

Version
as at 28 October 2021



Mental Health and Wellbeing Commission Act 2020

Public Act 2020 No 32
Date of assent 30 June 2020
Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Health.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Mental Health and Wellbeing Commission Act 2020.

2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates.
- (2) Any provision that is not earlier brought into force under subsection (1) comes into force on 9 February 2021.
- (3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication PCO must publish it on the legislation website and notify it in the *Gazette* LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1

Preliminary provisions

3 Treaty of Waitangi (Te Tiriti o Waitangi)

In order to recognise and respect the Crown’s responsibility to take appropriate account of the Treaty of Waitangi, and with a view to achieving better and equitable mental health and wellbeing outcomes for Māori,—

- (a) section 8(2) requires the Minister to have regard to the need for members of the board to collectively have knowledge, understanding, and experience of—
 - (i) te ao Māori (Māori world view), tikanga Māori (Māori protocol and culture), and whānau-centred approaches to wellbeing; and
 - (ii) the cultural, economic, educational, spiritual, societal, environmental, and other factors that affect people’s mental health and wellbeing; and
- (b) section 9(1) requires the board to ensure that the Commission maintains systems and processes to ensure that, for the purposes of carrying out its functions under this Act, the Commission has the capability and capacity—
 - (i) to uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles; and
 - (ii) to engage with Māori and to understand perspectives of Māori; and
- (c) section 11(2) requires the Commission to have particular regard to the experience of, and outcomes for, Māori when the Commission performs its functions under this Act, which include—
 - (i) assessing and reporting publicly on the mental health and wellbeing of people in New Zealand; and
 - (ii) assessing and reporting publicly on factors that affect people’s mental health and wellbeing; and
 - (iii) assessing and reporting publicly on the effectiveness, efficiency, and adequacy of approaches to mental health and wellbeing; and

- (iv) advocating for the collective interests of people who experience mental distress or addiction (or both), and the persons (including family and whānau) who support them; and
- (d) section 11(3) requires the Commission, when it performs its functions under this Act, to also have regard to—
 - (i) the cultural, economic, educational, spiritual, societal, environmental, and other factors that affect people’s mental health and wellbeing; and
 - (ii) actions undertaken that (or that could be undertaken to) identify and respond to people experiencing poor mental health and wellbeing, and the persons (including family and whānau) who support them; and
- (e) section 13 requires the Commission, in performing its functions and exercising its powers under this Act, to ensure that it has effective means of seeking the views of Māori.

4 Interpretation

In this Act, unless the context otherwise requires,—

board means the board of the Commission

Commission means the Mental Health and Wellbeing Commission established by section 7

Minister means the Minister of the Crown who, under authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

6 Act binds the Crown

This Act binds the Crown.

Part 2

Mental Health and Wellbeing Commission

Establishment of Mental Health and Wellbeing Commission

7 Mental Health and Wellbeing Commission established

- (1) The Mental Health and Wellbeing Commission is established.
- (2) The Commission is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

- (3) The Crown Entities Act 2004 applies to the Commission except to the extent that this Act expressly provides otherwise.

8 Board of Commission

- (1) The board of the Commission consists of 3 to 7 members.
- (2) When recommending a person for membership of the board, the Minister must have regard to the need for members to collectively—
- (a) have knowledge, understanding, and experience of—
 - (i) te ao Māori (Māori world view), tikanga Māori (Māori protocol and culture), and whānau-centred approaches to wellbeing; and
 - (ii) the cultural, economic, educational, spiritual, societal, environmental, and other factors that affect people’s mental health and wellbeing; and
 - (iii) mental health services and addiction services; and
 - (iv) public health approaches and population health approaches to improving health outcomes; and
 - (v) improving overall system performance; and
 - (b) have personal experience of mental distress; and
 - (c) have personal experience of addiction.
- (3) This section does not limit section 29 of the Crown Entities Act 2004.

9 Additional collective duty of board

- (1) The board must ensure that the Commission maintains systems and processes to ensure that, for the purposes of carrying out its functions under this Act, the Commission has the capability and capacity—
- (a) to uphold the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles; and
 - (b) to engage with Māori and to understand perspectives of Māori.
- (2) The duty in subsection (1)—
- (a) applies in addition to the duties of the board in sections 49 to 52 of the Crown Entities Act 2004; and
 - (b) is a collective duty owed to the Minister for the purposes of section 58 of the Crown Entities Act 2004.

Compare: 2019 No 50 s 11

*Objective, functions, and powers of Mental Health and Wellbeing Commission***10 Objective of Commission**

In performing its functions and exercising its powers under this Act, the Commission's objective is to contribute to better and equitable mental health and wellbeing outcomes for people in New Zealand.

Compare: 2004 No 115 s 14(2)

11 Functions of Commission

- (1) The functions of the Commission are—
 - (a) to assess and report publicly on the mental health and wellbeing of people in New Zealand; and
 - (b) to assess and report publicly on factors that affect people's mental health and wellbeing; and
 - (c) to assess and report publicly on the effectiveness, efficiency, and adequacy of approaches to mental health and wellbeing; and
 - (d) to make recommendations to improve the effectiveness, efficiency, and adequacy of approaches to mental health and wellbeing; and
 - (e) to monitor mental health services and addiction services and to advocate improvements to those services; and
 - (f) to promote alignment, collaboration, and communication between entities involved in mental health and wellbeing; and
 - (g) to advocate for the collective interests of people who experience mental distress or addiction (or both), and the persons (including family and whānau) who support them.
- (2) When performing its functions under this Act, the Commission must have particular regard to the experience of, and outcomes for, Māori.
- (3) The Commission must also have regard to—
 - (a) available evidence; and
 - (b) the cultural, economic, educational, spiritual, societal, environmental, and other factors that affect people's mental health and wellbeing; and
 - (c) actions undertaken that (or that could be undertaken to)—
 - (i) promote positive mental health and wellbeing;
 - (ii) build resilience and prevent poor mental health and wellbeing;
 - (iii) identify and respond to people experiencing poor mental health and wellbeing, and the persons (including family and whānau) who support them.
- (4) Except as expressly provided otherwise in this or another Act, the Commission must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—

- (a) this Act; and
- (b) any other Act that expressly provides for the functions, duties, or powers of the Commission (other than the Crown Entities Act 2004).

12 Powers of Commission

The Commission has the power to—

- (a) publicly report on any matters concerning the mental health and wellbeing of people in New Zealand; and
- (b) make recommendations to any person (including any Minister) on any matters concerning mental health and wellbeing; and
- (c) obtain information in accordance with sections 14 to 16.

Obtaining views of specified groups

13 Obligation to have effective means of seeking views

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

Compare: 2003 No 128 s 13

Power to obtain information

14 Power of Commission to obtain information

- (1) The Commission may request an entity specified in subsection (6) to supply to the Commission any information that is necessary or desirable to enable the Commission to perform its functions.

- (2) A request—
 - (a) must be in writing; and
 - (b) may state the date by which, and the manner in which, the information must be provided.
- (3) If a date is specified, that date must be reasonable.
- (4) An entity to which the request is made must comply with the request.
- (5) Section 15 overrides subsections (1) and (4).
- (6) A request may be made to 1 or more of the following entities:
 - (a) a department named in Part 1 of Schedule 2 of the Public Service Act 2020, other than—
 - (i) the Government Communications Security Bureau; and
 - (ii) the New Zealand Security Intelligence Service:
 - (b) a departmental agency named in Part 2 of Schedule 2 of the Public Service Act 2020:
 - (c) a statutory entity named in Schedule 1 of the Crown Entities Act 2004:
 - (d) the New Zealand Defence Force:
 - (e) the New Zealand Police.

Compare: 2019 No 51 s 23

Section 14(6)(a): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 14(6)(b): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

15 Reasons for refusing to supply requested information

- (1) The Commission must not request, and an entity must not supply, information that is—
 - (a) personal information as defined in section 2(1) of the Privacy Act 1993; or
 - (b) information held by the Government Statistician that was collected under the Statistics Act 1975; or
 - (c) information that a revenue officer must keep confidential under section 18 of the Tax Administration Act 1994.
- (2) An entity may refuse a request for information if—
 - (a) it can be properly withheld under sections 6, 7, 9(2)(a), (b)(i), (ba)(ii), (c) to (h), (j), or (k) of the Official Information Act 1982; or
 - (b) the supply of the information would limit the ability of the entity, or of any of its employees, members, or office holders, to act judicially, or to

carry out the statutorily independent functions of the entity, in relation to a particular matter.

Compare: 2019 No 51 s 24

16 Publication or disclosure of information to others

The Commission must not publish or disclose any information obtained under section 14 unless 1 or more of the following apply:

- (a) the information is available to the public under any enactment or is otherwise publicly available;
- (b) the information is in a statistical or summary form;
- (c) the publication or disclosure is with the consent of the entity from which the information was obtained;
- (d) the publication or disclosure is made under the Official Information Act 1982 or is otherwise required by law.

Compare: 2019 No 51 s 26

Review of Commission

17 Review of Commission

- (1) The Minister must, as soon as practicable after the expiry of 5 years from the commencement of this Act,—
 - (a) commence a review of the operation and effectiveness of the Commission; and
 - (b) prepare a report on that review.
- (2) The Minister must present the report to the House of Representatives as soon as practicable after it has been completed.

Consequential amendments

18 Consequential amendments to other enactments

Amend the enactments specified in Schedule 3 as set out in that schedule.

Schedule 1
Transitional, savings, and related provisions

s 5

Part 1
Provisions relating to this Act as enacted

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

Schedule 2
Groups identified in He Ara Oranga: Report of the Government
Inquiry into Mental Health and Addiction

s 13(1)(b)

Māori
Pacific peoples
Refugees and migrants
Rainbow communities
Rural communities
Disabled people
Veterans
Prisoners
Young people
Older people
Children experiencing adverse childhood events
Children in State care

Schedule 3

Consequential amendments

s 18

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 3, insert in its appropriate alphabetical order:

Mental Health and Wellbeing Commission

Health and Disability Commissioner Act 1994 (1994 No 88)

In the heading to section 9, delete “**and Mental Health Commissioner**”.

Repeal section 9(2).

In section 9(3), delete “or the Mental Health Commissioner”.

Repeal section 14(1)(ma).

In section 23(b), after “the Children’s Commissioner,”, insert “the Mental Health and Wellbeing Commission,”.

In section 68(2), delete “or the Mental Health Commissioner”.

In Schedule 2, clause 4(5), delete “or the Mental Health Commissioner”.

Official Information Act 1982 (1982 No 156)

In Schedule 1, insert in its appropriate alphabetical order:

Mental Health and Wellbeing Commission

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Mental Health and Wellbeing Commission

Remuneration Authority Act 1977 (1977 No 110)

In Schedule 4, delete “The Mental Health Commissioner and the Deputy Health and Disability Commissioners”.

In Schedule 4, insert in their appropriate alphabetical order:

The Deputy Health and Disability Commissioners

The members of the Mental Health and Wellbeing Commission

Notes

1 *General*

This is a consolidation of the Mental Health and Wellbeing Commission Act 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135