

In Confidence

Office of the Minister of Health

Office of the Minister of State Services

Chair, Cabinet Social Wellbeing Committee

ESTABLISHING A NEW INDEPENDENT MENTAL HEALTH AND WELLBEING COMMISSION

Proposal

1. This paper reports back to Cabinet on the form, functions and establishment process for a new Mental Health and Wellbeing Commission [CAB-18-MIN-0621 refers].

Executive Summary

2. In response to public and cross-sector calls, including through *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*, the Government committed to establishing a new Mental Health and Wellbeing Commission (the Commission) [CAB-19-MIN-0182 refers]. A Commission is a vital component of a transformed approach to mental wellbeing.
3. Transformation requires strong levers. A Commission will be a force for change, helping lead a shift to a mental wellbeing system that is accountable, and is experienced as joined-up, respectful and responsive by tāngata whaiora, their families and whānau. It will promote understanding of mental wellbeing that combats stigma, discrimination and inequity, and promotes human rights. In doing so, it will help improve mental wellbeing outcomes for the people of New Zealand.
4. We propose the purpose of a Commission will be to provide leadership in the mental wellbeing system, provide independent oversight to hold the system and government accountable, and uphold and promote the principles of Te Tiriti o Waitangi.
5. We propose the Commission has functions that fall in two groups: system-level oversight and leadership, and monitoring and advocacy. We propose the Commission has powers that enable it to carry out these functions.
6. A Commission will build on the roles of existing organisations in the mental wellbeing system, looking right across the system, including the health, social, education and justice sectors, and challenging it to perform better.
7. To ensure the independence needed to do its job, we propose establishing the Commission as an autonomous Crown entity. Because this requires legislation, which will take time, we propose to initially establish the Commission as a Ministerial Advisory Committee. This means some of the Commission's important functions can get underway quickly.

Background

8. There have been strong public and cross-sector calls to re-establish a Mental Health Commission. Re-establishing a Mental Health Commission was included in the Coalition Agreement and Speech from the Throne. Cabinet has previously noted the intention to establish a new Mental Health and Wellbeing Commission (the Commission) [CAB-19-MIN-0182 refers].
9. The Minister of Health asked the Government Inquiry into Mental Health and Addiction (the Inquiry) to make recommendations on the roles and responsibilities of a re-established Mental Health Commission. *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction* recommended establishing a Mental Health and Wellbeing Commission. **Appendix One** outlines the purpose, functions and powers the Inquiry recommended for the Commission.
10. In December 2018, Cabinet identified a Mental Health and Wellbeing Commission as one of our initial priorities for responding to the Inquiry.¹ We committed to this report-back on the form, function and establishment process for a Commission [CAB-18-MIN-0621].

Why a Commission is needed

11. New Zealanders have been clear the current mental wellbeing system needs significant improvement. Mental health and addiction supports and services, and the all-of-government contribution to mental wellbeing, are part of a wider 'mental wellbeing system'. The mental wellbeing system also includes the contribution of civil society and the private sector. It encompasses the social determinants of health, like family and whānau, housing, employment, poverty, the environment, social attitudes and more.
12. There are different areas within the system where improvement is needed. In the service delivery area, many people with lived experience of mental wellbeing issues feel they are not well-served by the mental health and addiction sector.
13. Looking right across the government's contribution to mental wellbeing, it is clear that existing mechanisms and arrangements for system oversight and accountability have not provided public confidence, or created meaningful improvement to mental wellbeing outcomes. There is fragmentation of services and support for mental wellbeing. Drug and other addiction issues need greater focus, as addiction has not had the priority it needs as a key public health issue.
14. There is also confusion about the different avenues for people to seek support or information, or make a complaint (for example, the Health and Disability Commissioner, the Ombudsman, and others).

¹ The Mental Health and Wellbeing Commission is one of a number of initiatives funded through Budget 2019 that support a transformative approach to mental health, wellbeing and addiction in New Zealand. These include initiatives to prevent suicide and support people bereaved by suicide, improving support for people experiencing a mental health crisis, expanding access to and choice of primary mental health and addiction support, expanding and enhancing school-based health services, and intensive parenting support.

15. *He Ara Oranga* called for urgent action across the mental wellbeing system, and within its different parts. It recommended the establishment of a Mental Health and Wellbeing Commission to act as a system leader for mental health and wellbeing in New Zealand, and to uphold and actively promote the principles of Te Tiriti o Waitangi in all its endeavours.
16. Addressing the issues identified in *He Ara Oranga* will take time, and requires system-wide action. A Commission will be a force for the change we want to see, working for a better functioning mental wellbeing system, and holding that system – and Government itself – accountable for better mental wellbeing outcomes.

Design features

Purpose of the Mental Health and Wellbeing Commission

17. To ensure the purpose of the Commission is aligned with the purpose proposed in *He Ara Oranga*, and the systemic problems the Commission will address, we recommend that the purpose of the Mental Health and Wellbeing Commission is to:
 - 17.1. Provide leadership within New Zealand’s mental wellbeing system, including by promoting a shift from an illness approach to a wellbeing approach, to improve mental wellbeing, emphasise promotion and prevention, reduce stigma, and improve equity²
 - 17.2. Provide independent cross-government oversight and hold the government to account for improving the mental wellbeing of people in New Zealand
 - 17.3. Uphold and actively promote the principles of Te Tiriti o Waitangi in relation to the promotion of mental wellbeing in New Zealand.
18. The Commission’s leadership role will be at the system level, focusing on fundamental changes in thinking and approach needed to transform mental wellbeing outcomes in New Zealand, and on how the all-of-government contribution to mental wellbeing can work better as a system.
19. *He Ara Oranga* was clear that improving mental health and addiction outcomes, including drug and other addiction issues, means addressing wider social determinants of wellbeing, with a more holistic emphasis on prevention of mental ill health and distress, and promotion of mental wellbeing. Consistent with this, we anticipate the Commission will have a broad scope in terms of the areas of interest where it exercises its functions (but are not recommending a broad range of functions, for example the Commission will not have a role in implementation, as discussed in the section below). Table 1 provides a non-exhaustive list of areas that will be in scope for the Commission.

² *He Ara Oranga* (p.16) describes the need for a wellbeing approach as a move from ‘a health system that focuses on responding to psychiatric illness’ to ‘a system that prevents mental distress and addiction, intervenes early when problems start to develop, and promotes wellbeing’. Submitters called for ‘a strategy of promoting physical, social, cultural and spiritual wellbeing’.

Table 1. Areas in scope for a Commission (ie, where it will exercise its functions, but not have a role in implementation)

Scope of the Commission	
<ul style="list-style-type: none"> • Service planning and provision (specialist mental health services, specialist addiction services, and mental health and alcohol and drug services more generally), with increased emphasis on drugs and other addiction issues • Co-design/collaboration arrangements, including with people with lived experience • Development and implementation of strategies • Workforce development • Information-gathering and evaluation (including a survey) • Promotion and prevention activity, including early intervention, aimed at social determinants and broad wellbeing 	<ul style="list-style-type: none"> • NGO sector stewardship • Funding • Development of resources • Supports for families and whānau and guidance • Responses to alcohol and other drugs • Suicide prevention and postvention efforts • Input into repeal and replacement of the Mental Health (Compulsory Assessment and Treatment) Act 1992 and other potential relevant legislative or regulatory reforms.

Functions of the Mental Health and Wellbeing Commission

21. The Commission needs to have functions that enable it to carry out its purpose. As outlined in Table 2, the functions we propose sit in two broad groups: system-level oversight and leadership functions; and monitoring and advocacy functions.

Table 2. Functions proposed for a Commission

System-level oversight and leadership functions	Monitoring and advocacy functions
<ul style="list-style-type: none"> • Provide system oversight, which involves taking an overview of whether government agencies and entities with responsibilities for mental wellbeing are performing as a system • Promote collaboration among key organisations and groups in the mental health and addiction sector, to improve the experiences of tāngata whaiora and their families and whānau • Work with relevant stakeholders to inform and influence policy and research that impacts on mental wellbeing • Report on and make public statements about the mental wellbeing of people in New Zealand 	<ul style="list-style-type: none"> • Monitor the government’s progress in improving mental health and wellbeing in New Zealand • Provide system-level advocacy for the collective interests of people with lived experience of mental health and addiction issues and their families and whānau.

22. Detailed service-level monitoring already exists throughout the mental wellbeing system, in a number of agencies (for example, the Ministry of Health’s monitoring of district health boards). We propose the Commission will not duplicate this detailed service-level monitoring, but will draw on it to help build a view of system performance. The value-add of a Commission will be looking at performance right across the system, not just within parts of the system.

23. *He Ara Oranga* recommended other functions for a Commission, such as supporting implementation of a national co-designed service transformation process. We do not recommend the Commission has a role in implementation, as this would create a potential conflict of interest. The Commission would be carrying out government policy, while also monitoring how effectively that policy is carried out. The Commission would therefore be monitoring itself, diminishing its independence. However, given strengthening implementation is an important function, the Minister of Health is giving further consideration to where this might appropriately sit.
24. *He Ara Oranga* also recommended establishing a Suicide Prevention Office, and suggested the Commission as one option to host this Office. We agree that governance and leadership of suicide prevention must be strengthened. However, locating the Office within a Commission would create the same conflict of interest as above. The Suicide Prevention Office will initially be housed in the Ministry of Health, with further advice (eg, on its role and form) to be provided through the Minister of Health's report-back on the suicide prevention strategy and implementation plan in July 2019 [CAB-19-MIN-0182 refers].

How the Mental Health and Wellbeing Commission will fit with other government organisations

25. A range of organisations play important roles in the mental wellbeing system, and will continue to do so, with the Commission complementing them, even as it challenges the performance of the system as a whole.
26. For example, the Health Quality and Safety Commission will continue to be central to the implementation improvements that *He Ara Oranga* called for, working with clinicians, providers and consumers to improve health and disability support services through its Mental Health and Addiction Quality Improvement Programme, and through its monitoring and reporting on health equity.
27. The Ministry of Health will continue in its leadership of New Zealand's health and disability system, advising the Minister of Health and government on health and disability issues, and carrying out government policy and work programmes. The Commission will also provide leadership and advice, but its independence from government – including its ability to be critical of government policies – and its broader scope, extending beyond only health and disability issues, will offer Ministers a different perspective from that of a government agency. The Commission will not be charged with carrying out government policy and work programmes.
28. We do not propose changing existing decision-making powers or accountability settings for Ministers or departments. The exception is the existing role of the Mental Health Commissioner under the Health and Disability Commissioner Act 1994, as outlined in paragraphs 57-62.
29. We also expect the Commission will have a relationship with the Social Wellbeing Board. This is consistent with the Board's role to provide advice on, and oversight of, the collective approach to mental wellbeing and cross-agency input into sequencing, the longer-term implementation pathway, and future Budget proposals [CAB-19-MIN-0182 refers].

30. We are mindful of a system-wide opportunity for bodies with oversight and monitoring functions to use a shared platform to provide critical mass and economies of scale for their various fields. Officials will continue to work on proposals for ensuring the work of the Mental Health and Wellbeing Commission is coordinated with that of other entities with roles in overseeing wellbeing, for example, the Health and Disability Commissioner and the Children’s Commissioner.

Form of the Mental Health and Wellbeing Commission

31. A key factor when considering the best form for a Commission is the level of independence needed to carry out the functions proposed: system-level oversight and leadership; and monitoring and advocacy. These functions require a Commission that can operate at arm’s length from Ministers, forming its own view on government’s performance. Independence is needed to build public confidence that the mental wellbeing system has the oversight needed for transformational change.
32. We propose the Commission be established through legislation as an autonomous Crown entity. These are stand-alone entities separate from the Crown. They are subject to their own enabling statute, as well as comprehensive provisions for governance, operations and accountability in the Crown Entities Act 2004. The responsible Minister may direct the entity to have regard to a government policy that relates to the entity’s functions and objectives.
33. We believe an autonomous Crown entity strikes the best balance between maintaining independence and having regard for the priorities of government. Other forms we considered are provided as **Appendix Two**.
34. No exemption from the provisions at sections 161 to 165 of the Crown Entities Act 2004 (exemption from acquisition of financial products, borrowing, guarantee, and derivative rules or net surplus to the Crown) are proposed.

Powers of the Mental Health and Wellbeing Commission

35. To undertake the proposed functions, the Commission must be able to question different parts of the mental wellbeing system, and make recommendations to address issues.
36. We recommend the Commission has the following powers, to:
- 36.1. Publicly report on any matters in relation to mental health and addiction services or impacting on the mental wellbeing of people in New Zealand
 - 36.2. Make recommendations to any Minister, including the Prime Minister
 - 36.3. Obtain information or data from government departments and statutory Crown entities.³ This will not override individual privacy rights.

³ We propose that the Commission will be able to obtain information from:

- Public service departments, except the Government Communications Security Bureau and the New Zealand Security Intelligence Service
- Departmental agencies

A power to obtain information

37. For its system oversight and advocacy role, especially in relation to the all-of-government contribution to mental wellbeing, the Commission will need access to relevant information from government departments and statutory Crown entities. Otherwise, it will be difficult for the Commission to build a picture of system performance and identify improvements.
38. We therefore propose that the Commission be empowered to obtain the information it needs to perform its functions.
39. Information sought by the Commission will not include personal information related to identifiable individuals. Such information is not needed, as powers to investigate individual cases, including by obtaining individual information, already exist elsewhere in the system; for example, the Health and Disability Commissioner.
40. The power we propose would not require agencies to supply information when there are good reasons for agencies to refuse to supply the information, such as those found in the Official Information Act 1982.
41. We expect this power will only rarely be required. We expect that government departments and statutory Crown entities will wish to collaborate with the Commission, as far as they can while upholding their legal and ethical responsibilities, by voluntarily supplying information the Commission requires to carry out its functions, in a way that is timely, and in a format that is useful to the Commission. The Health Quality and Safety Commission provides an example of an entity that relies on voluntary information sharing.
42. Further work will be done before the drafting of legislation on the details of the powers, including the scope of the information the Commission is likely to require, and from whom. Decisions on these matters will be sought from Cabinet Legislation Committee. Regulations may be required.

Governance of the Mental Health and Wellbeing Commission

43. As an autonomous Crown entity, the Commission requires a board as its governing body for the purposes of the Crown Entities Act 2004. The Act prescribes processes under which an autonomous Crown entity is appointed and operates. The responsible Minister appoints board members, for terms of up to three years. Members of the board (who may be called 'Commissioners') are appointed by the responsible Minister, who must appoint one of the board members as the chairperson.
44. As discussed below, a Bill will be required to establish the Commission as a Crown entity. We recommend the Bill provide for the Commission to have a board of no less than two members, and no more than five. This structure includes checks and balances, ensuring diverse perspectives and balanced decision-making.

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- Statutory Crown entities (includes Crown agents, autonomous Crown entities and independent Crown entities, but not school boards of trustees, Crown entity companies or Crown entity subsidiaries)
 - The New Zealand Defence Force

45. We propose that once the Commission is established as an autonomous Crown entity, it will initially have three Commissioners. For continuity and stability, we propose that Commissioners will be appointed so no more than two appointments expire in a year.
46. The Crown Entities Act 2004 provides that the Minister may only appoint or recommend a person who, in the Minister's opinion, has the appropriate knowledge, skills, and experience. The Bill may set out additional criteria for making appointments. To promote a balance of expertise, we propose the Bill require the Minister to consider the need for the Commission to have:
 - 46.1. Experience working in or with government
 - 46.2. Legal experience
 - 46.3. Māori mental wellbeing and Te Tiriti o Waitangi experience
 - 46.4. Lived experience of mental wellbeing and addiction issues
47. The Commission will be supported by a team of advisors who can also provide a variety of experiences and perspectives, such as knowledge of drug and other addiction issues, clinical expertise, and expertise in mental wellbeing for different groups, such as children and youth, Pacific peoples and rainbow people.

Establishing the Commission while legislation is progressed

48. Establishing an autonomous Crown entity will take some time. s 9(2)(ba)(ii) [REDACTED], and it is estimated a Bill would pass into law no sooner than late 2020. There would then be a process of up to six months before the Commission was operational. During this time, the landscape in which the Commission will operate will change. The Health and Disability System Review is taking place, as is other work emerging from *He Ara Oranga*, to transform New Zealand's approach to mental health and addiction.
49. This is a key period for mental wellbeing in New Zealand, as the response to the Inquiry is implemented, and a pivotal opportunity for a Commission to have influence over the future direction of mental wellbeing. We therefore propose establishing the Commission initially as a Ministerial Advisory Committee, while legislation is progressed. This will take three to six months to establish.
50. In its early form as a Ministerial Advisory Committee, the Commission will get underway quickly, starting to address current issues. A Ministerial Advisory Committee is more flexible in its set-up and structure than an autonomous Crown entity and does not require legislation. The Minister can refocus the Ministerial Advisory Committee's activity if the changing landscape requires it, by altering the terms of reference.
51. We propose that when the Commission is in its early form as a Ministerial Advisory Committee, it will be comprised of five committee members, one of whom will serve as a chair.

The functions of a Commission in its first phase as a Ministerial Advisory Committee

52. More work is needed on the detailed operational aspects of a Ministerial Advisory Committee; for example, in which agency or entity it will be physically housed, and how it will be supported with a secretariat and advisors. The functions of a Ministerial Advisory Committee will also need to complement those of the Health and Disability Commissioner (discussed further below).
53. As a Ministerial Advisory Committee, the Commission could take up some, but not all, of the functions of a permanent (Crown entity) Commission. A Ministerial Advisory Committee could begin system overview and advocacy functions, including through public comments and recommendations to Ministers.
54. The Commission could collaborate with the current Mental Health Commissioner to clarify monitoring responsibilities and arrangements for cross-government mechanisms to share information; develop processes to obtain information from and collaborate with other agencies; develop performance indicators to monitor cross-government contributions to mental wellbeing (such as the housing, education, justice and welfare systems); and provide a report on the Government's response to and implementation of the Inquiry recommendations.
55. We expect the Commission, as a Ministerial Advisory Committee, will provide initial implementation oversight of the Government's response to *He Ara Oranga*. The Ministry of Health in particular has a critical role to play in this implementation. The Minister of Health has asked the Ministry of Health to report quarterly to the Commission, in its Ministerial Advisory Committee form, on progress in delivering its contribution to the Government's response.
56. Subject to Cabinet's agreement, we propose to take a paper to Cabinet Appointments and Honours Committee including a detailed terms of reference for the early Commission / Ministerial Advisory Committee, as well as membership, in the next three months.

The role of the existing Mental Health Commissioner

57. If the proposals in this paper are agreed, a change will be required to the role of the Health and Disability Commissioner, under the Health and Disability Commissioner Act 1994 (the Health and Disability Commissioner Act). This is because the current role of Mental Health Commissioner is as a deputy to the Health and Disability Commissioner, with certain delegations related to mental health and addiction.⁴

⁴ The role of Mental Health Commissioner was moved under the Health and Disability Commissioner Act in 2012, when the original Mental Health Commission was disestablished. Because it is tied to the purposes of the Health and Disability Commissioner Act, which gives primacy to the Code of Health and Disability Services Consumers' Rights, the role of the current Mental Health Commissioner has a narrower scope than the original Commission, and than is recommended for the new Commission.

58. To avoid confusion with the new Commission, we propose amending the Health and Disability Commissioner Act to remove the role of Mental Health Commissioner when the Mental Health and Wellbeing Commission is established in its permanent form (the Commission is expected to begin operating about six months after legislation is passed, which will likely be late 2020 at the earliest). This will then enable roles called 'Mental Health Commissioners' to be established in the Commission.
59. We also propose amending the requirement on the Health and Disability Commissioner, set out in 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. However, because it is focused on monitoring at the service level, not the system level, it does not fit well with the mix of functions we propose for the Commission. The Minister of Health will give further consideration to where this function should most appropriately sit in the mental wellbeing system, to support transformation.
60. Amendments to the Health and Disability Commissioner Act will take place through the legislation to establish the Commission as a Crown entity. This means that the current role of Mental Health Commissioner will be disestablished at the same time the Commission comes into being as a Crown entity (ie, if legislation is passed around late 2020 at the earliest, then around six months later). This broadly aligns with the timing of the current term of the Mental Health Commissioner coming to an end (February 2021).
61. While the Commission is operating in its initial form, as a Ministerial Advisory Committee, the current role of Mental Health Commissioner will still be in place and required to deliver its statutory functions. The current Mental Health Commissioner and the Commission (as a Ministerial Advisory Committee) will therefore have to work together closely in this initial period. Supported by the Ministry of Health, the Commission (as a Ministerial Advisory Committee) and Health and Disability Commissioner will work together closely to develop a transition plan, so the Commission has access to the Health and Disability Commissioner's expertise, and its work can get underway quickly. Expectations for a smooth transition will be included in the terms of reference for the Ministerial Advisory Committee.
62. While legislation is progressed, and after the Commission is established in its permanent form as an autonomous Crown entity, the Office of the Health and Disability Commissioner will continue its core functions, investigating complaints under the Code of Health and Disability Consumers' Rights. This includes investigating complaints regarding mental health and addiction. The Health and Disability Commissioner's individual-and service-level focus and the Commission's system-level focus will be strongly complementary, and both are key components of the transformation we want to see. The Mental Health and Wellbeing Commission and Health and Disability Commissioner will therefore need to maintain a strong and ongoing relationship to improve the experiences of tāngata whaiora and their families and whānau.

Accountability and review arrangements for the Commission

63. As a Crown entity, the Commission will be subject to accountability arrangements through the Crown Entities Act 2004, including Ministers' power to set its direction through a Statement of Intent, appoint and dismiss board members, and control funding.
64. A Crown entity's performance is monitored by a monitoring department. We recommend the Commission's monitoring department is the Ministry of Health.
65. Officials will work to ensure existing and new monitoring arrangements across the system are aligned and coordinated.
66. To ensure the Commission remains fit-for-purpose, we recommend the Ministry of Health commissions a review of the Commission's effectiveness five years after its establishment.

Further policy decisions

67. To enable more detailed development of the proposals in this paper, and the drafting of legislation, we recommend Cabinet authorise the Minister of Health to make further decisions consistent with the agreements sought in this paper, consulting as needed with the Minister of State Services.

Consultation

68. The Ministry of Health and the State Services Commission prepared this paper in consultation with the Ministries of Education, Justice, Social Development, Primary Industries, Housing and Urban Development, Women, Pacific Peoples, and Business, Innovation and Employment; the Department of Corrections, the New Zealand Police, Oranga Tamariki–Ministry for Children, Te Puni Kōkiri, the Office for Disability Issues, the Accident Compensation Corporation, the Social Investment Agency, the Department of Prime Minister and Cabinet (Policy Advisory Group and the Child Wellbeing Unit), and the Treasury.
69. In addition, Ministry of Health officials have engaged with Māori partners; people with lived experience; Crown entities including the Health Promotion Agency, Housing New Zealand Corporation, WorkSafe New Zealand, the Health and Disability Commissioner, the Health Quality and Safety Commission, the Office of the Children's Commissioner, and representatives of district health boards; and other sector stakeholders in the development of the proposed responses to the recommendations in *He Ara Oranga*.

Financial Implications

70. Annual funding of \$2 million for the Commission is included in the Vote Health Budget 2019 package, and will be sufficient to cover the operations of a Ministerial Advisory Committee. [REDACTED]

Legislative Implications

71. As a Crown entity, the Mental Health and Wellbeing Commission will require legislation to be established. § 9(2)(ba)(ii)
[REDACTED]
72. This will include consequential amendments to the Health and Disability Commissioner Act 1994 to remove the role of Mental Health Commissioner and relevant functions.

Impact Analysis

73. The Impact Analysis requirements apply to this paper. A Regulatory Impact Assessment (RIA) has been prepared, and is attached to this Cabinet paper.
74. The Ministry of Health's Internal Cabinet Paper Committee has reviewed the RIA prepared by the Ministry of Health, and considers that the information and analysis summarised in the RIA meets the quality assurance criteria.

Human Rights

75. The proposals in this paper are consistent with, or will improve consistency with, the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. The proposals will also help improve consistency with United Nations conventions such as the United Nations Convention on the Rights of Persons with Disabilities.

Gender Implications

76. There are gender differences in mental health and addiction outcomes and the experience of mental health and addiction issues. A Commission will have a strong focus on supporting equitable outcomes, including in relation to gender equity.

Disability Perspective

77. Disabled people have a strong interest in mental wellbeing issues, and the Commission will work closely with them. As *He Ara Oranga* notes, 'the boundary between mental health and disability can be blurred, and mental health challenges can be both causes and consequences of disability' (p.16). The proposals in this paper will improve accountability for the government's progress improving mental wellbeing outcomes for people in New Zealand. They are consistent with the *New Zealand Disability Strategy 2016–2026* and international obligations, such as the United Nations Convention on the Rights of Persons with Disabilities.

Publicity

78. We intend to announce the decisions related to the establishment of the Commission following Cabinet decisions.

Proactive Release

79. We propose this Cabinet paper is released as part of the announcements following Cabinet approval, as soon as practicable, subject to redactions under the Official Information Act 1982, such as to withhold Budget information.

Recommendations

The Minister of Health and the Minister of State Services recommend that the Committee:

1. **note** that Cabinet has agreed to establish an independent 'Mental Health and Wellbeing Commission' to enhance cross-agency oversight, monitoring and accountability of mental health and addiction [CAB-19-MIN-0182 refers]

Purpose, functions, form and powers of the Commission

2. **agree** the purpose of the Commission is to:
 - 2.1. Provide leadership within New Zealand's mental wellbeing system, including by promoting a shift from an illness approach to a wellbeing approach, to improve mental wellbeing, emphasise promotion and prevention, reduce stigma, and improve equity
 - 2.2. Provide independent cross-government oversight and hold the government to account for improving the mental wellbeing of people in New Zealand
 - 2.3. Uphold and actively promote the principles of Te Tiriti o Waitangi in relation to the promotion of mental wellbeing in New Zealand
3. **agree** the Commission will have the following functions, required to give effect to its purpose:

System-level oversight and leadership functions

- 3.1. Provide system oversight, which involves taking an overview of whether government agencies and entities with responsibilities for mental wellbeing are performing as a system
- 3.2. Promote collaboration among key organisations and groups in the mental health and addiction sector, to improve the experiences of tāngata whaiora and their families and whānau
- 3.3. Work with relevant stakeholders to inform and influence policy and research that impacts on mental wellbeing
- 3.4. Report on and make public statements about the mental wellbeing of people in New Zealand

Monitoring and advocacy functions

- 3.5. Monitor the government's progress in improving mental health and wellbeing in New Zealand

- 3.6. Provide system-level advocacy for the collective interests of people with lived experience of mental health and addiction issues and their families and whānau
4. **agree** to establish the Commission as an autonomous Crown entity, with the provisions of the Crown Entities Act 2004 to apply
5. **agree** that the Minister of Health is the responsible Minister for the Crown entity
6. **agree** the Commission will have the following powers, required to effectively carry out its functions:
 - 6.1. Publicly report on any matters in relation to mental health and addiction services or impacting on the mental health and wellbeing of people in New Zealand
 - 6.2. Make recommendations to any Minister, including the Prime Minister
 - 6.3. Obtain information or data from government departments and statutory Crown entities. This will not override individual privacy rights
7. **note** that further work will be done before the drafting of legislation on the details of power 6.3, including the scope of the information the Commission is likely to require, and from whom, with the Minister of Health seeking decisions on these matters from Cabinet Legislation Committee
8. **agree** that the governance of the Commission will consist of a board of two to five members, who will also serve as Commissioners
9. **note** that, when it is established as an autonomous Crown entity, the Commission will initially have three Commissioners
10. **note** the term of the current Mental Health Commissioner, under the Health and Disability Commissioner Act 1994, ends in February 2021
11. **agree** that the Health and Disability Commissioner Act 1994 will be amended, to remove the position of Mental Health Commissioner and functions to do with service-level monitoring and advocacy in relation to mental health and addiction
12. **note** that the Minister of Health will give further consideration to an arrangement for how the Mental Health Commissioner can work alongside the Mental Health and Wellbeing Commission, in its early form as a Ministerial Advisory Committee
13. **agree** the monitoring department for the Commission is the Ministry of Health
14. **agree** that the Ministry of Health, as monitoring department, will commission a review of the Commission's effectiveness five years after its establishment
15. **authorise** the Minister of Health to issue drafting instructions to the PCO to give effect to the recommendations above

16. **authorise** the Minister of Health to make any technical and administrative changes required to finalise the Bill prior to its submission to the Cabinet Legislation Committee

Initial establishment of the Commission as a Ministerial Advisory Committee

17. s 9(2)(ba)(ii) and it is estimated that a Bill would pass into law no sooner than late 2020
18. **agree** to initially establish the Commission as a Ministerial Advisory Committee, while legislation progresses, to undertake priority work:
 - 18.1. Beginning system overview and advocacy functions, including by making public comments and recommendations to Ministers
 - 18.2. Promoting collaboration
 - 18.3. Carrying out the first progress report on implementation of the Government's response the Inquiry
19. **note** the Ministerial Advisory Committee will consist of five members
20. **invite** the Minister of Health to report to Cabinet Appointments and Honours Committee with nominees for the membership of the Commission / Ministerial Advisory Committee and a terms of reference
21. **note** the Ministry of Health will report quarterly to the Commission, as a Ministerial Advisory Committee, on progress delivering its contribution to the Government's response to *He Ara Oranga*

Consultation

22. **authorise** the Minister of Health and the Minister of State Services to release an exposure draft of the Bill for targeted consultation with key stakeholders, including Māori, people with lived experience of mental wellbeing issues and disabled people

Financial implications

23. **note** that \$2 million per annum has been secured through Budget 2019 to fund a Mental Health and Wellbeing Commission
24. **s 9(2)(f)(iv)** [REDACTED]
[REDACTED]
[REDACTED]
25. **authorise** the Minister of Health to make any further decisions required consistent with the agreements sought in this paper.

Authorised for lodgement

Hon Dr David Clark

Minister of Health

Hon Chris Hipkins

Minister of State Services

Appendix One: Purpose, functions and powers of a Mental Health and Wellbeing Commission as recommended by *He Ara Oranga*

Overarching purpose	<ul style="list-style-type: none"> • To act as a system leader for mental health and wellbeing in New Zealand • To uphold and actively promote the principles of the Treaty of Waitangi in all its endeavours
Core functions	<ul style="list-style-type: none"> • Report on progress against implementation of the Government's response to the recommendations of the Government Inquiry into Mental Health and Addiction • Facilitate a national co-designed service transformation process and provide backbone support for national, regional and local implementation • Develop an investment and quality assurance strategy for mental health promotion and prevention • Ensure any national strategies relating to mental health and wellbeing are implemented by responsible agencies and publicly report on progress • Advocate for the collective interests of people with mental health and addiction challenges and their families and whānau • Provide advice to the Government, at the Commission's discretion, on any matters relevant to mental health and wellbeing (including funding) • Facilitate best practice, innovation and evaluation • Promote collaboration, communication and understanding about mental wellbeing and issues that contribute to mental distress
Other possible functions	<ul style="list-style-type: none"> • Host the suicide prevention office and complete the national suicide prevention strategy and implementation plan
Powers	<ul style="list-style-type: none"> • Obtain information or data from government departments and other state services agencies • Initiate investigations and inquiries on systemic issues • Publicly report on any matters relating to mental health and addiction services or impacting on the mental health and wellbeing of New Zealanders • Develop other mental health and wellbeing strategies as appropriate • Appoint advisory or expert committees and seek expert advice • Review and comment on the annual and/or strategic plans of agencies responsible for delivering services that affect people with mental health and addiction challenges and their families and whānau

Source: Figure 4, *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*.

Appendix Two: Other options considered for the form of a Mental Health and Wellbeing Commission

In addition to our preferred approach – establishing a Commission first as a Ministerial Advisory Committee, then as an autonomous Crown entity – we considered three other broad options.

Option	Description
Option one: Setting up the Commission as a Crown entity, without first establishing it as a Ministerial Advisory Committee	A Crown entity has broader potential powers than a Ministerial Advisory Committee, so is likely to be more effective in the functions proposed for a Commission. However, time is required for the legislative process, and beginning the work of the Commission sooner is desirable.
Option two: Setting up the Commission permanently as a Ministerial Advisory Committee	A Ministerial Advisory Committee can be established more quickly than a Crown entity, but would not provide the permanence, powers and independence required for the enduring role mental wellbeing oversight requires. This option may not be perceived to have the strength of functions or independence to build public confidence.
Option three: Expanding the role of the existing Mental Health Commissioner	While this option would reduce cost, it would still require legislative change, meaning a time lag. The position of Mental Health Commissioner would remain under the Health and Disability Commissioner Act, so would be narrower in scope than the broad role of the Commission envisaged in <i>He Ara Oranga</i> . This option may not be perceived to have the strength of functions or independence to build public confidence.

Within our preferred approach – a Crown entity – there is a choice between an autonomous Crown entity and an independent Crown entity.

We consider a Commission should have as much independence as it needs to be a strong monitor, but not more. Autonomous Crown entities are suitable for government functions that are substantial in their own right, designed to meet specific policy objectives, and do not involve the exercise of significant coercive powers.

We think it would be useful for a Commission to have regard to government policy in limited situations, which an autonomous Crown entity allows – for example, when the government shifts its mental wellbeing priorities, the responsible Minister can require the Commission to start monitoring government's progress in new areas.

An independent Crown entity tends to be used where significant coercive powers are exercised by the entity, its decisions are binding, and the Crown is subject to its jurisdiction. We are not proposing these functions for the Commission.

We also considered the form of the previous Mental Health Commission, which was an autonomous Crown entity and was considered a strong and independent monitor.