



ANALYSIS

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1998, No. 5

An Act to establish a Mental Health Commission—

- (a) To ensure the implementation of the national mental health strategy; and**
- (b) By carrying out that task, to improve services that affect people with mental illness and to improve outcomes for people with mental illness and their families and caregivers** [27 March 1998]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Mental Health Commission Act 1998.

(2) This Act comes into force on 1 April 1998.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Commission” means the Mental Health Commission established by section 5:

“Family” includes whanau, hapu, iwi, and family group:

“Minister” means the Minister of Health:

“Ministry” means the Ministry of Health:

“National mental health strategy”—

(a) Means the strategic directions for the mental health services of New Zealand described in—

(i) The document entitled “Looking Forward—Strategic Directions for the Mental Health Services” published by the Ministry in June 1994; and

(ii) The document entitled “Moving Forward—The National Mental Health Plan for More and Better Services” published by the Ministry in July 1997; and

(b) Includes every variation of, or addition to, those strategic directions approved by the Minister and published under section 3 (1) (b):

“Provider” means a provider of services that affect people with mental illness:

“Regional health authority” has the meaning given to it by section 2 of the Health and Disability Services Act 1993:

“Year” means a period of 12 months commencing on 1 July and ending with 30 June.

(2) In section 6 (1) (c), the reference to all those involved in the care and treatment of people with mental illness and their families and caregivers includes (without limitation)—

(a) The Ministry; and

(b) Regional health authorities; and

(c) Providers; and

(d) People with mental illness and their families and caregivers; and

(e) Groups representing the interests of people with mental illness and their families and caregivers.

3. Amendments to national mental health strategy—

(1) The Minister may from time to time—

(a) Approve a variation of the national mental health strategy or an addition to it; and

(b) Give permission for the publication by the Ministry of a document that describes the variation or addition.

(2) On the publication of a document under subsection (1) (b), the variation or addition described is included in the national mental health strategy.

4. Act to bind the Crown—This Act binds the Crown.

Establishment and Functions of Mental Health Commission

5. Establishment of Commission—There is established a Commission to be called the Mental Health Commission.

6. Functions of Commission—(1) The functions of the Commission are—

- (a) To report to the Minister, from time to time or at intervals agreed between the Minister and the Commission, on the implementation of the national mental health strategy; and
 - (b) To report to and advise the Minister, when requested by the Minister, on any matter relating to the implementation of the national mental health strategy specified by the Minister in the request; and
 - (c) To work with all those involved in the care and treatment of people with mental illness and their families and caregivers—
 - (i) To promote better understanding, by the community, of mental illness; and
 - (ii) To reduce the stigma associated with mental illness and the prejudice shown to people with mental illness and their families and caregivers; and
 - (iii) To eliminate discrimination on the ground of mental illness against people with mental illness and their families and caregivers; and
 - (d) To promote employment in the mental health field as a desirable career choice; and
 - (e) To work with all those involved in training for employment in the mental health field—
 - (i) To promote the provision of training opportunities of an appropriate range and quality; and
 - (ii) To promote the obtaining and maintaining, by people employed in the mental health field, of skills of an appropriate range and quality.
- (2) The Commission must ensure—
- (a) That each report under subsection (1) (a) covers one, some, or all of the matters described in subsection (3); and
 - (b) That every year it presents at least one report under subsection (1) (a) on each of the matters described in subsection (3).
- (3) The matters referred to in subsection (2) are—

- (a) The extent to which—
- (i) The Ministry has exercised leadership in the implementation of the national mental health strategy by way of its performance of the tasks described in paragraphs (b) to (g):
 - (ii) Regional health authorities have exercised leadership in the implementation of the national mental health strategy by way of their performance of the tasks described in paragraphs (e) to (g):
- (b) The extent to which the Ministry has established, through negotiations with regional health authorities, specific targets and milestones for each of the strategic directions in the national mental health strategy:
- (c) The Ministry's performance in—
- (i) Measuring delivery by regional health authorities, with respect to each of the strategic directions in the national mental health strategy, against the targets and milestones; and
 - (ii) Responding to any failures by regional health authorities to meet the targets and milestones:
- (d) The Ministry's performance in measuring progress by regional health authorities towards clearly communicating to providers, people with mental illness and their families and caregivers, and communities—
- (i) The changes needed in order to implement the national mental health strategy; and
 - (ii) The roles to be played and the responsibilities to be undertaken by those providers, people with mental illness and their families and caregivers, and communities:
- (e) The progress made by the Ministry and regional health authorities in promoting co-ordination and collaboration among providers to ensure that services that affect people with mental illness are provided consistently and effectively:
- (f) The extent to which the Ministry, every regional health authority, and every other government agency that has responsibilities in relation to the delivery of services that affect people with mental illness and their families and caregivers is implementing the national mental health strategy—
- (i) Through the provision of services directly by it;
- or

- (ii) Through the standards it sets for the provision of services by parties which it funds to provide those services or from which it purchases services:
- (g) The effectiveness of systems put in place by the Ministry and regional health authorities to ensure—
 - (i) That Government funding for mental health services is not diverted to other purposes; and
 - (ii) That Government expenditure on mental health services has demonstrable effects.

Other Matters Relating to Mental Health Commission

7. Annual report—(1) The Commission must, as soon as practicable after the end of each year, furnish to the Minister a report on its performance of its functions in that year.

(2) The Minister must present a copy of each such report to the House of Representatives in accordance with section 44A of the Public Finance Act 1989.

8. Powers of Commission—The Commission has all such powers as are reasonably necessary or expedient to enable it to carry out its functions.

9. Membership of Commission—(1) The Commission consists of 3 members, who are appointed by the Minister, and of whom one must be appointed as Chairperson.

(2) Any person appointed as a member of the Commission or as its Chairperson may hold that office concurrently with any other office, subject to the Minister being satisfied that holding offices concurrently will not involve the person in a conflict of interest.

10. Term of office of members of Commission—Every member of the Commission is appointed for a term that expires at the time at which this Act expires.

11. Further provisions applying in respect of Commission—The provisions set out in Schedule I apply in respect of the Commission.

12. Advisory committee—The Minister may, at the request of the Commission, appoint under section 46 of the Health and Disability Services Act 1993 an advisory committee to provide advice to the Commission in relation to the functions of the Commission set out in section 6.

*Miscellaneous Provisions***13. Expiry and repeal of Act**—(1) This Act expires—

- (a) At 5 pm on 30 August 2001; or
- (b) At such earlier time as is appointed by the Governor-General by Order in Council on the recommendation of the Minister.

(2) The Minister must not make a recommendation under subsection (1) (b) unless the Minister is satisfied, whether by way of advice from the Commission or otherwise, that the national mental health strategy has been implemented.

(3) At the expiry of this Act—

- (a) The Commission ceases to exist; and
- (b) All assets and liabilities of the Commission become assets and liabilities of the Crown; and
- (c) Employment contracts between the Commission and any person are terminated and no compensation is payable except as provided in the relevant employment contract.

(4) This Act is repealed at the time at which it expires.

14. Amendments to other enactments—The enactments specified in Schedule 2 are amended in the manner indicated in that schedule.

SCHEDULES

Section 11

SCHEDULE 1

PROVISIONS APPLYING IN RESPECT OF MENTAL HEALTH COMMISSION

1. Delegation of functions or powers by Commission—(1) The Commission may from time to time delegate, either generally or particularly, to any of its members any of its functions or powers.

(2) Every delegation under this clause must be in writing.

(3) No delegation under this clause may include the power to delegate under this clause.

(4) Subject to any general or special directions given or conditions imposed by the Commission, the person to whom any functions or powers are delegated under this clause may exercise those functions or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.

(5) Every member of the Commission purporting to act under any delegation under this clause is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

(6) No such delegation affects or prevents the exercise of any function or power by the Commission, and no such delegation affects the responsibility of the Commission for the actions of any person acting under the delegation.

(7) Every delegation under this clause to 1 or 2 members of the Commission has effect even though, under clause 4, the quorum necessary for the transaction of business at a meeting of the Commission is 2 members.

2. Members not personally liable—No member of the Commission is personally liable for any act or default done or made by the Commission or by any member of the Commission in good faith in pursuance of the functions of the Commission.

3. Extraordinary vacancies—(1) Any member of the Commission may at any time be removed from office by the Minister for conflict of interest, disability affecting performance of duty, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(2) Any member of the Commission may at any time resign his or her office by giving written notice to that effect to the Minister.

(3) If any member of the Commission dies, or resigns, or is removed from office, the vacancy created is deemed to be an extraordinary vacancy.

(4) An extraordinary vacancy may be filled by the appointment of a person by the Minister.

(5) Every person appointed to fill an extraordinary vacancy is appointed for the residue of the term for which the vacating member was appointed.

(6) The powers of the Commission are not affected by any vacancy in its membership.

4. Meetings—(1) Meetings of the Commission are held at such times and places as the Commission or the Chairperson from time to time appoints.

(2) At any meeting of the Commission the quorum necessary for the transaction of business is 2 members.

(3) At all meetings of the Commission the Chairperson presides if he or she is present.

SCHEDULE 1—*continued*PROVISIONS APPLYING IN RESPECT OF MENTAL HEALTH COMMISSION—
continued

(4) All questions arising at any meeting are decided by a majority of the votes cast by the members present.

(5) At any meeting the Chairperson has a deliberative vote and, in the case of an equality of votes, also has a casting vote.

(6) A resolution in writing signed or assented to by letter, or by facsimile transmission or any other electronic means, by all members of the Commission, is as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.

(7) Subject to this Act, the Commission may regulate its procedure in such manner as it thinks fit.

5. Remuneration and travelling allowances—The members of the Commission are paid such fees, salaries, and allowances, and such travelling allowances and expenses, as the Minister from time to time determines.

6. Employees—The Commission may appoint such employees, including employees on secondment from other organisations, as it thinks necessary for the efficient performance of its functions.

7. Personnel policy—(1) The Commission must operate a personnel policy that complies with the principle of being a good employer.

(2) For the purposes of this clause, a “good employer” is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

- (a) Good and safe working conditions; and
- (b) An equal employment opportunities programme; and
- (c) The impartial selection of suitably qualified persons for appointment; and
- (d) Recognition of—
 - (i) The aims and aspirations of Maori people; and
 - (ii) The employment requirements of Maori people; and
 - (iii) The need for substantial involvement of Maori people as employees of the employer operating the personnel policy; and
- (e) Opportunities for the enhancement of the abilities of individual employees; and
- (f) Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- (g) Recognition of the employment requirements of women; and
- (h) Recognition of the employment requirements of persons with disabilities.

8. Choice of procedure—Where the circumstances giving rise to a personal grievance by a person employed by the Commission are also such that that person would be entitled to make a complaint under the Human Rights Act 1993, or to exercise a right of review or appeal, that person may take one, but no more than one, of the following steps:

SCHEDULE 1—*continued*PROVISIONS APPLYING IN RESPECT OF MENTAL HEALTH COMMISSION—
continued

- (a) The person may invoke, in relation to those circumstances, the procedures applicable in relation to personal grievances under the relevant employment contract:
- (b) The person may make, in relation to those circumstances, a complaint under the Human Rights Act 1993:
- (c) The person may exercise the right of review or appeal.

9. Application of certain Acts to members and employees—No person is deemed to be employed in the service of Her Majesty for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of that person's appointment as a member of the Commission or by reason only of that person's employment under clause 6.

10. Superannuation or retiring allowances—(1) For the purposes of providing superannuation or retiring allowances for any member or employee of the Commission, the Chairperson of the Commission may, out of the funds of the Commission, make payments to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

(2) Despite anything in this Act, any person who, immediately before being appointed as a member or, as the case may be, becoming an employee of the Commission, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 is deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to be a member of the Commission or, as the case may be, to be an employee of the Commission; and that Act applies to that person in all respects as if that person's service as a member or, as the case may be, as an employee, were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) entitles any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(4) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who is a member or, as the case may be, an employee of the Commission and (in any such case) is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person, means the Chairperson of the Commission.

11. Funds of Commission—The funds of the Commission consist of—

- (a) Any money appropriated by Parliament for the purposes of the Commission and paid to the Commission for the purposes of the Commission:
- (b) All other money lawfully received by the Commission for the purposes of the Commission:
- (c) All accumulations of income derived from any such money.

SCHEDULE 1—*continued*PROVISIONS APPLYING IN RESPECT OF MENTAL HEALTH COMMISSION—
continued

12. Audit Office to be auditor of accounts and financial statements—The Audit Office audits the accounts and financial statements of the Commission.

13. Commission to be Crown entity—The Commission is a Crown entity for the purposes of the Public Finance Act 1989.

SCHEDULE 2

Section 14

ENACTMENTS AMENDED

Enactment	Amendment
1982, No. 156—The Official Information Act 1982 (R.S. Vol. 21, p. 579)	By inserting in the First Schedule, in its appropriate alphabetical order, the following item: “Mental Health Commission”.
1989, No. 44—The Public Finance Act 1989 (R.S. Vol. 33, p. 419)	By inserting in the Fourth and Fifth Schedules (as added by section 41 of the Public Finance Amendment Act 1992), in its appropriate alphabetical order, the following item: “Mental Health Commission.”

This Act is administered in the Ministry of Health.