

## **Draft Terms of Reference for the Initial Mental Health and Wellbeing Commission**

### **Context**

1. The Government has committed to establishing an independent Mental Health and Wellbeing Commission as part of its response to *He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction (He Ara Oranga)*.
2. This is an important time for mental health and wellbeing in New Zealand and a pivotal opportunity for a Commission to influence better and more equitable mental health and wellbeing outcomes.
3. The new Commission will provide enduring, independent oversight of mental health and wellbeing in New Zealand. The Commission's focus spans all government and non-government contributors to mental health and wellbeing. This includes, but is not limited to, the health and disability, social welfare, housing, education, justice and workplace relations and safety sectors. It encompasses the social determinants of health like whānau ora, housing, employment, poverty, social and physical isolation, racism, the impact of colonisation, the environment, social attitudes and more.
4. The Commission will oversee the performance of the whole mental health and wellbeing system and challenge it to perform better. It will not, however, investigate the performance of specific services or investigate individual complaints.
5. To ensure its independence, the Commission will be established through the legislative process as a Crown entity. While legislation is being progressed, an Initial Mental Health and Wellbeing Commission (the Initial Commission) will undertake some, but not all, of the functions of the permanent Commission. The Initial Commission will be established under section 11 of the New Zealand Public Health and Disability Act 2000 to provide advice to the Minister of Health on the mental health and wellbeing of New Zealanders.
6. This document is a Terms of Reference approved by Cabinet. It sets out the purpose, functions and operations for the Initial Mental Health and Wellbeing Commission.

### **Purpose**

7. The purpose of the Initial Commission is to provide independent scrutiny of the Government's progress in improving New Zealand's mental health and wellbeing, promote collaboration between entities that contribute to mental health and wellbeing, and develop advice for the permanent Mental Health and Wellbeing Commission (the permanent Commission) to enable the permanent Commission to make swift progress once it has been established.

### **Key functions and deliverables**

8. The Initial Commission will:
  - a) monitor progress of the Government's system transformation response to *He Ara Oranga* and provide advice on and report to the Minister of Health within one year of the Initial Commission's establishment

- b) develop a draft outcomes and monitoring framework for mental health and wellbeing that would be suitable for the permanent Commission to consider adopting
  - c) identify any gaps in information required to monitor performance under the draft framework and make recommendations to the Minister of Health on how these could be filled and by whom
  - d) develop a draft work programme and potential operating model for consideration by the permanent Commission
  - e) provide input on the establishment of the permanent Commission including its roles and powers
  - f) develop and maintain relationships with and between key government and non-government entities that contribute to mental health and wellbeing, including those monitoring or contributing information on aspects of system performance.
9. The Initial Commission is not required to perform some functions that the permanent Commission will undertake, namely:
- a) monitoring and reporting publicly on the state of New Zealand's mental health and wellbeing and emerging issues beyond progress with implementing Government's response to *He Ara Oranga*
  - b) advocating for improvements to the mental health and wellbeing system beyond those that are being undertaken in response to *He Ara Oranga*.
10. The Initial Commission will not be required to investigate or advocate on individual incidents or cases. If it becomes aware of such cases requiring consideration, it will refer these to the appropriate agencies, for example, the Health and Disability Commissioner or other relevant authorities.

### **Approach**

11. In carrying out its functions, the Initial Commission will:
- a) undertake its tasks in a manner consistent with Te Tiriti O Waitangi including by having a direct relationship with iwi, and working directly with whānau and community
  - b) ensure a wide range of perspectives inform the draft mental health and wellbeing outcomes and monitoring framework including:
    - whānau Māori
    - people with lived-experience of mental health and addiction and their families, whānau and caregivers
    - disabled people
    - Pacific peoples
    - rainbow communities

- other groups with disproportionately poorer mental health and wellbeing outcomes.
- c) engage with agencies that undertake oversight and monitoring functions covering aspects of mental health and wellbeing to draw on existing thinking, align outcomes and monitoring frameworks, and facilitate efficient information sharing as much as possible
  - d) engage with government agencies that may need to provide data and other information to the permanent Commission to understand what is readily available and what may require future investment
  - e) coordinate with, but not duplicate, other entities with similar roles, including but not limited to the Ministry of Health, the Health and Disability Commissioner, the Office of the Ombudsman, the Office of the Privacy Commissioner, the Human Rights Commission and the Office of the Children’s Commissioner
  - f) work in a way that is consistent with New Zealand’s commitments under the Convention on the Rights of Persons with Disabilities, including the principle that disabled people should have full and effective participation and inclusion in society.
12. The Government expects that government departments and Crown entities will collaborate with the Initial Commission, as far as they can while upholding their legal and ethical responsibilities. They are expected to supply the information in a useful format and timely manner to the Initial Commission so the Initial Commission can carry out its functions. This includes quarterly reports from the Ministry of Health to the Initial Commission on progress in delivering its contribution to the Government’s response to *He Ara Oranga*.

**Independent advice and comment**

13. The Initial Commission will provide independent advice to the Minister of Health.
14. The Initial Commission is expected to meet with the Minister of Health before starting its work to discuss these Terms of Reference, its intended work programme and deliverables.
15. The Minister of Health may request advice from the Initial Commission on specific matters and direct the Initial Commission to have regard to specific policies relating to mental health and wellbeing. The Initial Commission may also propose matters for its work programme.
16. The Initial Commission is expected to meet with the Minister of Health monthly (or as agreed between the Minister and Chair) to provide information as its work progresses, and act in accordance with a “no surprises” approach.
17. The Minister may forward information from the Initial Commission to relevant portfolio Ministers.
18. The reporting timeframe for the Initial Commission’s report on the Government’s response to *He Ara Oranga* can be extended if the Minister of Health agrees.

19. The Initial Commission is accountable to the Minister of Health and is expected to act consistently with the objectives and functions set out in these Terms of Reference, and, perform the functions efficiently and effectively, and consistently with the spirit of service to the public, and in collaboration with other entities where practicable.

### **Membership**

20. The Initial Commission will consist of a Chairperson (the Chair) and up to four members appointed by Cabinet and accountable to the Minister of Health.
21. Members are required to possess the appropriate knowledge, skills, and experience to carry out their role. Members are required to be widely respected as subject matter experts or authorities in mental health and wellbeing, and have the necessary personal expertise and ability to provide independent, strategic assessments of mental health and wellbeing issues. They will not act as advocates or representatives of a particular interest or sector group.
22. Collectively the intended members of the Initial Commission should possess the following expertise and attributes:
  - a) in-depth understanding of mental health and addiction issues, services and support
  - b) understanding, knowledge and experience in Te Ao Māori (Māori world) practices, protocols, values and beliefs and capability in te reo Māori
  - c) lived experience of mental health and addiction issues
  - d) experience in leading or influencing complex systems
  - e) an understanding of wider contributors to mental health and wellbeing such as housing, education, justice and workplace relations and safety sectors, as well as social determinants like whānau ora, housing, employment, poverty, the environment, social and physical isolation, racism, the impact of colonisation, social attitudes and more
  - f) gender, age and ethnicity balance.
23. In addition, the following are key attributes for the Chair of the Initial Commission:
  - a) experience in a public-facing role
  - b) governance experience
  - c) familiarity with machinery of government and government processes.
24. Members are responsible for declaring any real or potential conflict of interest to the Initial Commission, as soon as the conflict arises.
25. Members must ensure that they do not let advocacy of particular interests override or undermine their responsibilities or duties as members of the Initial Commission.
26. The Initial Commission is expected to work closely with the Mental Health Commissioner.

## **Operations**

27. The Initial Commission is expected to meet regularly to carry out its functions. The scheduling of these processes will be determined by the Chair and Members subject to budgetary constraints.
28. The Initial Commission will operate on the basis of consensus and, where it is not possible to achieve a consensus, on the basis of majority vote with the Chair having the final casting vote.
29. The Chair will determine the meeting processes. Members who are unable to attend a meeting of the Initial Commission cannot be represented by a substitute or proxy.
30. The Initial Commission will be supported by a dedicated Secretariat. The role of the Secretariat is to prepare a range of resources and materials at the direction of the Initial Commission to support its work.
31. As a Ministerial Committee the Initial Commission cannot be an employer or enter into contracts. The Ministry of Health will be the managing agency for the Initial Commission and will be responsible for employing the Secretariat and contracting for work on behalf of the Initial Commission.
32. The Head of Secretariat will be appointed by the Director-General of Health in consultation with the Chair of the Initial Commission. The Head of Secretariat is accountable to the Chair of the Initial Commission for delivery of the Initial Commission's work programme and to the Director-General of Health for employment and budget matters.
33. Secretariat staff may include subject matter specialists seconded from the Ministry of Health and other relevant agencies. Secretariat staff will report to the Head of Secretariat.
34. The Director-General of Health and the Chair of the Initial Commission will meet regularly to ensure that the Initial Commission's work programme is well supported and to keep each other well informed of relevant work and issues.

## **Public statements**

35. Only the Chair is authorised to comment publicly on matters connected with the Initial Commission, and where appropriate, the Chair will advise the Minister of Health in advance. The Chair may delegate comment to other members.

## **General Confidentiality Requirements**

36. In order for the Initial Commission to operate effectively, members must maintain the confidence of the Initial Commission, including maintaining confidentiality of matters discussed at meetings, and any information or documents (not otherwise publicly available) provided to it.
37. Disclosure of Initial Commission business to anyone outside the Initial Commission must be on the decision of the Initial Commission or at the discretion of the Chair when the Initial Commission is unable to meet. The release or withholding of

information is subject to the provisions of the Official Information Act 1982 and the Privacy Act 1993.

### **Terms and Conditions of Appointment**

38. Members of the Initial Commission are appointed by the Minister of Health. Letters of appointment will detail the remuneration and reimbursement arrangements for the Chair and members. Fees will be paid in accordance with the Cabinet Office Fees Framework.
39. Unless a person sooner vacates their office, every appointed member of the Initial Commission will continue in office until their successor comes into office.
40. Any member of the Initial Commission may at any time resign as a member by advising the Minister of Health in writing.
41. Any serious breach of any of these terms of reference may result in the Minister of Health removing a member at the Minister's sole discretion. Serious breaches of the Terms of Reference include, but are not limited to, a breach of confidentiality, unauthorised communication with media about the Initial Commission, or a failure to declare, or appropriately manage, a conflict of interest.
42. The Minister of Health may from time to time alter or reconstitute the Initial Commission, or discharge any member or appoint new members for the purpose of decreasing or increasing the membership or filling any vacancies.

### **Duration of the Initial Commission**

43. The Initial Commission will remain in place until 7 February 2021, unless otherwise disestablished or extended by the Minister of Health.
44. The Minister of Health may extend the duration of the Initial Commission.