

Mental Health and Wellbeing Commission Bill

Government Bill

Explanatory note

General policy statement

The objective of the Mental Health and Wellbeing Commission Bill is to establish a Mental Health and Wellbeing Commission.

The Commission will contribute to better mental health and wellbeing outcomes for people in New Zealand. It will also contribute to improving equity for Māori, Pacific peoples, disabled people, rainbow communities, and other groups that experience poorer mental health and wellbeing outcomes. The Commission will hold the current and future governments and other decision-makers to account for improving mental health and wellbeing, challenging them to perform better. The Commission will be established as an independent Crown entity to provide independence from the Government of the day.

The Commission will provide system-level oversight of mental health and wellbeing in New Zealand. It will build on the roles of existing organisations that contribute to mental health and wellbeing by looking across the whole system. This will include looking at how the system —

- promotes mental health and wellbeing:
- builds resilience and prevents poor mental health and wellbeing (including addiction and suicidal distress and behaviour):
- identifies and responds to people experiencing poor mental health and wellbeing, and the persons (including family and whānau) who support them.

Acknowledging that there are many factors that contribute to people's mental health and wellbeing, and that people rarely experience 1 factor in isolation, the Commission's focus will span all government and non-government contributors to mental health and wellbeing. This will include (but will not be limited to) the health and disability, social welfare, housing, education, justice, and workplace relations and safety sectors. It will encompass the social determinants of health, such as housing, employ-

ment, poverty, social attitudes, and discrimination. It will include whether approaches to mental health and wellbeing are culturally appropriate.

The Commission will promote alignment, collaboration, and communication between government and non-government contributors to mental health and wellbeing. The Commission will monitor and advocate for the collective mental health and wellbeing of people in New Zealand.

The Commission will contribute to better and more equitable mental health and wellbeing outcomes for people in New Zealand by influencing—

- government and non-government decision makers to develop effective, culturally appropriate strategies and policies that contribute to improved mental health and wellbeing:
- service funders and providers to design and provide appropriate services and supports:
- research and evidence funders and providers to improve the evidence base relating to mental health and wellbeing:
- people and businesses in New Zealand to take action to improve their own mental health and wellbeing and that of family, whānau, employees, clients, and the wider community.

Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=188>

Regulatory impact assessment

The Ministry of Health produced a regulatory impact assessment on 20 June 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on **9 February 2021**.

Part 1

Preliminary provisions

Clause 3 is the Treaty of Waitangi clause.

Clause 4 defines terms used in the Bill.

Clause 5 is the operative provision for *Schedule 1*, which contains transitional, savings, and related provisions. There are currently no provisions of this nature.

Clause 6 provides that the Act will bind the Crown.

Part 2

Mental Health and Wellbeing Commission

Establishment of Mental Health and Wellbeing Commission

Clause 7 establishes the Mental Health and Wellbeing Commission (the **Commission**) as an independent Crown entity under the Crown Entities Act 2004.

Clause 8 provides that the board of the Commission consists of 2 to 5 members who collectively must have knowledge, understanding, and experience of specified matters.

Clause 9 imposes a collective duty on the board of the Commission, in addition to the collective duties of the board that are already owed under sections 49 to 52 of the Crown Entities Act 2004. The board must ensure that the Commission maintains systems and processes to ensure that the Commission has the capability and capacity to uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles, and to engage with Māori and to understand perspectives of Māori.

Objective, functions, and powers of Mental Health and Wellbeing Commission

Clause 10 sets out the objective of the Commission, which is to contribute to better and more equitable mental health and wellbeing outcomes for people in New Zealand.

Clause 11 sets out the functions of the Commission.

Clause 12 sets out the powers of the Commission.

Obtaining views of specified groups

Clause 13 requires the Commission to establish mechanisms to ensure that there are effective means of seeking the views of certain people and groups when performing its functions and exercising its powers. The Commission may establish advisory or consultancy groups for that purpose.

Power to obtain information

Clause 14 empowers the Commission to obtain information from the entities identified in *clause 14(6)*, if that information is necessary or desirable to enable the Com-

mission to perform its functions. The power to obtain information is subject to *clause 15*.

Clause 15 provides that the Commission must not request, and an entity must not supply, information that is—

- personal information;
- information collected under the Statistics Act 1975 (access to that information can instead be obtained in accordance with the provisions of that Act);
- information that a revenue officer must keep confidential under section 18 of the Tax Administration Act 1994.

An entity may also refuse to supply information if it can be properly withheld under certain sections of the Official Information Act 1982, or if the supply of the information would limit the ability of the entity (or certain others) to act judicially, or to carry out the statutorily independent functions of the entity.

Clause 16 sets out restrictions that apply to the publication or disclosure of information obtained by the Commission under *clause 14*. In general, the Commission will only be able to publish the information in statistical or summary form, unless the information is otherwise publicly available, the Commission has the consent of the entity that the information was obtained from, or publication or disclosure is required by law.

Review of Commission

Clause 17 provides for a review of the operation and effectiveness of the Commission to be commenced 5 years after this legislation comes into force.

Consequential amendments

Clause 18 gives effect to the consequential amendments set out in *Schedule 2*.

Hon Dr David Clark

Mental Health and Wellbeing Commission Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Mental Health and Wellbeing Commission Act **2019**.

2 Commencement

This Act comes into force on **9 February 2021**.

5

Part 1

Preliminary provisions

3 Treaty of Waitangi (Te Tiriti o Waitangi)

In order to recognise and respect the Crown's responsibility to take appropriate account of the Treaty of Waitangi, and with a view to achieving better and more equitable mental health and wellbeing outcomes for Māori,— 10

(a) **section 8(2)** requires the Minister to have regard to the need for members of the board to collectively have knowledge, understanding, and experience of—

(i) te ao Māori (Māori world view), tikanga Māori (Māori protocol and culture), and whānau-centred approaches to wellbeing; and 15

(ii) the cultural, economic, educational, spiritual, societal, and other factors that affect people's mental health and wellbeing; and

(b) **section 9(1)** requires the board to ensure that the Commission maintains systems and processes to ensure that, for the purposes of carrying out its functions under this Act, the Commission has the capability and capacity— 20

(i) to uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles; and

- (ii) to engage with Māori and to understand perspectives of Māori; and
- (c) **section 11** requires the Commission to have particular regard to the experience of, and outcomes for, Māori when the Commission performs its functions under this Act, which include— 5
- (i) assessing and reporting publicly on the mental health and wellbeing of people in New Zealand; and
- (ii) assessing and reporting publicly on factors that affect people’s mental health and wellbeing; and
- (iii) assessing and reporting publicly on the effectiveness, efficiency, and adequacy of approaches to mental health and wellbeing (including mental health services and addiction services); and 10
- (iv) advocating for the collective interests of people who experience mental distress or addiction (or both), and the persons (including family and whānau) who support them; and 15
- (d) **section 13** requires the Commission, in performing its functions and exercising its powers under this Act, to establish mechanisms to ensure that there are effective means of seeking the views of Māori.
- 4 Interpretation**
- In this Act, unless the context otherwise requires,— 20
- board** means the board of the Commission
- Commission** means the Mental Health and Wellbeing Commission established by **section 7**
- Minister** means the Minister of the Crown who, under authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act. 25
- 5 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.
- 6 Act binds the Crown** 30
- This Act binds the Crown.

Part 2

Mental Health and Wellbeing Commission

Establishment of Mental Health and Wellbeing Commission

- 7 Mental Health and Wellbeing Commission established** 5
- (1) The Mental Health and Wellbeing Commission is established.
- (2) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.
- 8 Board of Commission** 10
- (1) The board of the Commission consists of 2 to 5 members.
- (2) In appointing the members, the Minister must have regard to the need for members to collectively—
- (a) have knowledge, understanding, and experience of—
- (i) te ao Māori (Māori world view), tikanga Māori (Māori protocol and culture), and whānau-centred approaches to wellbeing; and 15
- (ii) the cultural, economic, educational, spiritual, societal, and other factors that affect people’s mental health and wellbeing; and
- (iii) mental health services and addiction services; and
- (iv) improving overall system performance; and 20
- (b) have personal experience of mental distress; and
- (c) have personal experience of addiction.
- (3) This section does not limit section 29 of the Crown Entities Act 2004.
- 9 Additional collective duty of board**
- (1) The board must ensure that the Commission maintains systems and processes to ensure that, for the purposes of carrying out its functions under this Act, the Commission has the capability and capacity— 25
- (a) to uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles; and
- (b) to engage with Māori and to understand perspectives of Māori. 30
- (2) The duty in **subsection (1)**—
- (a) applies in addition to the duties of the board in sections 49 to 52 of the Crown Entities Act 2004; and

- (b) is a collective duty owed to the Minister for the purposes of section 58 of the Crown Entities Act 2004.

Compare: 2019 No 50 s 11

Objective, functions, and powers of Mental Health and Wellbeing Commission

- 10 Objective of Commission** 5
- In performing its functions and exercising its powers under this Act, the Commission's objective is to contribute to better and more equitable mental health and wellbeing outcomes for people in New Zealand.
- Compare: 2004 No 115 s 14(2)
- 11 Functions of Commission** 10
- (1) The functions of the Commission are—
- (a) to assess and report publicly on the mental health and wellbeing of people in New Zealand; and
- (b) to assess and report publicly on factors that affect people's mental health and wellbeing; and 15
- (c) to assess and report publicly on the effectiveness, efficiency, and adequacy of approaches to mental health and wellbeing (including mental health services and addiction services); and
- (d) to promote alignment, collaboration, and communication between entities involved in mental health and wellbeing; and 20
- (e) to advocate for the collective interests of people who experience mental distress or addiction (or both), and the persons (including family and whānau) who support them.
- (2) When performing its functions under this Act, the Commission must have particular regard to the experience of, and outcomes for, Māori. 25
- 12 Powers of Commission**
- The Commission has the power to—
- (a) publicly report on any matters concerning the mental health and wellbeing of people in New Zealand; and
- (b) make recommendations to any person (including any Minister) on any matters concerning mental health and wellbeing; and 30
- (c) obtain information in accordance with **sections 14 to 16**.

*Obtaining views of specified groups***13 Obligation to establish mechanisms to seek views**

- (1) In performing its functions and exercising its powers under this Act, the Commission must establish mechanisms to ensure that there are effective means of seeking the views of— 5
- (a) Māori; and
 - (b) Pacific peoples; and
 - (c) disabled people; and
 - (d) other groups of people who have disproportionately poorer mental health and wellbeing; and 10
 - (e) people who have experienced mental distress, and the persons (including family and whānau) who support them; and
 - (f) people who have experienced addiction, and the persons (including family and whānau) who support them; and
 - (g) children and young people. 15
- (2) Those mechanisms may include appointing advisory committees or forming consultation forums.

Compare: 2003 No 128 s 13

Power to obtain information

- 14 Power of Commission to obtain information** 20
- (1) The Commission may request an entity specified in **subsection (6)** to supply to the Commission any information that is necessary or desirable to enable the Commission to perform its functions.
- (2) A request—
- (a) must be in writing; and 25
 - (b) may state the date by which, and the manner in which, the information must be provided.
- (3) If a date is specified, that date must be reasonable.
- (4) An entity to which the request is made must comply with the request.
- (5) **Section 15** overrides **subsections (1) and (4)**. 30
- (6) A request may be made to 1 or more of the following entities:
- (a) a department named in Schedule 1 of the State Sector Act 1988, other than—
 - (i) the Government Communications Security Bureau; and
 - (ii) the New Zealand Security Intelligence Service: 35

- (b) a departmental agency named in Schedule 1A of the State Sector Act 1988:
- (c) a statutory entity named in Schedule 1 of the Crown Entities Act 2004:
- (d) the New Zealand Defence Force:
- (e) the New Zealand Police. 5

Compare: 2019 No 51 s 23

15 Reasons for refusing to supply requested information

- (1) The Commission must not request, and an entity must not supply, information that is—
 - (a) personal information as defined in section 2(1) of the Privacy Act 1993; 10
or
 - (b) information held by the Government Statistician that was collected under the Statistics Act 1975; or
 - (c) information that a revenue officer must keep confidential under section 18 of the Tax Administration Act 1994. 15
- (2) An entity may refuse a request for information if—
 - (a) it can be properly withheld under sections 6, 7, 9(2)(a), (b)(i), (ba)(ii), (c) to (h), (j), or (k) of the Official Information Act 1982; or
 - (b) the supply of the information would limit the ability of the entity, or of any of its employees, members, or office holders, to act judicially, or to carry out the statutorily independent functions of the entity, in relation to a particular matter. 20

Compare: 2019 No 51 s 24

16 Publication or disclosure of information to others

- The Commission must not publish or disclose any information obtained under **section 14** unless 1 or more of the following apply: 25
- (a) the information is available to the public under any enactment or is otherwise publicly available:
 - (b) the information is in a statistical or summary form:
 - (c) the publication or disclosure is with the consent of the entity from which the information was obtained: 30
 - (d) the publication or disclosure is required by law.

Compare: 2019 No 51 s 26

Review of Commission

17 Review of Commission 35

- (1) The Minister must, as soon as practicable after the expiry of 5 years from the commencement of this Act,—

- (a) commence a review of the operation and effectiveness of the Commission; and
 - (b) prepare a report on that review.
- (2) The Minister must present the report to the House of Representatives as soon as practicable after it has been completed. 5

Consequential amendments

18 Consequential amendments to other enactments

Amend the enactments specified in **Schedule 2** as set out in that schedule.

Schedule 1
Transitional, savings, and related provisions

s 5

Part 1
Provisions relating to this Act as enacted

5

There are no transitional, savings, or related provisions relating to this Act as enacted.

Schedule 2

Consequential amendments

s 18

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 3, insert in its appropriate alphabetical order: 5

Mental Health and Wellbeing Commission

Health and Disability Commissioner Act 1994 (1994 No 88)

In the heading to section 9, delete “**and Mental Health Commissioner**”.

Repeal section 9(2).

In section 9(3), delete “or the Mental Health Commissioner”. 10

Repeal section 14(1)(ma).

In section 23(b), after “the Children’s Commissioner,”, insert “the Mental Health and Wellbeing Commission,”.

In section 68(2), delete “or the Mental Health Commissioner”.

In Schedule 2, clause 4(5), delete “or the Mental Health Commissioner”. 15

Official Information Act 1982 (1982 No 156)

In Schedule 1, insert in its appropriate alphabetical order:

Mental Health and Wellbeing Commission

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, insert in its appropriate alphabetical order: 20

Mental Health and Wellbeing Commission

Remuneration Authority Act 1977 (1977 No 110)

In Schedule 4, delete “The Mental Health Commissioner and the Deputy Health and Disability Commissioners”.

In Schedule 4, insert in its appropriate alphabetical order: 25

The Deputy Health and Disability Commissioners