ANALYSIS

Title
1. Short Title and commencement
2. Interpretation
3. Effect of order establishing new district
4. Establishment of area health districts
5. Constitution of boards
6. New sections (relating to union or reconstitution of area health districts and hospital districts) inserted
8A. Union or reconstitution of districts
8B. Boards of united districts or reconstituted districts
8C. Property and contracts of boards of abolished districts
8D. Transmission of rights of boards of abolished districts
8E. Inquiries by Local Government Commission
7. New sections (relating to review of constituent districts and membership) substituted
13. Review of constituent districts and membership
13A. Objections to decision of board
8. First election of members
9. Cost of elections
10. Community committees
11. Opening and closing of institutions and health services
12. Health computer system
13. New heading and sections (relating to collection and use of personal information) inserted
Collection and Use of Personal Information
51A. Meaning of 'personal information'
51B. Board to collect personal information only where reasonably necessary
51C. Protection of personal information collected
51D. Special provisions relating to independent contractors, etc.
14. Recovery of certain costs of treatment
15. Application of board's funds
16. New Part IVA (relating to transferred staff) inserted in principal Act
PART IVA
TRANSITIONAL PROVISIONS RELATING TO TRANSFERRED STAFF
89A. Interpretation
89B. Application of Part
89C. Transfer of staff
89D. Conditions of employment of transferred employees
17. Contracts

1988, No. 100

An Act to amend the Area Health Boards Act 1983

[*28 June 1988*

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

1. Short Title and commencement—(1) This Act may be cited as the Area Health Boards Amendment Act (No. 3) 1988, and shall be read together with and deemed part of the Area Health Boards Act 1983 (hereinafter referred to as the principal Act).

(2) Sections 3 and 16 of this Act shall be deemed to have come into force on the 1st day of April 1988.

(3) Section 7 of this Act shall come into force on the date on which this Act receives the Governor-General's assent.

(4) Except as provided in subsections (2) and (3) of this section, this Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, before the definition of the term "health computer system" (as inserted by section 2 (1) of the Area Health Boards Amendment Act 1986), the following definition:

" 'Financial year' means a period of 12 months ending with the 31st day of March:".

(2) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term "initiating hospital board", and substituting the following definition:

" 'Initiating hospital board', in relation to an area health board, means the hospital board, or each of the hospital boards, whose hospital district was replaced in whole or in part by the area health district of the area health board:".

(3) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term "institution", the following definition:

" 'Local Government Commission' means the Local Government Commission established under the Local Government Act 1974:".

3. Effect of order establishing new district—Section 7 (2) of the principal Act is hereby amended by adding the following paragraph:

"(e) The provisions of Part IVA of this Act shall apply in respect of staff."

4. Establishment of area health districts—(1) Section 5 (2) of the principal Act is hereby amended by omitting the words "the hospital board or hospital boards", and substituting the words "any hospital board".

(2) Section 5 (3) of the principal Act is hereby amended by inserting, after the words "the Minister shall", the words "consult with each of the hospital boards concerned and shall".

(3) Section 5 (4) of the principal Act is hereby amended—

(a) By omitting the words "tendered with the consent of each hospital board whose district is to be affected, and of the area health board (where that is already in existence)":

(b) By inserting in paragraph (a), after the words "forming part of", the words "an area health district of an area health board or".

5. Constitution of boards—The principal Act is hereby amended by repealing section 8, and substituting the following section:

"8. (1) Subject to the succeeding provisions of this section, every area health board shall have—

"(a) Not less than 8 nor more than 14 elected members, being one or more elected representatives of each of the constituent districts within the area health district; and

"(b) Such number (if any) of appointed members, being persons appointed by the Governor-General on the recommendation of the Minister, not exceeding 1 for every 4 elected members, as may be agreed between the elected members and the Minister under section 18 of this Act.

"(2) In any particular case the Minister may permit a board to have up to 17 elected members.

"(3) On establishing a new area health district by Order in Council under section 5 of this Act, the Governor-General shall, by the same order, determine the number of representatives each constituent district is to have on the area health board for that area health district.

"(4) By the same order, the Governor-General may—

"(a) Combine into one or more combined districts any number of the constituent districts, or any parts of constituent districts, (whether of the same or of different kinds) in the area health district for the purpose of the election of representatives on the area health board; and

"(b) Prescribe the number of members to be elected in common as the representative or representatives of any combined district; and

"(c) Select and appoint one of the local authorities of the combined district to be the principal local authority of that combined district for the purposes of the conduct of elections within that district.

"(5) In deciding what provision to make in respect of any matter under this section, the Governor-General shall have regard, in such manner as the Governor-General thinks fit, to the relative populations of the constituent districts and of any combined districts, and to such other considerations as the Governor-General thinks necessary for ensuring the proper representation of all localities in the area health district."

6. New sections (relating to union or reconstitution of area health districts and hospital districts) inserted—The principal Act is hereby amended by inserting, after section 8 (as substituted by section 5 of this Act), the following sections:

"8A. **Union or reconstitution of districts**—(1) If at any time it appears to the Governor-General, on the recommendation of the Minister made after consultation by the Minister with each of the boards concerned, to be expedient that any 2 or more area health districts, or any area health district and any hospital district, that constitute a single continuous area should be united or reconstituted to form the same or a smaller number of area health districts, the Governor-General may, by Order in Council,—

"(a) Abolish those districts, as from a date to be specified in the order; and

"(b) Constitute, as from the same date, the same or a smaller number of new area health districts, or one new area health district, as the Governor-General thinks fit, under a name or names to be specified in the order and comprising the whole of the area included in the districts so abolished.

"(2) Each area health district so constituted shall comprise such counties and other areas (if any) as are specified in the order.

"(3) Two or more area health boards, or any area health board and any hospital board, whose districts constitute a single continuous area may, by resolutions, request the union or reconstitution of their districts under this section.

"(4) No such resolution shall be passed by any area health board or hospital board at any meeting unless notice of the intention to propose the resolution has been given at a previous meeting of the board held not less than 14 days before the day of the meeting at which the resolution is proposed to be passed.

"(5) A copy of every such resolution, signed by the chairman of the board, shall be sent to the Minister, and shall be

conclusive evidence that the resolution was duly passed in accordance with subsection (4) of this section.

"(6) All the provisions of this Act relating to area health districts constituted by this Act shall apply, so far as they are applicable and with the necessary modifications, to an area health district constituted by an Order in Council under this section.

"8B. **Boards of united districts or reconstituted districts**—(1) The area health board of any area health district constituted under section 8A of this Act shall come into existence as a body corporate on the day on which the district comes into existence, and the boards of the districts abolished by the order shall thereupon be deemed to be dissolved.

"(2) In any case where one new area health district is so constituted, the board of the new district shall be deemed to be the successor of the boards of the abolished districts.

"(3) In any case where 2 or more new area health districts are so constituted, the boards of such of those districts as are specified in that behalf in the Order in Council shall, subject to the provisions of this Act, be deemed to be the successors of the boards of the abolished districts.

"(4) Except as otherwise expressly provided by this Act, every area health board created a body corporate under this section shall be deemed for all purposes to be the same corporation as any board of which it is declared by or under this section to be the successor.

"(5) All the provisions of this Act shall apply, so far as they are applicable and with the necessary modifications, with respect to every area health board constituted under this section as if it had been constituted under section 8 of this Act.

"8C. **Property and contracts of boards of abolished districts**—(1) In any case where 2 or more districts are abolished and one new area health district is constituted by Order in Council under section 8A of this Act, the following provisions shall apply:

"(a) All real and personal property vested in the board of any district so abolished shall, on the coming into existence of the board of the new district, vest in the new board, without conveyance or assignment, for the estate and interest in the property of the board of which it is the successor, subject to all liabilities, charges, obligations, or trusts affecting that property:

"(b) All the contracts, debts, and liabilities of the board of any district so abolished shall, on the coming into existence of the board of the new district, become the contracts, debts, and liabilities of the new board.

"(2) In any case where, by any such Order in Council, 2 or more new area health districts are constituted, the following provisions shall apply:

"(a) All property, contracts, debts, and liabilities of the boards of the districts so abolished shall be apportioned between the boards of the new districts in such manner and proportions and upon and subject to such terms and conditions as the boards of the new districts may agree:

"(b) Subject to any such terms and conditions,—

"(i) All property so apportioned to any board shall vest in that board, without conveyance or assignment, for the estate and interest in the property of the board to which that property formerly belonged; and

"(ii) All contracts, debts, and liabilities so apportioned to any board shall become the contracts, debts, and liabilities of that board:

"(c) It shall be the duty of the boards among which any such apportionment is made to comply with any terms and conditions on which the apportionment is made:

"(d) If any question, whether of law or of fact, or any disagreement, arises between any boards as to—

"(i) An apportionment under this section; or

"(ii) Any terms or conditions on which it is made; or

"*(iii) The mode of carrying the apportionment* into effect or of complying with the terms or conditions,—

the question or disagreement shall be determined by the Minister, whose decision shall be final; and it shall be the duty of the boards to give effect to it accordingly.

"(3) Where, by virtue of this section, any land becomes vested in an area health board without conveyance or assignment, and a board of any district abolished under section 8A of this Act is registered as the proprietor of that land under the Land Transfer Act 1952, the District Land Registrar shall, at the request of the area health board, and on being satisfied, by statutory declaration or otherwise, of the title of the area

health board, register the area health board as the proprietor of that land instead of the board of the district so abolished.

"8D. **Transmission of rights of boards of abolished districts**—(1) Every area health board that is the successor of the board of any district that has been abolished under section 8A of this Act shall have and may exercise all the rights, powers, and authorities that the board of which it is the successor could have exercised.

"(2) Every area health board to which any property of any board is apportioned, or to which any contracts, debts, or liabilities of any board are apportioned under the foregoing provisions of this Act, shall have and may exercise all the rights, powers, and authorities that the abolished board could have exercised in respect of that property, or those contracts, debts, or liabilities.

"8E. **Inquiries by Local Government Commission**—If at any time the Minister is of the opinion that for the purposes of this Act an inquiry should be made into any question relating to the union, reconstitution, or alteration of boundaries of any area health districts or hospital districts, the Minister may request the Minister of Local Government to refer the question to the Local Government Commission for inquiry and report under the Local Government Act 1974."

7. New sections (relating to review of constituent districts and membership) substituted—The principal Act is hereby amended by repealing section 13, and substituting the following sections:

"13. **Review of constituent districts and membership**—(1) Every area health board shall, in the year preceding that in which a general election of the board is to be held and not later than the 30th day of June in that year, review the number of its constituent districts and the distribution of membership of the board among those districts.

"(2) For the purposes of the review, the board shall have regard to—

"(a) The respective areas and populations of the several constituent districts, combined districts, and wards, as the case may be; and

"(b) Such additional factors of any kind as the board considers relevant.

"(3) In having regard, pursuant to subsection (2) of this section, to the population of the several constituent districts, combined districts, and wards, the board shall have regard to

the population as at the immediately preceding 31st day of March.

"(4) At the conclusion of the review, the board may, by resolution,—

"(a) Alter the number of representatives that a constituent district has on the board; and

"(b) Combine into one or more combined districts any number of the constituent districts, or any parts of the constituent districts, (whether of the same or of different kinds) in the area health district for the purpose of the election of representatives on the area health board; and

"(c) Prescribe the number of members to be elected in common as the representative or representatives of any combined district; and

"(d) Select and appoint one of the local authorities of the combined district to be the principal local authority of that combined district for the purposes of the conduct of elections within that district.

"(5) In deciding what provision to make in respect of any matter under this section, the board shall have regard, in such manner as it thinks fit, to the relative populations of the constituent districts and of any combined districts, and to such other considerations as the board thinks necessary for ensuring the proper representation of all localities in the area health district.

"(6) Every resolution under this section shall come into force only on the date of the next general election, except to such extent as may be necessary for providing for that election.

"(7) Every resolution under this section shall forthwith be publicly notified.

"(8) A copy of every resolution under this section shall forthwith be sent to each territorial authority within the area health district and to the Local Government Commission.

"(9) A copy of every such resolution shall be kept at the office of the board and in such other place or places within the area health district as the board considers necessary, and shall be open to inspection without fee during ordinary office hours by any resident of the areas health district.

"(10) Nothing in this section shall apply in any case where the triennial general election is to be held within 15 months after the date of the constitution of the area health district.

"13A. **Objections to decision of board**—(1) Any territorial authority whose district is within the area health district may,

not later than the 30th day of August after the passing of any resolution of the board made under section 13 of this Act, object to the board against the resolution.

"(2) The objecting territorial authority shall, forthwith after lodging its objection with the board, serve a copy of the objection on every other territorial authority in the area health district, and every such other territorial authority shall be entitled to make written representations to the board on that objection.

"(3) Subject to subsection (4) of this section,—

"(a) The board, after considering the objection and any representations received, shall be entitled to alter the number of constituent districts, and the number of members of the board to represent each constituent district; and

"(b) In doing so, the board shall have regard to the matters specified in subsections (2) and (5) of section 13 of this Act.

"(4) If any territorial authority affected is dissatisfied with the decision of the board under subsection (3) of this section, it may, not later than the 31st day of October after the passing of the resolution, object to the Local Government Commission against that decision, in which case it shall serve a copy of the objection on the board and every other territorial authority within the area health district.

"(5) The Local Government Commission shall, not later than the 15th day of April after receiving any such objection, duly consider and determine it.

"(6) In determining the objection, the Local Government Commission—

"(a) Shall be entitled to alter the number of constituent districts, and the number of members of the board to represent each constituent district, so far as that alteration is necessary to give effect to its decision on the objection or is consequential on that decision; and

"(b) Shall, in doing so, have regard to—

"(i) The respective areas and populations of the several districts, combined districts, and wards, as the case may be; and

"(ii) Such additional factors of any kind as the Local Government Commission considers relevant.

"(7) The Local Government Commission shall advise the board and every territorial authority within the area health district of the Commission's decision on the objection.

"(8) The determination of the Local Government Commission on any objection under this section shall be final, and shall have effect so as to confirm or amend, as the case may be, the resolution of the board and shall be implemented by the board accordingly."

8. First election of members—(1) Section 14 (1) of the principal Act is hereby repealed.

(2) Section 14 (2) is hereby amended by omitting the words "Except in a case to which subsection (1) of this section applies,".

9. Cost of elections—The principal Act is hereby amended by repealing section 16, and substituting the following section:

"16. The cost of every election of a representative or representatives on an area health board of any constituent district or combined district (excluding the expenses incurred by or on behalf of candidates) shall be borne and paid by the area health board."

10. Community committees—(1) Section 31 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

"(2A) The board may authorise any such committee—

"(a) To manage any undertaking or service within the functions of the board; or

"(b) To regulate and undertake, or to inquire into and report upon, such matters as the board thinks fit.

"(2B) The board shall have the same powers of delegation to any such committee as it has in respect of committees appointed under section 28 of this Act; and the provisions of subsection (2) of that section shall apply accordingly."

(2) Section 31 (4) of the principal Act is hereby amended by inserting, before the words "Every community committee", the words "In addition to performing any function required of it by the board under subsection (2A) or subsection (2B) of this section,".

11. Opening and closing of institutions and health services—(1) Section 45 (2) of the principal Act is hereby amended by inserting, after the words "subject to subsection (3) of this section", the words "and to any direction given to the board by the Minister pursuant to section 37 of this Act".

(2) Section 45 of the principal Act is hereby further amended by repealing subsections (3) to (5), and substituting the following subsections:

"(3) Before closing any institution other than a health centre or a family health counselling centre, or ceasing to provide any service, an area health board shall give notice of its proposal, at least twice at intervals of not less than 7 days, in a newspaper or newspapers circulating in the area health district, and shall not close the institution or cease providing the service for at least 1 month after the date of the second publication of the notice.

"(4) Nothing in subsection (3) of this section applies to the closure of any institution for a period not exceeding 3 months at any one time."

12. Health computer system—(1) Section 51 of the principal Act (as substituted by section 5 (1) of the Area Health Boards Amendment Act 1986) is hereby amended by repealing subsection (8).

(2) Section 51 (7) of the principal Act (as so substituted) is hereby consequentially amended by omitting the words ", but subject to subsection (8) of this section,".

13. New heading and sections (relating to collection and use of personal information) inserted—The principal Act is hereby amended by inserting, after section 51 (as substituted by section 5 (1) of the Area Health Boards Amendment Act 1986), the following heading and sections:

"Collection and Use of Personal Information

"51A. **Meaning of 'personal information'**—In sections 51B to 51D of this Act, the term 'personal information' has the same meaning as it has in the Official Information Act 1982.

"51B. **Board to collect personal information only where reasonably necessary**—A board shall not collect personal information unless it is reasonably necessary to do so in connection with the duties or functions of the board.

"51C. **Protection of personal information collected**—A board shall take all reasonable steps to ensure that personal information collected by the board is protected from—

"(a) Unauthorised access, unauthorised alteration, and unauthorised destruction; and

"(b) Any use that is not authorised by this Act or in accordance with the Official Information Act 1982.

"51D. **Special provisions relating to independent contractors, etc.**—(1) This section applies to every person who, not being an employee of an area health board, is engaged by the board to collect, hold, or provide personal information for the board.

"(2) Every person to whom this section applies shall take all reasonable steps to ensure that the personal information is protected from—

"(a) Unauthorised access, unauthorised alteration, and unauthorised destruction; and

"(b) Any use that is not authorised by this Act or in accordance with the Official Information Act 1982.

"(3) The personal information shall at all times remain the property of the board, and every person to whom this section applies shall hand over any such personal information to the board whenever the board so directs."

14. Recovery of certain costs of treatment—The principal Act is hereby amended by inserting, after section 54, the following section:

"54A. Notwithstanding anything in section 101 of the Social Security Act 1964, an area health board may recover as a debt due to that board from the referring board the costs of treatment incurred in respect of a patient referred to the board by another area health board or any hospital board where—

"(a) The treatment given to the patient is within such classes of treatment as may from time to time be approved for the purposes of this section in writing by the Minister; and

"(b) The method of calculation of the sum sought to be recovered from the referring board has been approved in writing by the Minister, whether generally or in any particular case."

15. Application of board's funds—Section 84 (1) of the principal Act is hereby amended—

(a) By omitting from paragraph (g) the words ", subject to the approval of the Minister in each case,":

(b) By omitting from paragraph (m) the words "for the time being approved by the Minister in that behalf", and substituting the words "with similar purposes".

16. New Part IVA (relating to transferred staff) inserted in principal Act—The principal Act is hereby amended by inserting, after section 89, the following Part:

"PART IVA

"TRANSITIONAL PROVISIONS RELATING TO TRANSFERRED STAFF

"89A. **Interpretation**—In this Part of this Act, unless the context otherwise requires,—

" 'Affected district office', in relation to an area health board, means the district office that, on the date of transfer, is replaced by that board and, in any case where 2 or more such offices are so replaced, means each of those district offices:

" 'Date of transfer', in relation to—

"(a) A hospital board, or a district office, that is replaced by an area health board; or

"(b) An employee of a hospital board or a district office that is replaced by an area health board who thereupon becomes an employee of the area health board,—

means the operative date for that area health board:

" 'District office' means a district office of the Department of Health:

" 'Transferred employee' means a person who is employed by an area health board by virtue of section 89C of this Act.

"89B. **Application of Part**—The provisions of this Part of this Act apply whenever an area health board is established under this Act.

"89C. **Transfer of staff**—(1) On the date of transfer, every person employed by the initiating hospital board or by the Department of Health in the affected district office shall cease to be employed by the board or the Department of Health, as the case may be, and shall become an employee of the area health board.

"(2) Every person who, on the date of transfer, becomes an employee of the area health board by virtue of subsection (1) of this section shall, as from that date, have the same functions, duties, and powers as that person had immediately before that date unless and until the general manager otherwise determines.

"89D. **Conditions of employment of transferred employees**—(1) Every transferred employee—

"(a) Whose conditions of employment, immediately before the date of transfer, were prescribed by—

"(i) An award or agreement registered or deemed to be registered under the Labour Relations Act 1987; or

"(ii) An apprenticeship order made under the Apprentices Act 1948; and

"(b) Whose position in the employment of the area health board on the date of transfer is the same in terms of responsibility and function as that which that person occupied immediately before that date,—

shall continue to be employed on the same conditions until a new award or agreement is registered under the Labour Relations Act 1987.

"(2) For the purposes of any enactment, law, award, determination, contract, or agreement relating to the employment of a transferred employee, the contract of employment of that employee shall be deemed to have been unbroken, and the period of service recognised by the initiating hospital board or the affected district office shall be deemed to have been a period of service with the area health board.

"(3) No transferred employee shall be entitled to receive any payment or other benefit by reason of that employee ceasing to be an employee of the initiating hospital board or of the Department of Health in the affected district office."

17. Contracts—Section 92 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

"(1A) Subject to subsection (2) of this section, and subject to any general or special directions of the Minister, any contract for the execution or provision of any work or service by any area health board, or for the supply by an area health board of any fuel, goods, stores, or equipment required for the purposes of this Act, may be made by the board in respect of any period."

This Act is administered in the Department of Health.