

Mental Health and Wellbeing Commission Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Mental Health and Wellbeing Commission Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to establish a Mental Health and Wellbeing Commission. This is in response to recommendations 36 to 38 in He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction.

The Commission would be established as an independent Crown entity. Its role would be to contribute to better and equitable mental health and wellbeing outcomes for people in New Zealand.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Groups from which the Commission would seek views

Clause 13(1) of the bill as introduced would require the Commission to seek the views of Māori, Pacific peoples, disabled people, and others who are at higher than normal risk of poorer mental health and wellbeing. It must also seek the views of children, young people, and those with personal experience of mental distress or addiction.

There was strong interest in this clause. We note that multiple submissions identified additional groups that experience poorer outcomes. Submitters recommended that the bill also list them as groups the Commission should seek the views of when carrying out its functions.

We propose a more inclusive approach to clause 13 that would acknowledge groups that experience poorer outcomes, such as rainbow communities, while providing the Commission flexibility to determine the groups it will consult.

We recommend amending clause 13 to highlight that the Commission should seek views of people at greater risk of experiencing poor mental health and wellbeing, while also explicitly referring to the 12 groups identified in He Ara Oranga as examples of groups that are at risk of experiencing poor mental health and wellbeing. This list includes the groups in the bill as introduced (Māori, Pacific peoples, disabled people, and children and young people) but also includes rainbow communities, rural communities, older people, and refugees and migrants, among others. We recommend inserting the list of groups into the bill as Schedule 1A.

We also recommend the addition of clause 13(1)(e) to explicitly state that the Commission could seek the views of any group that it considers may help it meet its objective. We note that the Commission's mandate covers the mental health and wellbeing of all people in New Zealand, and believe this addition would reinforce that the Commission could consider any perspectives it considers necessary to fulfil its functions.

We believe these amendments would capture not only the groups specified in Schedule 1A, but also those of other groups that made submissions on this bill. These amendments also reflect the fact that the groups that are at greater risk of experiencing poor mental health and wellbeing will change over time, and the Commission needs the flexibility to seek the views of differing groups as circumstances evolve and change.

Functions of the Commission

Clause 11(1) sets out the functions of the Commission. In undertaking its functions, the Commission would be required to have particular regard to the experience of, and outcomes for, Māori (clause 11(2)).

We also recommend inserting clause 11(3) to be clear that the Commission should consider evidence where relevant and that it have regard to a wide range of factors affecting mental health and wellbeing.

We believe the bill should provide more clarity about the Commission's role in influencing and improving approaches to mental health and wellbeing. We therefore recommend the addition of clause 11(1)(ca) to emphasise that the Commission can make recommendations to influence better mental health and wellbeing.

Membership of the board

Proposed clause 8 would allow for the board to consist of 2 to 5 members. It would also require the Minister to take into consideration the need for board members to collectively have an understanding of (amongst other things) te ao Māori and tikanga Māori; factors that affect people's mental health and wellbeing; mental health services and addiction services; and improving overall system performance.

We recommend amending clause 8(1) to require a board of 3 to 7 members. We believe this would allow for the board to collectively cover a wider range of the recommended attributes and experience.

We also recommend amending clause 8(2)(a) to specify that consideration must also be given to potential board members' collective knowledge, understanding, and experience of:

- the effect of environmental factors on people's mental health and wellbeing; and
- public health and population health approaches to improving health outcomes.

We believe this amendment would encourage the Commission to consider the full range of factors that affect people's mental health and wellbeing and the full range of interventions to promote positive mental health and wellbeing and prevent poor mental health and wellbeing.

Commencement

As introduced, clause 2 specifies that this legislation would come into force on 9 February 2021. We note that the Government has already established the Initial Mental Health and Wellbeing Commission to undertake some of the proposed functions for the permanent Commission and to provide advice for the permanent Commission. We see it as important to maintain momentum from this work and from He Ara Oranga. To allow flexibility for the permanent Commission to be established earlier than 9 February 2021, we recommend that the Act come into force on the earlier of a date to be appointed by the Governor-General by Order in Council or 9 February 2021.

Independence of the Commission

We recommend the following two amendments to reflect the fact that the Commission would be an independent Crown entity:

- amending clause 8(2) to make it clear that the Minister would recommend people for membership of the board, but (under the Crown Entities Act 2004) members would be appointed by the Governor-General, not the Minister
- inserting clause 11(4), requiring the Commission to act independently when performing its functions. This is a standard provision in legislation that establishes such entities.

Appendix

Committee process

The Mental Health and Wellbeing Commission Bill was referred to the committee on 19 November 2019. The closing date for submissions was 11 December 2019. We received and considered 99 submissions from interested groups and individuals. We heard oral evidence from 42 submitters.

We received advice from the Ministry of Health.

Committee membership

Louisa Wall (Chairperson)

Hon Maggie Barry

Dr Liz Craig

Matt Doocey

Hon Ruth Dyson

Jenny Marcroft

Dr Shane Reti

Hon Michael Woodhouse

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr David Clark

Mental Health and Wellbeing Commission Bill

Government 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**.~~

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(1) This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates.

(2) Any provision that is not earlier brought into force under **subsection (1)** comes into force on 9 February 2021.

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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,—

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(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
- (ii) the cultural, economic, educational, spiritual, societal, environmental, and other factors that affect people’s mental health and wellbeing; and 5
- (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—
 - (i) to uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles; and 10
 - (ii) to engage with Māori and to understand perspectives of Māori; and
- (c) **section 11(2)** 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— 15
 - (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 20
 - (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
 - (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 25
- (ca) **section 11(3)** requires the Commission, when it performs its functions under this Act, to also have regard to—
 - (i) the cultural, economic, educational, spiritual, societal, environmental, and other factors that affect people’s mental health and wellbeing; and 30
 - (ii) actions undertaken that (or that could be undertaken to) identify and respond to people experiencing poor mental health and wellbeing, and the persons (including family and whānau) who support them; and 35
- (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~~ it has effective means of seeking the views of Māori.

4 Interpretation

In this Act, unless the context otherwise requires,— 40

- 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. 5
- 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** 10
- 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** 15
- (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. 20
- 8 Board of Commission**
- (1) The board of the Commission consists of ~~2 to 5~~ 3 to 7 members.
- (2) ~~In appointing the members,~~ When recommending a person for membership of the board, the Minister must have regard to the need for members to collectively— 25
- (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
- (ii) the cultural, economic, educational, spiritual, societal, environmental, and other factors that affect people’s mental health and wellbeing; and 30
- (iii) mental health services and addiction services; and
- (iiia) public health approaches and population health approaches to improving health outcomes; and
- (iv) improving overall system performance; and 35

- (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—
- (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.
- (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

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

- (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
 - (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~~
 - (ca) to make recommendations to improve the effectiveness, efficiency, and adequacy of approaches to mental health and wellbeing; and
 - (cb) to monitor mental health services and addiction services and to advocate improvements to those services; and
 - (d) to promote alignment, collaboration, and communication between entities involved in mental health and wellbeing; and

- (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. 5
- (3) The Commission must also have regard to—
- (a) available evidence; and
- (b) the cultural, economic, educational, spiritual, societal, environmental, and other factors that affect people’s mental health and wellbeing; and
- (c) actions undertaken that (or that could be undertaken to)— 10
- (i) promote positive mental health and wellbeing;
- (ii) build resilience and prevent poor mental health and wellbeing;
- (iii) identify and respond to people experiencing poor mental health and wellbeing, and the persons (including family and whānau) who support them. 15
- (4) Except as expressly provided otherwise in this or another Act, the Commission must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—
- (a) this Act; and
- (b) any other Act that expressly provides for the functions, duties, or powers of the Commission (other than the Crown Entities Act 2004). 20

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 25
- (b) make recommendations to any person (including any Minister) on any matters concerning mental health and wellbeing; and
- (c) obtain information in accordance with **sections 14 to 16**.

Obtaining views of specified groups

13 ~~Obligation to establish mechanisms to seek~~ have effective means of seeking views 30

- (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—~~
- (a) Māori; and 35
- (b) Pacific peoples; and
- (c) disabled people; and

- (d) ~~other groups of people who have disproportionately poorer mental health and wellbeing; and~~
- (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~~ 5
- (g) ~~children and young people.~~
- (2) ~~Those mechanisms may include appointing advisory committees or forming consultation forums.~~
- (1) In performing its functions and exercising its powers under this Act, the Commission must ensure that it has effective means of seeking the views of— 10
- (a) Māori; and
- (b) people who share a common identity, experience, or stage in life that increases the risk that they will experience poor mental health and wellbeing (for example, the groups identified in He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction and that are set out in **Schedule 1A**); and 15
- (c) people who have experienced mental distress, and the persons (including family and whānau) who support them; and
- (d) people who have experienced addiction, and the persons (including family and whānau) who support them; and 20
- (e) any other group the Commission considers may help it to meet its objective (see **section 10**).
- (2) Those means may include—
- (a) appointing advisory committees or forming consultation forums; 25
- (b) using consultation mechanisms that have been established by other entities.

Compare: 2003 No 128 s 13

Power to obtain information

- 14 Power of Commission to obtain information** 30
- (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 35
- (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)**.
- (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:
 - (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: 10
 - (d) the New Zealand Defence Force:
 - (e) the New Zealand Police.

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— 15
- (a) personal information as defined in section 2(1) of the Privacy Act 1993; or
 - (b) information held by the Government Statistician that was collected under the Statistics Act 1975; or 20
 - (c) information that a revenue officer must keep confidential under section 18 of the Tax Administration Act 1994.
- (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 25
 - (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.

Compare: 2019 No 51 s 24

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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:

- (a) the information is available to the public under any enactment or is otherwise publicly available: 35
- (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:
- (d) the publication or disclosure is made under the Official Information Act 1982 or is otherwise required by law.

Compare: 2019 No 51 s 26

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Review of Commission

17 Review of Commission

- (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.

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Consequential amendments

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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

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

Schedule 1A
Groups identified in He Ara Oranga: Report of the Government
Inquiry into Mental Health and Addiction

	<u>s 13(1)(b)</u>
<u>Māori</u>	5
<u>Pacific peoples</u>	
<u>Refugees and migrants</u>	
<u>Rainbow communities</u>	
<u>Rural communities</u>	
<u>Disabled people</u>	10
<u>Veterans</u>	
<u>Prisoners</u>	
<u>Young people</u>	
<u>Older people</u>	
<u>Children experiencing adverse childhood events</u>	15
<u>Children in state care</u>	

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~~ their appropriate alphabetical order: 25

The Deputy Health and Disability Commissioners

The members of the Mental Health and Wellbeing Commission

Legislative history

14 November 2019

Introduction (Bill 188–1)

19 November 2019

First reading and referral to Health Committee