

19 June 2019



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Hon Dr David Clark
Minister of Health
Parliament Buildings
P O Box 18 888
WELLINGTON 6160

Dear Minister

New Mental Health and Wellbeing Commission – purpose, independence and powers

Congratulations on the recent decisions to substantially implement the recommendations of *He Ara Oranga* and to invest an additional \$1.9 billion to increase support for people with mental health and addiction issues. I warmly welcome those decisions.

The government's decisions provide the opportunity to make substantial progress in improving the wellbeing of New Zealanders and improving mental health and addiction services in New Zealand.

Summary

I welcome the establishment of a new Mental Health and Wellbeing Commission. I recommend:

- The new Commission be established as an Independent Crown entity to have a status consistent with similar Crown entities required to provide enduring, independent oversight and accountability
- Section 8 of the New Zealand Public Health and Disability Act 2000 be amended to require a mental wellbeing strategy to stand alongside New Zealand's health and disability strategies to ensure the current focus on mental wellbeing endures
- The new Commission have powers to obtain information (including information from beyond State services, such as primary sector service providers), to report publicly and to make recommendations

New Mental Health and Wellbeing Commission welcomed

As I advised in December, Anthony Hill, the Health and Disability Commissioner, and I support the establishment of a new Mental Health and Wellbeing Commission to strengthen independent monitoring and advocacy in relation to mental wellbeing and, as part of that, improve mental health and addiction services.

The new Commission has a valuable role in rebuilding public confidence by providing independent oversight and constructive advice.

Independent Crown entity required

I have previously commented on the need for the new Commission to be independent. I have not commented on the level of independence required because *He Ara Oranga* presented a wide array of potential functions.

I propose the new Commission be required to:

- Hold decision makers and successive governments to account, including when mental health is not a high priority nor the focus of public attention and concern (which has often been the case)
- Provide independent, public oversight and critique of the development and implementation of *He Ara Oranga* recommendations approved by the Government (as envisaged in your recent decisions)
- Provide independent oversight of the development and implementation of any subsequent mental health and wellbeing strategies – I propose a statutory requirement for such a strategy below
- Provide oversight, as an important part of its role, of the impact of approximately \$1.4 billion of annual expenditure on mental health and addiction services and the additional \$1.9 billion of expenditure, over four years, recently announced in the Budget.

To fulfil those functions the new Commission will need to act as the public's watchdog - able to hold decision makers, including successive governments, to account and to report publicly without fear or favour. It will, therefore, require sufficient independence, powers and resources to fulfil its role successfully and durably and to maintain public confidence in its work. It is essential for that purpose for it to be an Independent Crown entity (ICE) under the Crown Entities Act 2004.

Being able to act without fear or favour requires four key elements of independence: clarity of mandate and sufficient powers to act and report; freedom from direction by those the entity holds to account; security of tenure for the entity's members; and sufficient resources and operational autonomy. These are well accepted principles internationally. I note the Legislation Advisory Committee Guidelines on legislative design consider an ICE to be the appropriate form for a body if the body needs greater independence from Ministers to preserve public confidence. A Minister cannot then direct the body how to perform its functions.

The independence of an ICE is enhanced by Commissioners (or members) being appointed by the Governor-General for terms up to five years rather than being appointed, for up to three years, and capable of being removed by a Minister.

I also note the local and international experience of the marginalisation of mental health and addiction issues and the significance of these issues to public wellbeing. The new Commission must be able to ensure mental health and wellbeing stays on future governments' agendas. The cost of marginalisation is too high for individuals, their whānau and the wider community.

A comparison of agencies currently established as ICEs and the other most likely alternative, Autonomous Crown entities (ACEs) affirms the ICE option. ACEs tend to have a funding or operational focus (e.g. the New Zealand Artificial Limb Service, the Broadcasting Commission or the Symphony Orchestra) whereas ICEs exist where there is a strong need to maintain independence for regulatory purposes (e.g. the Commerce Commission), for making quasi-judicial decisions (e.g. the Health and Disability Commissioner), or to preserve an independent oversight and reporting function (e.g. the Children's Commissioner or the Productivity Commission). The new Commission clearly falls within the latter category.

Failure to establish a watchdog with sufficiently independent status will send the wrong message to the public about the ongoing importance of mental wellbeing.

Statutory requirement for a mental wellbeing strategy required – ensuring the current focus on mental wellbeing endures

As I have noted previously it has proven difficult to ensure there is an all-of-government strategy to improve the mental wellbeing of New Zealanders (and a mental health and addiction services strategy aligned to it). While there is a strong focus on mental wellbeing at present, this is not always the case.

An amendment to section 8 of the New Zealand Public Health and Disability Act 2000 is strongly needed to add a provision for an all-of-government mental wellbeing strategy to stand alongside New Zealand's health and disability strategies. This would ensure there is an enduring commitment to a long-term strategy to promote mental wellbeing as well as address mental illness and addiction issues, and that the strategy is not put to one side over time because of other priorities.

The new Commission is the obvious entity to provide on-going independent oversight of this strategy and its implementation. At present it is proposed that the new Commission have oversight of *He Ara Oranga*. Beyond this, the Commission needs to make an enduring contribution to ensure we retain a strong focus on the mental wellbeing of New Zealanders.

Powers of the new Commission

While the detail will need to be determined, to perform its core functions the new Commission must have the powers to:

- Obtain information – this must be wider than only obtaining information from state service agencies (a scope suggested in *He Ara Oranga*). If, for example, the new Commission is to monitor service models and investments it must be able to obtain information from a wide range of organisations (for example primary sector organisations such as Primary Health Organisations which are likely to have a growing role in providing services to people with mild to moderate mental health and addiction issues).
- Report publicly on progress, challenges and opportunities.
- Make recommendations – to provide constructive, well informed advice.

These powers are essential for the Commission to fulfil its “holding to account” role credibly and constructively. They again reinforce the importance of the Commission having full independence in the terms outlined above.

Sufficient resources

I note provision of \$2m per annum for the new Commission. I recommend funding levels be reviewed once the proposed purpose, functions and powers of the Commission are fully developed.

Transparent advocacy

Given HDC's role as an independent advocate in relation to mental health and addiction services, I propose to publish this letter on the Health and Disability Commissioner's website.

I have also copied the letter to the Ministry of Health for their information.

Conclusion

It is encouraging to see the level of commitment and investment the Government is making to improve the mental wellbeing of New Zealanders.

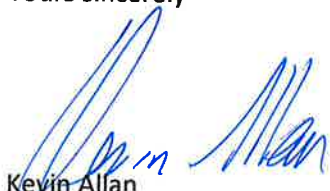
I welcome the decision to establish a new Mental Health and Wellbeing Commission. It is essential it is set up to succeed. This means ensuring independent oversight of actions taken and investments made to improve our mental wellbeing and the result of those actions. To do that it needs to be an Independent Crown entity with a clear mandate, powers to gather information and report, and sufficient resources as well as the freedom from direction and control by Ministers.

Underpinning these changes with a statutory requirement for a mental health and addictions strategy to sit alongside our health and disability strategies would leave a lasting legacy and ensure that New Zealand's future efforts are aimed at building on progress rather than responding to crisis.

I look forward to continuing to work with the Ministry and others to ensure a smooth transition to support the establishment and success of the new Commission.

I am happy to discuss this briefing with you.

Yours sincerely



Kevin Allan

Mental Health Commissioner

Cc: Dr Ashley Bloomfield, Director-General of Health
Ms Robyn Shearer, Deputy Director-General Mental Health