

16 December 2019

Louisa Wall
Chairperson
Health Committee
Parliament Buildings
Wellington

By email: he@parliament.govt.nz



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

Dear Ms Wall

Supplementary submission, Mental Health and Wellbeing Commission Bill

Thank you for the opportunity to make an oral submission to the Health Select Committee regarding the Mental Health and Wellbeing Commission Bill (the Bill). This letter is supplementary to HDC's written submission of 10 December and responds to at least one submission to this Bill advocating for:

1. the Health and Disability Commissioner to retain section 14(1)(ma) of the Health and Disability Commissioner Act 1994 (the HDC Act) "to monitor mental health and addiction services and to advocate improvements to those services"
2. an amendment to the HDC Act to require one Deputy Health and Disability Commissioner to be Deputy Commissioner Mental Health
3. an amendment to the HDC Act to require consultation with the Commission.

As set out in HDC's substantive submission, HDC supports the proposed Mental Health and Wellbeing Commission (the Commission). HDC supports its establishment as an independent crown entity, its powers to obtain information, report publicly and make recommendations, and the collective knowledge and experience required of the Board of the Commission including of te ao Māori, mental distress and addiction. HDC advocates for:

- stronger powers to obtain information
- a statutory requirement for a government mental health and wellbeing strategy, the contents and implementation of which would be monitored by the Commission.

1. HDC supports the removal of section 14(1)(ma) from the HDC Act

HDC's general functions include to consider both individual and systemic issues of any health or disability service when considering complaints, and to promote the Code of Health Services and Disability Services Consumers' Rights (the Code). HDC will continue to do so following the establishment of the new Commission.

HDC's section 14(1)(ma) function to monitor mental health and addiction services and to advocate for improvements to those services was added to the HDC Act in 2012 when the previous Mental Health Commission was disestablished. It provides a much broader function than HDC's core functions of promoting the Code and upholding consumers' rights, including complaints assessment. In practice this has resulted in the development of a consumer experience tool to gather the voices of consumers and whanau who access services, *Mārama Real Time Feedback*, and the implementation of a monitoring and advocacy framework for mental health and addiction service improvement. The monitoring and advocacy framework draws on information sources well beyond HDC complaints (including consumer and whanau feedback, service performance information and sector engagement) to assess the state of services and make recommendations for improvement. Reports applying the framework were published in 2018 and 2019, with a third report planned for 2020 (see *New Zealand's mental health and addiction services: The monitoring and advocacy report of the Mental Health Commissioner*; and *New Zealand's mental health and addiction services: Monitoring indicator update 2017 & 2017/18*).

The broader function of 14(1)(ma) has been explicitly incorporated into the functions of the new Commission in clause 11(1)(c). Service monitoring and advocacy is an important and essential function for the new Commission in considering both the promotion of mental wellbeing and providing independent oversight of services and support for people seeking help for a mental health or addiction concern. It ensures the Commission will have the oversight and quality of analysis required to allow it to speak into the system and positively impact system improvement. Retaining the 14(1)(ma) in HDC would duplicate the work of the new Commission, create inefficiency, and potentially be confusing for consumers, providers and others.

HDC sees its general functions in section 14 of the HDC Act and those of the new Commission as complementary. HDC will continue to monitor services in relation to compliance with the Code of Consumers' Rights, including mental health and addiction services. These functions include:

- assessment and investigation of complaints
- commissioner-initiated investigations
- considering wider systemic issues within or across services
- publicly reporting on issues
- making recommendations for improvements.

2. HDC does not support a legislative requirement within the HDC Act for a Deputy Commissioner, Mental Health

HDC does not support a legislative requirement for a Deputy Commissioner to be solely focussed on one speciality of complaints. Currently through the HDC's delegation power under the HDC Act, every decision-maker is delegated specialty areas as well general functions. HDC already delegates responsibility for the vast majority of decisions about mental health and addiction complaints to the Mental Health Commissioner and will continue the practice of delegating this speciality to one Deputy Commissioner after the new Commission is established. Similar arrangements are in place to for specific oversight of other areas (disability, aged care and prison health services). This allows Deputy Commissioners to have oversight of the specific issues raised in relation to vulnerable consumer groups and issues of high concern, and to ensure that recommendations made are having

best impact. It also ensures that Deputy Commissioners benefit from having insight into the breadth of issues facing the health and disability system.

Making these delegations administratively enables the HDC to strike the right balance between speciality and organisational flexibility to respond to issues across the health and disability system. It would be unnecessary and unwise to direct organisational design through legislation.

3. HDC supports consultation with the Commission on preparation and review of the Code, but not in relation to organisations concerned with personal rights

HDC supports the current inclusion in the Bill to amend section 23(b) of the HDC to require consultation with the Commission in relation to preparation and review of the Code. This addition will support the Commission in its work to promote mental health and wellbeing. HDC is aware of at least one submission that recommends that the Commission be added to section 14(2)(b) of the HDC Act, requiring HDC in the performance of his or her functions to “consult and co-operate with other agencies concerned with personal rights, including the Ombudsmen, the Human Rights Commission, the Children’s Commissioner, the Privacy Commissioner, and the Director of Mental Health”. HDC’s understanding is that the Commission will be concerned with a systems view rather than personal rights. Should the Commission be added to section 14(2)(b), HDC recommends that a reciprocal provision be inserted into the Bill requiring the Commission to consult and co-operate with the HDC in the performance of its functions.

We trust this information is helpful to the Committee in making its deliberations.

Yours sincerely



Anthony Hill
Health and Disability Commissioner



Kevin Allan
Mental Health Commissioner
Deputy Health and Disability Commissioner