STATE SERVICES COMMISSION
TE KAWA MATAAHO

MINISTRY OF HEALTH
MANATŪ HAUORA

Joint Report

Options for a new Mental Health and Wellbeing Commission

Date due to MO:	7 May 2019	**Action required by:**	13 May 2019
Security level:	IN CONFIDENCE	**Health Report number:**	20190712
To:	Hon Dr David Clark, Minister of Health Hon Chris Hipkins, Minister of State Services		

Contact for telephone discussion

Name	Position	Telephone
Robyn Shearer	Deputy Director-General, Mental Health and Addiction	s 9(2)(a)
Hannah Cameron	Deputy Commissioner, Strategy and Policy	s 9(2)(a)

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Action for Private Secretaries

Provide feedback to the Ministry of Health and State Services Commission on any requested changes to the attached working draft Cabinet paper.

Return the signed report to the Ministry of Health and the State Services Commission.

Date dispatched to MO:

Ministry of Health
07 MAY 2019
DISPATCHED

Options for a new Mental Health and Wellbeing Commission

Purpose of report

This report provides information on the proposed form, function and establishment process for a Mental Health and Wellbeing Commission (the Commission) for your consideration. It also sets out a proposed establishment process and next steps for reporting back to the Cabinet Social Wellbeing Committee in June 2019.

Key points

- Cabinet has invited the Minister of Health and Minister of State Services to jointly report back to the Cabinet Social Wellbeing Committee in June 2019 to seek approval regarding the form, function and establishment process for a new Mental Health and Wellbeing Commission [CAB-18-MIN-0621].
- The Commission will play an important role in the transformation of New Zealand's approach to mental health and addiction. It is proposed the Commission's purpose will be to provide leadership and accountability for the transformation, as well as to uphold and promote the principles of the Treaty of Waitangi. To enable this, it is proposed the Commission monitors and provides independent advice to the Government on progress with the transformation, promotes an all-of-government wellbeing approach, leads and promotes collaboration, and provides system-level advocacy. Our recommendations have attempted to balance calls for strong and focused leadership aimed at improving New Zealanders' mental wellbeing with the opportunity for a shared platform for oversight bodies in the future.
- There are a range of options for the form the Commission could take. Officials propose establishing the Commission initially as a Ministerial Advisory Committee, whilst legislation to establish the Commission as a Crown entity is progressed.
    - Establishing the Commission as a Crown entity will provide a strong degree of independence and grant the Commission the powers required to effectively carry out its functions.
    - It will take time to establish the Crown entity through legislation (likely late 2020 at the earliest). The Commission can initially be established as a Ministerial Advisory Committee to ensure progress towards transformation and accountability for transformation is in place.
- Agency consultation to inform the form, function and establishment process for a Commission is underway. Officials have also begun engagement with key external stakeholders to inform the Cabinet paper, which will be provided to you in late May 2019. A working draft Cabinet paper framed around the option of an autonomous Crown entity is attached for your consideration.

Recommendations

The Ministry of Health and State Services Commission recommend that you:

a) **Provide** feedback to officials on the proposed form, function and establishment process for the Commission **Yes/No**

b) **Note** that officials are available to meet with you to discuss the proposals.

Robyn Shearer
Deputy Director-General
Mental Health and Addiction

Hon Dr David Clark
Minister of Health
Date:

Hannah Cameron
Deputy Commissioner, Strategy and Policy
State Services Commission

Hon Chris Hipkins
Minister of State Services
Date:

Options for a new Mental Health and Wellbeing Commission

Context

1. We understand that on 6 May 2019 the Government agreed to establish an independent Mental Health and Wellbeing Commission (Commission) to enhance cross-agency oversight, monitoring and accountability for mental health and addiction.

2. Cabinet has invited the Minister of Health and the Minister of State Services to jointly report back on the functions, powers, form and financial implications for establishing a Commission in June 2019 [CAB-18-MIN-0621 refers].

3. This report-back is one of three related to the response to the Inquiry into Mental Health and Addiction (the Inquiry). The Minister of Health has also been invited to report back in mid-2019 on options for reforming the Mental Health (Compulsory Assessment and Treatment) Act 1992, and with a draft suicide prevention strategy and implementation plan.

Design features of the Commission

4. The following sections outline recommended features for the Commission, which are summarised in the attached A3 'Mental Wellbeing Commission Overview'.

5. Our recommendations have attempted to balance calls for strong and focused leadership aimed at improving New Zealanders' mental wellbeing with avoiding fragmentation, overlaps and gaps. 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 also continue to work on proposals for ensuring the work of the Mental 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.

Scope and name of the Commission

6. We suggest that the Commission have a broad scope covering mental health, addiction and wellbeing related services and matters. This is consistent with the proposed shift recommended in *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction* (the Inquiry), from a focus on mental illness and health services, towards a wider focus on mental wellbeing and an all-of-government approach.

7. To reflect this broader scope, we propose the new Commission be called the Mental Wellbeing Commission. This name reflects the proposed shift in New Zealand's approach to mental health and addiction, as well as reflecting that mental wellbeing is an all-of-government issue, not just a health sector priority.

Purpose of the Commission

8. In order to enhance cross-agency oversight, monitoring and accountability of mental health and mental wellbeing, officials propose the Commission's purpose should include holding government to account for its progress in improving mental wellbeing in New Zealand. Initially, the Commission would focus on the Government's response to the Inquiry; but over time, as the approach to mental wellbeing changes, so too should the Commission's focus.

9. The Commission's purpose should also include providing leadership across government's mental health, addiction, suicide prevention and mental wellbeing efforts and actively upholding and promoting the principles of the Treaty of Waitangi and equity. This will help address a known gap in the system and drive transformation of government's approach to mental health, addiction and wellbeing.

Functions of the Commission

10. Given the proposed purpose of the Commission, the proposed functions for the Commission sit within two broad groups:

    a. system-level oversight and leadership functions

    b. monitoring and advocacy functions.

11. Other functions recommended in the Inquiry and considered for the Commission include co-design and implementation support. While these functions are important, they do not align with the monitoring and advocacy functions proposed. The ability of a Commission to provide a fair and unbiased assessment of the Government's progress and hold the Government to account would be compromised if it is involved in implementing the Government's approach to mental wellbeing, as well as monitoring that approach. Officials are giving further consideration to where in the system co-design and implementation support functions might most appropriately sit. This may involve enhancing the current roles of existing government agencies, Crown entities and agents.

Implications for existing organisations

12. If the Commission is given the proposed monitoring and advocacy functions, this will impact on the Mental Health Commissioner's role which is delegated under the Health and Disability Commissioner Act 1994. Currently, the Commissioner's role includes 'to monitor mental health and addiction services and to advocate improvements to those services'. It is proposed that this system-level service monitoring and advocacy function move to a new Commission, once established.

13. It is proposed that the Health and Disability Commissioner's functions relating to individual-level complaints, including complaints in relation to mental health and addiction, remain with the Health and Disability Commissioner.

14. We do not propose changes to the current role of any other entities (eg, the Health Promotion Agency and the Health Quality and Safety Commission).

15. Officials will work to ensure existing and new monitoring arrangements across the system are aligned and coordinated.

Powers of the Commission

16. In order to undertake monitoring functions and hold government to account, the Commission would need to be able to question government and make recommendations on issues it identifies that need addressing.

17. We propose the Commission has three powers to enable this:

    a. obtain information or data from government departments and other state services agencies. This will not override individual privacy rights

    b. 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

    c. make recommendations to any Minister, including the Prime Minister.

18. Officials do not recommend a Commission has the power to 'initiate investigations and inquiries on systemic issues', which was recommended in the Inquiry. There are other avenues for inquiry, investigation and review, including, but not limited to, Select Committee inquiries, statutory bodies with inquiry powers, and different forms of Ministerial inquiry. The Commission could, however, make recommendations about significant issues that it considers require further analysis, review or investigation.

19. Officials will continue to work on the proposed powers for the Commission, which will include consultation with the Ministry of Justice and Parliamentary Counsel Office.

Form of the Commission

20. There are a number of potential forms for the Commission to carry out the proposed purpose, functions and powers noted above. A range of factors need to be considered to determine the best form, including independence, complexity and timing of establishment, flexibility or permanence of the arrangements, ability to hold the full suite of powers recommended, and cost.

21. There are three primary options for the form of the Commission:

    a. Statutory Crown entity

    b. Ministerial Advisory Committee

    c. Expand the role and functions of the current Mental Health Commissioner.

Statutory Crown entity

22. Establishing the Commission as a Crown entity (eg, an autonomous Crown entity) will provide a necessary level of independence from ministerial direction, enable statutory mandate for the full powers required to carry out its functions, and provide the public with confidence regarding independent leadership and monitoring of the transformation of New Zealand's approach to mental health, addiction and mental wellbeing.

23. The disadvantages of this option relate to the timeframes for establishment. [redacted] s 9(2)(ba)(ii) it is estimated the legislation required probably would not be enacted until at least late 2020, and establishment of the Commission may take additional time to establish following the passing of the legislation. It is also likely the most costly option.

Ministerial Advisory Committee

24. Establishing the Commission as a Ministerial Advisory Committee requires less time than setting it up as a Crown entity. A Ministerial Advisory Committee can be established following approval from Cabinet, or, a Committee could be set up under section 11 of the New Zealand Public Health and Disability Act 2001. We estimate a Ministerial Advisory Committee could be established within 3 to 6 months.

25. A Ministerial Advisory Committee offers greater flexibility than a Crown entity: its purpose, functions and operations can be more easily amended as, unlike a Crown entity, this would not require legislative change. This would allow the Commission to adapt more easily, for instance, as its role matures alongside progress of system transformation and in response to any system changes following the current Health and Disability System Review and other sector reforms. It is likely to cost less than a Crown entity.

26. Several of the advantages of a Ministerial Advisory Committee may also present risks. A Commission established in this way may lack perceived permanence. In addition, it may not be perceived as independent by stakeholders and the public, particularly if it is hosted within a government agency.

27. A Ministerial Advisory Committee's powers to carry out its functions are also more limited than that of a Crown entity. While a Ministerial Advisory Committee could be operationally independent from government (such as through physical separation and information ring-fencing, and as defined in its terms of reference) it cannot have the same level of statutory powers as a Crown entity. Limitations on the Commission's powers may reduce its effectiveness.

28. If a Ministerial Advisory Committee is established as the permanent Commission, amendment to the Health and Disability Commissioner Act 1994 may still be required to transfer the role and relevant functions of the current Mental Health Commissioner.

Expanding the role of the current Mental Health Commissioner

29. Expanding or amending the scope of the Mental Health Commissioner's role in the Health and Disability Commissioner would enable the proposed functions of the Commission to be undertaken within that existing body. This would potentially reduce timeframes for establishment and cost. However, this option may not meet public expectations of expanded responsibilities for a Commission, and legislative amendment would still be required.

30. The Health and Disability Commissioner Act 1994 is also limited to health and disability matters. Expanding the role of the Mental Health Commissioner under the Health and Disability Commissioner Act could therefore suggest that mental health, and the new Commission, are focused solely on health and disability issues as opposed to the wider, cross-agency wellbeing approach underway.

Suggested form of the Commission

31. Officials recommend that consideration be given to initially establishing the Commission as a Ministerial Advisory Committee, whilst legislation to establish a Commission as a statutory Crown entity is progressed.

32. This would allow for the Commission to be put in place relatively quickly, whilst offering flexibility to make changes to the Commission's form, functions or powers if required, for instance, following the Health and Disability System Review currently underway, or based on learnings from the experience of the Ministerial Advisory Committee.

33. Officials will progress with this as the recommended option in the drafting of and consultation on the Cabinet paper for the June 2019 report-back, but are available to discuss your preferred approach if different.

Engagement to inform advice on the Commission

34. Officials from the Ministry of Health and the State Services Commission have been collaborating on the potential form, functions and establishment process for the Commission. We will continue to work together to confirm the final recommendations.

35. Engagement with other government agencies is also underway, and Kevin Allan, the Mental Health Commissioner, has provided his views on the potential form, functions and powers of the Commission.

36. Officials intend to commence engagement with other key stakeholders, including health Crown entities and external stakeholders, in the week of 13 May 2019. This engagement will inform the Cabinet paper to be provided to you in late May 2019.

Next steps

37. A working draft Cabinet paper to inform the June 2019 report-back to the Cabinet Social Wellbeing Committee on the form, functions and establishment process for a Commission is attached.

38. Officials are available to meet with your to discuss the proposed approach, form, functions and establishment process for a Commission.

39. Table 1 below sets out the process and timeframes for the report-back to the Cabinet Social Wellbeing Committee in June 2019.

Table 1. Process and timeframes for the report-back to Cabinet Social Wellbeing Committee

Process	Timeframe
Cross-agency and stakeholder engagement to inform advice	Ongoing
Minister of Health and Minister of State Services receive joint report and working draft Cabinet paper	Tuesday 7 May
Minister of Health and Minister of State Services provide feedback on the proposed approach	Monday 13 May
Cross-agency consultation on the draft Cabinet paper and external stakeholder engagement on draft discussion documents	Week of 13 May (approx. 1.5 weeks)
Minister of Health and Minister of State Services receive draft Cabinet paper for Ministerial and cross-party consultation	Week of 27 May (approx. 2 weeks)
Minister of Health and Minister of State Services receive final Cabinet paper reflecting the outcomes of Ministerial and cross-party consultation	Week of 10 June
Lodge Cabinet paper	Thursday 13 June
Consideration by Cabinet Social Wellbeing Committee (SWC)	Wednesday 19 June
Consideration by Cabinet	Monday 24 June

Note: If the process is delayed, there is a SWC meeting on 26 June 2019, which would result in Cabinet consideration on 1 July 2019.

ENDS.

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 WELLBEING COMMISSION

Proposal

1. This paper seeks agreement to establish a new Mental Wellbeing Commission. It proposes the Commission initially be established as a Ministerial Advisory Committee. This will enable work to begin while legislation is progressed to establish the Commission in its permanent form, as an autonomous Crown entity.

Executive Summary

[to be completed - for ease of reference, the figure below sets out the design of the Commission as proposed in this draft working paper]

Mental Wellbeing Commission Overview

DESIGN FEATURE	RECOMMENDATION
Name and scope	• Name: Mental Wellbeing Commission. • Scope: a broad scope that includes mental wellbeing, mental health and addiction.
Purpose	• Provide leadership for the transformation of New Zealand's approach to mental health, addiction and wellbeing, to improve equity, emphasise promotion and prevention, and reduce stigma. • Hold government to account for its progress in improving mental health and wellbeing. • Uphold and actively promote the principles of Te Tiriti o Waitangi.
Functions	• Monitor and provide independent advice to government, on its own or as requested by the Minister of Health. • Provide system level advocacy for the collective mental wellbeing interests for people in New Zealand. • Promote a wellbeing approach and collaboration among stakeholders across sectors, to improve the experiences of tāngata whaiora and their families and whānau.
Powers	• Compel information from relevant agencies and stakeholders. • Make recommendations to the government. • Report publicly.
Governance	• Board of 2-5 members (who are known as Commissioners, including chair), 3 appointed initially • Should include expertise in Māori mental wellbeing and lived experience.
Process	Two stage approach: 1. Ministerial Advisory Committee established while legislation is progressed (3-6 months). 2. Crown Entity established by legislation (probably not earlier than late 2020)

Background

2. There have been strong public and cross-sector calls to re-establish a Mental Health Commission. This Government has heard those calls, and we are committed to establishing a new Mental Wellbeing Commission (the Commission) [CAB-19-MIN-XXXX refers].

3. 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. Through *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction*, the Inquiry recommended establishing a Mental Health and Wellbeing Commission. **Appendix One** outlines the purpose, functions and powers the Inquiry recommended for the Commission.

4. In December 2018, Cabinet identified a Mental Health and Wellbeing Commission as one of our initial priorities for responding to the Inquiry. 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

5. New Zealanders have been clear the current mental health and addiction system needs significant improvement. The existing mechanisms and arrangements for system oversight and accountability have not provided the public with confidence, or created meaningful improvement to mental health and addiction outcomes. There is fragmentation of services and support for mental wellbeing, and 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).

6. *He Ara Oranga* called for urgent action across the mental wellbeing system, including the establishment of a Mental Health and Wellbeing Commission with these purposes: 'to act as a system leader for mental health and wellbeing in New Zealand', and 'to uphold and actively promote the principles of the Treaty of Waitangi in all its endeavours.'

7. Addressing the issues identified in *He Ara Oranga* will take time, and require system-wide action. A Commission will play a key role in this transformation.

Design features

Name of the Commission

8. We propose to call the Commission the Mental Wellbeing Commission, rather than 'Mental Health and Wellbeing Commission', as recommended by *He Ara Oranga*.

9. The name 'Mental Wellbeing Commission' reflects the Commission's purpose, discussed below, to help lead a societal shift away from a narrow focus on mental illness and services to a wider wellbeing approach. This name reinforces that mental wellbeing is an all-of-government issue, not just a health sector priority.

Purpose of the Mental Wellbeing Commission

10. The purpose of the Commission should align with the purpose proposed by *He Ara Oranga*, and the system problems the Commission will address. We therefore recommend that the purpose of the Mental Wellbeing Commission is to:

    10.1. Provide leadership within New Zealand's mental health and addiction sector 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

    10.2. Provide independent cross-government oversight and hold the Government to account for improving the mental wellbeing of people in New Zealand

    10.3. Uphold and actively promote the principles of Te Tiriti o Waitangi in relation to the promotion of mental wellbeing in New Zealand.

11. The Commission's leadership role will not duplicate leadership roles of other organisations in the mental wellbeing system. Rather, the Commission will focus on the fundamental changes in thinking and approach needed to transform mental wellbeing in New Zealand.

12. *He Ara Oranga* was clear that improving mental health and addiction outcomes means addressing wider social determinants of wellbeing, with a more holistic emphasis on prevention and promotion. Consistent with this, we anticipate the Commission will have a broad scope (that is, areas of interest where it exercises its functions). **Appendix Two** sets out a non-exhaustive list of areas where the Commission could have oversight (not implementation responsibility).

Functions of the Mental Wellbeing Commission

13. The Commission needs to have functions that enable it to carry out its purpose. The functions we propose sit in two broad groups: system-level oversight and leadership functions; and monitoring and advocacy functions.

Functions proposed for a Commission

System-level oversight and leadership functions	Monitoring and advocacy functions
• 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	• 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 and their families and whānau

14. The system-level oversight and leadership functions will enable the Commission to promote a shift in approach to mental wellbeing, and show leadership to help address system gaps and fragmentation. The monitoring and advocacy functions will enable the Commission to hold government to account for improving outcomes.

15. 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 build on it. The value-add of a Commission will be looking at performance right across the system, not just parts of the system.

16. *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 it might appropriately sit in the system.

17. *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 long-term location) to be provided through the Minister of Health's report-back on the suicide prevention strategy and plan in July 2019 [CAB-19-MIN-XXX refers].

How the Mental Wellbeing Commission will fit with other government organisations

18. Because it will have system-level oversight, the Commission will not establish, design, regulate or implement policy. As above, this would reduce its independence. Government agencies and entities already leading these functions will continue to do so.

19. 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 45-50 below.

20. In general, the Commission will not duplicate responsibilities related to mental wellbeing across government agencies. It will focus across the system, challenging the system to work better for tāngata whaiora and their whanau.

21. Our recommendations have attempted to balance calls for strong and focused leadership aimed at improving New Zealanders' mental wellbeing with avoiding fragmentation, overlaps and gaps. 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 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.

22. We also expect the Commission will have a complementary relationship with the Social Wellbeing Board (SWB).

Form of the Mental Wellbeing Commission

23. 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.

24. We propose the Commission be established through legislation as an autonomous Crown entity (ACE). ACEs 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.

25. We believe the ACE form strikes the best balance between maintaining independence and having regard for the priorities of Government. Other forms we considered are provided as **Appendix Two**.

26. 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 Commission

27. 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.

28. We recommend the Commission has the following powers, to:

    28.1. Obtain information or data from government and other state services agencies, persons, bodies or organisations. This will not override individual privacy rights

    28.2. 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

    28.3. Make recommendations to any Minister, including the Prime Minister.

A power to obtain information [further work needed]

29. For its system oversight and advocacy role, the Commission will need access to information held by other organisations, bodies or persons, in and outside government.

30. s 9(2)(f)(iv)

31.

32.

Governance of the Commission

33. As an ACE, 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 ACE is appointed and operates. The responsible Minister appoints board members, for terms of up to three years. Members of an ACE's board (who may be called 'Commissioners') are appointed by the responsible Minister, who must appoint one of the board members as the chairperson.

34. 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.

35. We propose that once the Commission is established as an ACE, 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.

36. The Crown Entities Act 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:

    36.1. Experience working in or with government

    36.2. Legal experience

36.3. Māori mental wellbeing and Treaty of Waitangi experience

36.4. Lived experience of mental wellbeing and addiction issues.

37. The Commission will be supported by a team of advisors who can also provide a variety of experiences and perspectives, such as clinical expertise.

Establishing the Commission while legislation is progressed

38. Establishing an autonomous Crown entity will take some time. s 9(2)(ba)(ii) [redacted] 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.

39. 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 (MAC), while legislation is progressed. This will take three to six months to establish.

40. In its early form as a MAC, the Commission will get underway quickly, starting to address current issues. A MAC is more flexible in its set-up and structure than an ACE (it does not require legislation). The Minister can refocus the MAC's activity if the changing landscape requires it, by altering the terms of reference.

41. As a MAC, the Commission could take up some, but not all, of the functions of a permanent (Crown entity) Commission. A MAC could begin system overview and advocacy functions, including through public comments and recommendations to Ministers. It could promote collaboration, and start to monitor progress, including by carrying out the first report on Government's response to the Inquiry.

42. We propose that when the Commission is in its early form as a MAC, it will be comprised of five committee members, one of whom will serve as a chair.

43. More work is needed on detailed aspects of the operations of a MAC; 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 MAC will also need to complement those of the Health and Disability Commissioner (discussed further below).

44. We propose to take a paper to Cabinet Appointments and Honours Committee including a detailed terms of reference for the early Commission/MAC, as well as membership.

The role of the existing Mental Health Commissioner

45. If the proposals in this paper are agreed, a change will be required to the role of Health and Disability Commissioner (HDC), under the Health and Disability Commissioner Act 1994 (the HDC Act). The current role of Mental Health Commissioner is as a deputy to the HDC, with certain delegations related to mental health and addiction.[1]

46. To avoid confusion with the new Commission, we propose amending the HDC Act to remove the role of Mental Health Commissioner. The role can then be re-established in the permanent Mental Wellbeing Commission.

47. We also propose amending the requirement on the HDC, set out in s.14(1)(ma) of the HDC Act, 'to monitor mental health and addiction services and to advocate improvements to those services'. This will allow the new Commission to take up aspects of this service monitoring and advocacy role.

48. Amendments to the HDC Act will take place through the legislation to establish the Commission as a Crown entity.

49. The HDC 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 Commission and HDC would need to maintain a strong relationship to improve the experiences of tāngata whaiora and their families and whānau.

50. The term of the current Mental Health Commissioner ends in February 2021. We will give further consideration to how the Commission works with the Mental Health Commissioner before the role is moved over. This will be addressed partly through the terms of reference for the MAC. We propose that when decisions are made about the role of the Mental Wellbeing Commission and how it will be constituted, detailed consideration will be given to how its functions sit alongside the Health and Disability Commissioner and, in particular, the Mental Health Commissioner.

Accountability and review arrangements for the Commission

51. As a Crown entity, the Commission will be subject to accountability arrangements through the Crown Entities Act, including Ministers' power to set its direction through a Statement of Intent, appoint and dismiss board members, and control funding.

52. A Crown entity's performance is monitored by a monitoring department. We recommend the Commission's monitoring department is s 9(2)(f)(iv) [redacted]

53. Officials will work to ensure existing and new monitoring arrangements across the system are aligned and coordinated. [Placeholder – officials are continuing to work on detailed monitoring arrangements.]

[1] 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, and has a narrower scope than the original Commissioner.

54. 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

55. 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

56. [to be completed]

Financial Implications

57. Funding for the Commission is included in the Vote Health Budget 2019 package, and will be sufficient to cover the operations of a MAC. s 9(2)(f)(iv) [redacted]

While the ongoing costs of the permanent Commission will be influenced by its mix of functions, we expect its annual operating budget will likely be approximately [redacted] s 9(2)(f)(iv) [redacted]

Legislative Implications

58. As a Crown entity, the Mental Wellbeing Commission will require legislation to be established. s 9(2)(ba)(ii) [redacted]

59. This will include consequential amendment to the Health and Disability Commissioner Act 1994 to shift the role of Mental Health Commissioner and relevant functions to the Mental Wellbeing Commission.

Impact Analysis

60. The Impact Analysis requirements apply to this paper. An Impact Statement has been prepared, and is attached to this Cabinet paper.

61. The Ministry of Health's Internal Cabinet Paper Committee has reviewed the RIS prepared by the Ministry of Health, and considers that the information and analysis summarised in the RIS [Partially meets / meets the quality assurance criteria / does not meet] the quality assurance criteria.

Human Rights

62. 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

63. 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

64. The proposals in this paper will improve accountability for 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

65. We intend to announce the decision to establish the Commission following Cabinet decisions.

Proactive Release

66. 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-XXXX refers]

2. **agree** to establish a Commission with the name of 'Mental Wellbeing Commission'

Form, functions and powers of the Commission

3. **agree** the purpose of the Commission is to:

    3.1. Provide leadership within New Zealand's mental health and addiction sector 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

    3.2. Provide independent cross-government oversight and hold the Government to account for improving the mental wellbeing of people in New Zealand

    3.3. Uphold and actively promote the principles of Te Tiriti o Waitangi in relation to the promotion of mental wellbeing in New Zealand

4. **agree** the Commission will have the following functions, required to give effect to its purpose:

Purpose, functions, form and powers of a Mental Wellbeing Commission

4.1. Provide system oversight, which involves taking an overview of whether government agencies and entities with responsibilities for mental wellbeing are performing as a system

4.2. 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

4.3. Work with relevant stakeholders to inform and influence policy and research that impacts on mental wellbeing

4.4. Report on and make public statements about the mental wellbeing of people in New Zealand

Monitoring and advocacy functions

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

4.6. Provide system-level advocacy for the collective interests of people with lived experience of mental health and addiction and their families and whānau

5. **agree** to establish the Commission as an autonomous Crown entity, with the provisions of the Crown Entities Act 2004 to apply

6. **agree** that the Minister of Health is the responsible Minister for the Crown entity

7. **agree** the Commission will have the following powers, required to effectively carry out its functions:

7.1. Obtain information or data from government and other state services agencies, persons, bodies or organisations. This will not override individual privacy rights [further work needed]

7.2. 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

7.3. Make recommendations to any Minister, including the Prime Minister

8. s 9(2)(f)(iv) [redacted]

9. **agree** that the governance of the Commission will consist of a board of two to five members, who will also serve as Commissioners

10. **note** that, when it is established as an autonomous Crown entity, the Commission will initially have three Commissioners

11. **note** the term of the current Mental Health Commissioner, under the Health and Disability Commissioner Act 1994, ends in February 2021

12. **agree** that the Health and Disability Commissioner Act 1994 will be amended, to remove the position of Mental Health Commissioner and associated functions to do with service-level monitoring and advocacy in relation to mental health and addiction – so that the role and function can be re-established in a new Commission [further work needed]

13. **note** that the Minister of Health will give further consideration to an arrangement for how the Mental Health Commissioner can work alongside the Mental Wellbeing Commission, in its early form as a Ministerial Advisory Committee [further work needed]

14. s 9(2)(f)(iv) [redacted]

15. **agree** that s 9(2)(f)(iv) [redacted] as monitoring department, will commission a review of the Commission's effectiveness five years after its establishment

16. **authorise** the Minister of Health to issue drafting instructions to the PCO to give effect to the recommendations above

17. **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

18. s 9(2)(ba)(ii) [redacted] and it is estimated that a Bill would pass into law no sooner than late 2020

19. **agree** to initially establish the Commission as a Ministerial Advisory Committee, while legislation progresses, to undertake priority work:

    19.1. Beginning system overview and advocacy functions, including by making public comments and recommendations to Ministers

    19.2. Promoting collaboration

    19.3. Carrying out the first progress report on implementation of the Government's response the Inquiry

20. **note** the Ministerial Advisory Committee will consist of five members

21. **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

s 9(2)(f)(iv) [redacted]

Financial implications

23. **note** that $2 million per annum has been secured through Budget 2019 to fund a Mental Wellbeing Commission

24. **note** that, once the Commission is established as an autonomous Crown entity, its operating costs are expected to be about s 9(2)(f)(iv) [redacted] per annum, and s 9(2)(f)(iv) [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	• 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	• 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	• Host the suicide prevention office and complete the national suicide prevention strategy and implementation plan
Powers	• 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: the scope of a Commission – potential areas for oversight

Scope of the Commission	
• Service planning and provision (specialist mental health services, specialist addiction services, and mental health and alcohol and drug services more generally) • 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	• 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.

Appendix Three: Other options considered for the form of a Mental 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 Group	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 be 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 *He Ara Oranga*. This option may not be perceived to have the strength of functions or independence to build public confidence.

Appendix Four: Impact Assessment

[to be completed]

Mental Wellbeing Commission Overview

DESIGN FEATURE	RECOMMENDATION	RATIONALE
Name and scope	• Name: Mental Wellbeing Commission. • Scope: a broad scope that includes mental wellbeing, mental health and addiction.	• This reinforces the desired shift away from a health-focused approach to mental health and addiction, to a whole-of-government approach to mental wellbeing.
Purpose	• Provide leadership for the transformation of New Zealand's approach to mental health, addiction and wellbeing, to improve equity, emphasise promotion and prevention, and reduce stigma. • Hold government to account for its progress in improving mental health and wellbeing. • Uphold and actively promote the principles of Te Tiriti o Waitangi.	• There is a lack of public confidence in mental health and addiction services, gaps in leadership of the system (particularly around independent and cross-sectoral oversight and support for implementation). • The Commission will take a key role in the philosophical shift in mental health from an illness to a wellbeing approach.
Functions	• Monitor and provide independent advice to government, on its own or as requested by the Minister of Health. • Provide system level advocacy for the collective mental wellbeing interests for people in New Zealand. • Promote a wellbeing approach and collaboration among stakeholders across sectors, to improve the experiences of tāngata whaiora and their families and whānau.	• Its main functions should consist of system monitoring and advocacy to allow it to assess and hold the Government accountable for its progress. These functions would enable the Commission to monitor government's progress giving effect to mental wellbeing priorities, such as improving equity. • Other functions considered for the Commission included co-design, implementation support and hosting the Suicide Prevention Office. However, these do not align with the core monitoring and advocacy functions.
Powers	• Compel information from relevant agencies and stakeholders. • Make recommendations to the government. • Report publicly.	• The powers will enable the Commission to carry out its functions of monitoring and holding Government to account for its progress implementing its mental wellbeing priorities. • Powers of inquiry and investigation were recommended by the Inquiry Panel, however, these already exist through other avenues so are not recommended to be included.
Governance	• Board of 2-5 members (who are known as Commissioners) • Should include expertise in Māori mental wellbeing and lived experience.	• This structure includes checks to ensure balanced decision-making and consideration of diverse perspectives.

OPTIONS FOR FORM

	1 Crown Entity (ACE)	2 Ministerial Advisory Committee	3 Enhancing current Commissioner role
Strength of independence from government direction	Independent, but Minister can direct entity to have regard to a government policy	May be perceived to lack independence. Could reduce public and stakeholder confidence	Mental Health Commissioner is under Health & Disability Commissioner, an independent Crown entity
Ease of establishment	Legislation required, enacted late 2020 (estimated) at earliest	3-6 months (estimated) following Cabinet approval. No legislation required. Needs terms of reference.	Requires significant amendment to purpose, scope and functions of Health and Disability Commissioner Act 1994
Flexibility to adapt to changing landscape (vs. permanence)	More difficult to change purpose and functions. However, a permanent body with an enduring role will increase public confidence	Purpose, functions and operations easily amended by Minister - but might affect public confidence in independence	Limited ability to change purpose and functions. Current Act is focused on health and disability consumers
Ability to hold full recommended powers	Powers necessary to carry out functions can be prescribed in legislation	Powers limited. This may reduce its effectiveness	Commissioner has powers. Additional powers necessary to carry out functions can be prescribed in legislation
Cost effectiveness of establishment and operation	Establishment costs for location, infrastructure, staff	Potential to house within existing organisation to reduce establishment costs	Existing infrastructure will reduce costs

High
Variable
Low

RECOMMENDED FORM 1 + 2

Two stage approach:

1. **Ministerial Advisory Committee** established while legislation is progressed and to progress the inquiry recommendations.
2. **Crown Entity** established by legislation.

NEXT STEPS

- A working draft Cabinet paper to inform the June 2019 Cabinet Social Wellbeing Committee report-back on the form, functions and establishment process for a Commission is attached to HR20190712.
- Officials will continue to engage with key stakeholders, including social Crown entities and external stakeholders, to inform development of a draft Cabinet paper that will be provided to you in late May 2019.
- Officials will provide you with an updated draft Cabinet paper for your review ahead of Ministerial consultation in late May 2019, with a view to submitting a Cabinet paper for consideration at Cabinet Social Wellbeing Committee on 19 June 2019.