

Departmental Disclosure Statement

Mental Health and Wellbeing Commission Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

6 November 2019

Contents

Contents..... 2

Part One: General Policy Statement..... 3

Part Two: Background Material and Policy Information 5

Part Three: Testing of Legislative Content..... 7

Part Four: Significant Legislative Features 9

Part One: 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, employment, 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.

Functions of the Commission

The Commission's functions are principally to assess and report publicly on the mental health and wellbeing of people in New Zealand; advocate for the collective interests of people who experience mental distress and/or addiction; and promote alignment, collaboration, and communication between entities involved in mental health and wellbeing.

When performing its functions, the Commission must have particular regard to the experience of, and outcomes for, Māori.

The Commission will not consider individual complaints related to mental health and wellbeing.

As an Independent Crown Entity, the Commission will be subject to the reporting and auditing requirements of the Crown Entities Act 2004, such as preparing statements of performance expectations and annual reports.

Scope of the Commission

As outlined in the General Policy Statement, there are many factors that contribute to people's mental health and wellbeing, and people rarely experience one factor in isolation. The scope of the Commission therefore extends beyond the health and disability system.

Powers of the Commission

To undertake the proposed functions, the Commission will have the following powers:

- to publicly report on any matters concerning the mental health and wellbeing of people in New Zealand
- to make recommendations to any person (including any Minister) on any matters concerning mental health and wellbeing
- to obtain information from government departments and statutory Crown entities.

Information-gathering powers

The Commission's ability to successfully assess and report on the state of mental health and wellbeing in New Zealand relies on its ability to gather and consider information and research.

It is anticipated the Commission will use existing sources of information and will collaborate with owners to encourage them to provide information. However, as the Commission's success depends heavily on its ability to gather information, the Bill includes provisions requiring certain State sector agencies to comply with information requests from the Commission to enable the Commission to carry out its functions.

The Commission cannot obtain personal information about identifiable individuals.

Amendments to other Acts

The Bill will amend the Health and Disability Commissioner Act 1994 to shift the existing role of Mental Health Commissioner to the Commission.

The Bill also repeals the existing Mental Health Commissioner's function under section 14(1)(ma) of the Health and Disability Commissioner Act, 'to monitor mental health and addiction services and to advocate improvements to those services'. This requirement is carried out as part of the role of the existing Mental Health Commissioner. This function will be shifted to the Commission and is reflected in clause 11(1) of the Bill.

The Bill establishes the Commission as an independent Crown entity under the Crown Entities Act 2004.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction.</i> Published in November 2018. A copy of the report can be accessed at: www.mentalhealth.inquiry.govt.nz/inquiry-report.</p> <p>The Government's response to the recommendations made in the Inquiry can be found at: https://www.health.govt.nz/our-work/mental-health-and-addictions/government-inquiry-mental-health-and-addiction.</p> <p>Additionally, the following documents are, or will be, publicly available in the near future:</p> <ul style="list-style-type: none">• the Cabinet paper considered by the Social Wellbeing Committee and Cabinet titled 'Establishing a New Independent Mental Health and Wellbeing Commission';• the attached Regulatory Impact Analysis (RIA); and• the associated Cabinet minute CAB-19-MIN-0329.01 of the same title.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Establishing a new independent Mental Health and Wellbeing Commission.</i> Authored by Ministry of Health. Attached to the Cabinet paper considered by Cabinet Social Wellbeing Committee on 26 June 2019 and Cabinet on 1 July 2019.</p>	
2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Ministry of Health's internal Cabinet paper committee reviewed the RIA prepared by the Ministry of Health and considered that the information and analysis summarised in the RIA meets the quality assurance criteria.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
<p>Cabinet previously agreed the Commission will be established as an autonomous Crown entity [CAB-19-MIN-0329.01 refers]. Following consideration of strong stakeholder views, and based on advice from officials that the Commission could perform its functions as an autonomous or independent Crown entity, the Minister of Health sought Cabinet's agreement to establish the Commission as an independent Crown entity rather than an autonomous Crown entity. The Minister of State Services supported the recommendation. Both forms were analysed in the Regulatory Impact Analysis.</p> <p>The Bill reflects the Commission will be an independent Crown entity under the Crown Entities Act 2004.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
This information can be found in the Regulatory Impact Analysis mentioned in 2.3.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>This information can be found in the Regulatory Impact Analysis mentioned in 2.3.</p> <p>If the organisations that are compelled to provide certain requested information to the Commission do not comply, this could impact the Commission's effectiveness in carrying out its functions.</p> <p>The Mental Health and Wellbeing Commission will not be a regulator.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
--

The Commission's objective to contribute to better and more equitable mental health and wellbeing outcomes for people in New Zealand will help improve consistency with United Nations conventions such as the United Nations Convention on the Rights of Persons with Disabilities. Specifically, clause 12 of the Bill requires the Commission to establish mechanisms to allow it to seek the views of disabled people when carrying out its functions.
--

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Cabinet agreed the Commission's purpose will be to uphold and actively promote the principles of Te Tiriti o Waitangi in relation to the promotion of mental wellbeing in New Zealand [CAB-19-MIN-0329.01]. The Treaty of Waitangi (Te Tiriti o Waitangi) clause (cl.3) outlines how the Bill gives effect to this, including providing:
--

- | |
|--|
| <ul style="list-style-type: none">• the Commission must have particular regard to the experience of, and outcomes for, Māori when it performs its functions• the Commission must establish mechanisms to ensure that there are effective means of seeking the views of Māori when performing its functions.• the Board of the Commission must maintain systems and processes to ensure that, for the purposes of carrying out its functions, it has the capability and capacity uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles, and it has the capability and capacity to engage with Māori and to understand perspectives of Māori |
|--|

The Ministry of Health's Māori mental health advisory group was consulted during the policy development and drafting of the Bill. Feedback is reflected in the Bill. In particular, Te ao Māori (Māori world view), tikanga Māori (Māori protocol and culture), and whānau centered approaches to wellbeing has been included as criteria for Board members following the consultation.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
--	--

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
--	----

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
---	----

3.4.1. Was the Ministry of Justice consulted about these provisions?	N/A
---	------------

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
The information-gathering power contained in the Bill does not apply to personal information (clause 12(c) of the Bill).	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	N/A
--	------------

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>The following agencies were consulted on the Cabinet paper and the Bill: State Services Commission, Ministry for Pacific Peoples, Ministry of Justice, Te Puni Kōkiri, Department of Prime Minister and Cabinet (Policy Advisory Group), Department of Prime Minister and Cabinet (Child Wellbeing Unit), Ministry for Primary Industries, Ministry of Education, Ministry of Social Development, New Zealand Police, Oranga Tamariki, Ministry of Business, Innovation, and Employment, Accident Compensation Corporation, Social Investment Agency, Inland Revenue, Department of Corrections, The Treasury, Health Promotion Agency, Health Quality and Safety Commission, Human Rights Commission, Office of the Children's Commissioner, Office of the Health and Disability Commissioner, Office of the Ombudsman, WorkSafe New Zealand and the Office of the Privacy Commissioner.</p> <p>Targeted consultation on key components of the Bill was undertaken with stakeholder reference groups that represent Māori, people with lived experience of mental health and wellbeing issues, and disabled people.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
A summary of benefits and costs are outlined in the Regulatory Impact Analysis mentioned in 2.3.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
---	----

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
---	----

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
--	----

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
--	----

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
---	----

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
--	----

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
---	----

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
---	----