

## MENTAL HEALTH COMMISSION BILL

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### EXPLANATORY NOTE

#### GENERAL POLICY STATEMENT

THIS Bill establishes the Mental Health Commission as an independent statutory body. The main purpose of the Commission is to ensure that the National Mental Health Strategy is implemented.

The two key goals of the Strategy are to decrease the prevalence of mental illness and mental health problems within the community; and to increase the health status of, and reduce the impact of mental disorders on, consumers, their families, caregivers, and the community.

The Commission will make an annual report to the Minister of Health about the performance of its functions, which the Minister will table in the House of Representatives. The Bill also provides for the Minister of Health to appoint an advisory committee to the Commission, if requested to do so by the Commission.

The Bill has an expiry date of 30 August 2001, or earlier if the Minister is satisfied that the National Mental Health Strategy has been implemented.

#### OTHER EXPLANATORY NOTES

*Clause 1* relates to the Short Title.

*Clause 2* is the interpretation provision. It includes a definition of the term “national mental health strategy”.

*Clause 3* gives the Minister of Health power to amend the national mental health strategy.

*Clause 4* provides for the Act to bind the Crown.

#### *Establishment and Functions of Mental Health Commission*

*Clause 5* provides for the establishment of the Mental Health Commission.

*Clause 6* sets out the functions of the Commission. These involve the Commission reporting to the Minister of Health, and working with others, on matters related to the implementation of the national mental health strategy.

#### *Other Matters Relating to Mental Health Commission*

*Clause 7* provides for the Commission to furnish the Minister with an annual report on its performance of its functions.

*Clause 8* provides that the Commission has the powers necessary to perform its functions.

*Clause 9* deals with the membership of the Commission (3 members).

*Clause 10* deals with the term of office of members (normally 5 years).

*Clause 11* provides that the provisions in the *First Schedule* apply to the Commission.

*Clause 12* provides that the Minister may establish a committee to advise the Commission.

*Miscellaneous Provisions*

*Clause 13* provides for the expiry of the Act.

*Clause 14* deals with amendments to other Acts.

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Hon. Jenny Shipley

## MENTAL HEALTH COMMISSION

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### ANALYSIS

Title	<i>Other Matters Relating to Mental Health Commission</i>
1. Short Title	7. Annual report
2. Interpretation	8. Powers of Commission
3. Amendments to national mental health strategy	9. Membership of Commission
4. Act to bind the Crown	10. Term of office of members of Commission
<i>Establishment and Functions of Mental Health Commission</i>	11. Further provisions applying in respect of Commission
5. Establishment of Commission	12. Advisory committee
6. Functions of Commission	<i>Miscellaneous Provisions</i>
	13. Expiry of Act
	14. Amendments to other enactments Schedules

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### A BILL INTITULED

#### **An Act to establish the Mental Health Commission to ensure the implementation of the national mental health strategy**

5 BE IT ENACTED by the Parliament of New Zealand as follows:

1. **Short Title**—This Act may be cited as the Mental Health Commission Act 1996.

2. **Interpretation**—In this Act, unless the context otherwise requires,—

10 “Commission” means the Mental Health Commission established by **section 5** of this Act:

“Minister” means the Minister of Health:

“Ministry” means the Ministry of Health:

“National mental health strategy”—

15 (a) Means the strategic directions for the mental health services of New Zealand described in the document entitled “Looking Forward—Strategic

Directions for the Mental Health Services” published by the Ministry in June 1994; and

(b) Includes any variation of, or addition to, those strategic directions approved by the Minister and published pursuant to **section 3 (1) (b)** of this Act: 5

“Provider” means a provider of services:

“Regional health authority” has the meaning given to it by section 2 of the Health and Disability Services Act 1993:

“Services” means mental health services: 10

“Year” means a period of 12 months commencing on the 1st day of July and ending with the 30th day of June.

**3. Amendments to national mental health strategy—**

(1) The Minister may from time to time—

(a) Approve a variation of the national mental health strategy or an addition to it; and 15

(b) Give permission for the publication by the Ministry of a document that describes the variation or addition.

(2) On the publication of a document pursuant to **subsection (1) (b)** of this section, the variation or addition described shall be included in the national mental health strategy. 20

**4. Act to bind the Crown—**This Act binds the Crown.

*Establishment and Functions of Mental Health Commission*

**5. Establishment of Commission—**There is hereby established a Commission to be called the Mental Health Commission. 25

**6. Functions of Commission—**(1) The functions of the Commission are—

(a) To report to the Minister, from time to time or at intervals agreed between the Minister and the Commission, on the implementation of the national mental health strategy; and 30

(b) To report to and advise the Minister, when requested by the Minister, on any matter relating to the implementation of the national mental health strategy specified by the Minister in the request; and 35

(c) To work with all those involved in the care and treatment of people with mental illness and their families, including the Ministry, regional health authorities, and providers,— 40

- (i) To promote better understanding, by the community, of mental illness; and
- (ii) To reduce the stigma associated with mental illness and the prejudice shown to people with mental illness and their families; and
- 5 (d) To promote employment in the mental health field as a desirable career choice; and
- (e) To work with all those involved in training for employment in the mental health field—
- 10 (i) To promote the provision of training opportunities of an appropriate range and quality; and
- (ii) To promote the obtaining and maintaining, by people employed in the mental health field, of skills of an appropriate range and quality.
- 15 (2) The Commission shall ensure—
- (a) That each report under **subsection (1) (a)** of this section covers one, some, or all of the matters described in **subsection (3)** of this section; and
- 20 (b) That every year it presents at least one report under **subsection (1) (a)** of this section on each of the matters described in **subsection (3)** of this section.
- (3) The matters referred to in **subsection (2)** of this section are—
- 25 (a) The extent to which the Ministry has exercised leadership in the implementation of the national mental health strategy by way of its performance of the tasks described in **paragraphs (b) to (g)** of this subsection:
- 30 (b) The extent to which the Ministry has established, through negotiations with regional health authorities, specific targets and milestones for each of the strategic directions in the national mental health strategy:
- 35 (c) The Ministry's performance in—
- (i) Measuring delivery by regional health authorities, with respect to each of the strategic directions in the national mental health strategy, against the targets and milestones; and
- (ii) Responding to any failures by regional health authorities to meet the targets and milestones:
- 40 (d) The Ministry's performance in measuring progress by regional health authorities towards clearly communicating to providers, consumers, and communities—

- (i) The changes needed in order to implement the national mental health strategy; and
- (ii) The roles to be played and the responsibilities to be undertaken by those providers, consumers, and communities: 5
- (e) The progress made by the Ministry and regional health authorities in promoting co-ordination and collaboration among providers to ensure that services are provided consistently and effectively:
- (f) The extent to which the Ministry, and any other government agency that has responsibilities in relation to the delivery of services that affect people with mental illness and their families, is implementing the national mental health strategy— 10
  - (i) Through the provision of services directly by it; 15
  - or
  - (ii) Through the standards it sets for the provision of services by parties which it funds to provide those services or from which it purchases services:
- (g) The effectiveness of systems put in place by the Ministry and regional health authorities to ensure— 20
  - (i) That Government funding for services is not diverted to other purposes; and
  - (ii) That Government expenditure on services has demonstrable effects. 25

*Other Matters Relating to Mental Health Commission*

**7. Annual report**—(1) The Commission shall, as soon as practicable after the end of each year, furnish to the Minister a report on its performance of its functions in that year.

(2) The Minister shall lay a copy of each such report before the House of Representatives in accordance with section 44A of the Public Finance Act 1989. 30

**8. Powers of Commission**—The Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions. 35

**9. Membership of Commission**—(1) The Commission shall consist of 3 members, who shall be appointed by the Minister, and of whom one shall be appointed as Chairperson.

(2) Any person appointed as a member of the Commission or as its Chairperson may hold that office concurrently with any other office, subject to the Minister being satisfied that 40

holding offices concurrently will not involve the person in a conflict of interest.

5 **10. Term of office of members of Commission**—Except as otherwise provided in **clause 3 (5) of the First Schedule** to this Act, every member of the Commission shall be appointed for a term of 5 years.

**11. Further provisions applying in respect of Commission**—The provisions set out in the **First Schedule** to this Act shall apply in respect of the Commission.

10 **12. Advisory committee**—The Minister may, at the request of the Commission, appoint under section 46 of the Health and Disability Services Act 1993 an advisory committee to provide advice to the Commission in relation to the functions of the Commission set out in **section 6** of this Act.

15 *Miscellaneous Provisions*

**13. Expiry of Act**—(1) This Act shall expire—  
(a) At 5 p.m. on the 30th day of August 2001; or  
(b) At such earlier time as is appointed by the Governor-General by Order in Council on the recommendation of the Minister.

20 (2) The Minister shall not make a recommendation under **subsection (1) (b)** of this section unless the Minister is satisfied, whether by way of advice from the Commission or otherwise, that the national mental health strategy has been implemented.

25 (3) At the expiry of this Act—  
(a) The Commission shall cease to exist; and  
(b) All assets and liabilities of the Commission shall become assets and liabilities of the Crown; and  
30 (c) Employment contracts between the Commission and any person shall be terminated and no compensation shall be payable except as provided in the relevant employment contract.

35 **14. Amendments to other enactments**—The enactments specified in the **Second Schedule** to this Act are hereby amended in the manner indicated in that Schedule.

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## SCHEDULES

### Section 11

### FIRST SCHEDULE

#### PROVISIONS APPLYING IN RESPECT OF MENTAL HEALTH COMMISSION

**1. Delegation of functions or powers by Commission—**(1) The Commission may from time to time delegate, either generally or particularly, to any of its members any of its functions or powers.

(2) Every delegation under this clause shall be in writing.

(3) No delegation under this clause shall include the power to delegate under this clause.

(4) Subject to any general or special directions given or conditions imposed by the Commission, the person to whom any functions or powers are delegated under this clause may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.

(5) Every member of the Commission purporting to act pursuant to any delegation under this clause shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(6) No such delegation shall affect or prevent the exercise of any function or power by the Commission, nor shall any such delegation affect the responsibility of the Commission for the actions of any person acting under the delegation.

(7) Every delegation under this clause to 1 or 2 members of the Commission shall have effect notwithstanding that, under **clause 4** of this Schedule, the quorum necessary for the transaction of business at a meeting of the Commission is 2 members.

**2. Members not personally liable—**No member of the Commission shall be personally liable for any act or default done or made by the Commission or by any member of the Commission in good faith in pursuance of the functions of the Commission.

**3. Extraordinary vacancies—**(1) Any member of the Commission may at any time be removed from office by the Minister for conflict of interest, disability affecting performance of duty, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(2) Any member of the Commission may at any time resign his or her office by giving written notice to that effect to the Minister.

(3) If any member of the Commission dies, or resigns, or is removed from office, the vacancy thereby created shall be deemed to be an extraordinary vacancy.

(4) An extraordinary vacancy may be filled by the appointment of a person by the Minister.

(5) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

(6) The powers of the Commission shall not be affected by any vacancy in its membership.

**4. Meetings—**(1) Meetings of the Commission shall be held at such times and places as the Commission or the Chairperson from time to time appoints.

(2) At any meeting of the Commission the quorum necessary for the transaction of business shall be 2 members.



FIRST SCHEDULE—*continued*

PROVISIONS APPLYING IN RESPECT OF MENTAL HEALTH COMMISSION—  
*continued*

(3) At all meetings of the Commission the Chairperson shall preside if he or she is present.

(4) All questions arising at any meeting shall be decided by a majority of the votes cast by the members present.

(5) At any meeting the Chairperson shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(6) A resolution in writing signed or assented to by letter, or by facsimile transmission or any other electronic means, by all members of the Commission, shall be as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.

(7) Subject to this Act, the Commission may regulate its procedure in such manner as it thinks fit.

**5. Remuneration and travelling allowances**—The members of the Commission shall be paid such fees, salaries, and allowances, and such travelling allowances and expenses, as the Minister from time to time determines.

**6. Employees**—The Commission may appoint such employees, including employees on secondment from other organisations, as it thinks necessary for the efficient performance of its functions.

**7. Personnel policy**—(1) The Commission shall operate a personnel policy that complies with the principle of being a good employer.

(2) For the purposes of this clause, a “good employer” is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

- (a) Good and safe working conditions; and
- (b) An equal employment opportunities programme; and
- (c) The impartial selection of suitably qualified persons for appointment; and
- (d) Recognition of—
  - (i) The aims and aspirations of Maori people; and
  - (ii) The employment requirements of Maori people; and
  - (iii) The need for substantial involvement of Maori people as employees of the employer operating the personnel policy; and
- (e) Opportunities for the enhancement of the abilities of individual employees; and
- (f) Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- (g) Recognition of the employment requirements of women; and
- (h) Recognition of the employment requirements of persons with disabilities.

**8. Choice of procedure**—Where the circumstances giving rise to a personal grievance by a person employed by the Commission are also such that that person would be entitled to make a complaint under the Human Rights Act 1993, or to exercise a right of review or appeal, that person may take one, but no more than one, of the following steps:

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF MENTAL HEALTH COMMISSION—  
*continued*

- (a) The person may invoke, in relation to those circumstances, the procedures applicable in relation to personal grievances under the relevant employment contract:
- (b) The person may make, in relation to those circumstances, a complaint under the Human Rights Act 1993:
- (c) The person may exercise the right of review or appeal.

**9. Application of certain Acts to members and employees**—No person shall be deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of that person's appointment as a member of the Commission or by reason only of that person's employment under **clause 6** of this Schedule.

**10. Superannuation or retiring allowances**—(1) For the purposes of providing superannuation or retiring allowances for any member or employee of the Commission, the Chairperson of the Commission may, out of the funds of the Commission, make payment to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

(2) Notwithstanding anything in this Act, any person who, immediately before being appointed as a member or, as the case may be, becoming an employee of the Commission, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to be a member of the Commission or, as the case may be, to be an employee of the Commission; and that Act shall apply to that person in all respects as if that person's service as a member or, as the case may be, as an employee, were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in **subclause (2)** of this clause entitles any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(4) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with **subclause (2)** of this clause, to a person who is a member or, as the case may be, an employee of the Commission and (in any such case) is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person, means the Chairperson of the Commission.

**11. Funds of Commission**—The funds of the Commission shall consist of—

- (a) Any money appropriated by Parliament for the purposes of the Commission and paid to the Commission for the purposes of the Commission:
- (b) All other money lawfully received by the Commission for the purposes of the Commission:
- (c) All accumulations of income derived from any such money.

FIRST SCHEDULE—*continued*

PROVISIONS APPLYING IN RESPECT OF MENTAL HEALTH COMMISSION—  
*continued*

**12. Audit Office to be auditor of accounts and financial statements**—The Audit Office shall audit the accounts and financial statements of the Commission.

**13. Commission to be Crown entity**—The Commission shall be a Crown entity for the purposes of the Public Finance Act 1989.

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## Section 14

SECOND SCHEDULE  
ENACTMENTS AMENDED

Enactment	Amendment
1982, No. 156—The Official Information Act 1982 (R.S. Vol. 21, p. 579)	By inserting in the First Schedule, in its appropriate alphabetical order, the following item: “Mental Health Commission”.
1989, No. 44—The Public Finance Act 1989 (R.S. Vol. 33, p. 419)	By inserting in the Fourth and Fifth Schedules (as added by section 41 of the Public Finance Amendment Act 1992), in its appropriate alphabetical order, the following item: “Mental Health Commission.”