

HEALTH AMENDMENT (NO. 2) BILL

EXPLANATORY NOTE

THIS Bill amends the Health Act 1956. Its principal purpose is to provide for the reconstitution of the Board of Health and to redefine the functions of that Board.

Clause 1 relates to the Short Title and commencement.

Clause 2 amends section 5 of the principal Act. In general, subsections (4) to (6) of that section provide for the Deputy Director-General of Health (or, in his absence, the Deputy Director-General of Health (Public Health)) to exercise all the powers, duties, and functions of the Director-General during any vacancy in that office or any absence from duty of the Director-General.

By virtue of the proposed *section 11A (3)* of the principal Act (set out in *clause 5* of this Bill), the Director-General will be the Deputy Chairman of the Board of Health. Thus, in the event of a vacancy in the office of Director-General or of his absence from duty, the Deputy Director-General can rely on section 5 (4) of the principal Act to exercise and perform the functions, powers, and duties of the Deputy Chairman of the Board, including his powers to deputise for the Chairman in certain prescribed circumstances.

However, this is inconsistent both with the proposed *section 11A (5)* of the principal Act (set out in *clause 5* of this Bill) and with section 13 (6) of the principal Act. The proposed *section 11A (5)* empowers the Minister to appoint another member of the Board to act as the Chairman while the Chairman and Deputy Chairman are unable to act. Section 13 (6) of the principal Act empowers the Director-General to authorise any officer of the Department of Health to attend any meeting of the Board in his place.

The amendment removes these inconsistencies by providing that section 5 does not authorise the Deputy Director-General of Health to act as the Chairman of the Board if the Minister has appointed an acting Chairman, or to attend any meeting of the Board in respect of which the Director-General has appointed a deputy under section 13 (6).

Clause 3 amends in 2 respects section 5A of the principal Act, which authorises the Director-General to delegate to any officer of the Department of Health any of his powers under the principal Act.

The amendment extends this to include the Director-General's powers under any other Act. However, it also provides that he may not delegate any power delegated to him by the Minister, or under the State Services Act 1962, without the written consent of the Minister or the State Services Commission.

Clause 4 reconstitutes the Board of Health. At present, the Board comprises 13 members, being the Minister of Health, the Director-General of Health, the Deputy Director-General of Health, the Director of the Division of Hospitals in the Department of Health, 5 persons nominated by various bodies, a member of a Hospital Board, and 2 other persons of whom 1 shall be deemed to represent the interests of women and children.

Under the new section 11, the Board will comprise 12 members, being the Director-General of Health and 11 persons appointed by the Governor-General on the recommendation of the Minister.

Subsection (3) sets out the matters that the Minister must take into account when deciding whom to recommend for appointment. Briefly, they are the personal attributes of the persons under consideration, and the desirability of ensuring that the members together have a wide range of experience and interest in the various health services and related fields.

Subclause (2) provides that on the commencement of this amendment, the present members of the Board will vacate office, but may be reappointed under the new provisions.

Clause 5 inserts in the principal Act a new *section 11A* relating to the offices of Chairman and Deputy Chairman of the Board.

Subsection (1) provides for the Minister to appoint one of the members of the Board to be the Chairman, who will hold that office during the pleasure of the Minister.

Subsection (3) provides that the Director-General shall be the Deputy Chairman.

Subsection (5) provides that where neither the Chairman nor the Deputy Chairman is able to exercise and perform the functions, powers, and duties of the Chairman, the Minister may appoint another member to act as the Chairman.

Clause 6 is consequential upon the rewriting of section 11 of the principal Act by *clause 4* of this Bill. However, as provision is made in *clause 10* of this Bill for the appointment of subcommittees, this clause extends the provision for fees and allowances to members of such subcommittees.

Clause 7 is largely consequential upon *clause 5*.

Subclause (1) rewrites section 16 (3) of the principal Act. That subsection provides that in the absence from any meeting of the Chairman and Deputy Chairman of the Board, the members present shall select one of their number to act as the Chairman for that meeting. The amendment provides, in effect, that this procedure is only to be followed where the Minister has not appointed an acting Chairman under the proposed *section 11A (3)* (set out in *clause 5*).

Subclause (2) makes it clear that, where the Director-General authorises any officer of the Department to attend any meeting of the Board in his place, that officer will not thereby be deemed to be the Deputy Chairman of the Board.

Clause 8 rewrites section 11 of the principal Act relating to the functions of the Board.

Subsection (1) sets out the functions of the Board. These are divided into 2 groups, those that the Board may perform without a request from or the approval of the Minister and those that it may not.

Subsection (4) prescribes the duties of the Board in respect of reports. The Board must submit ad hoc reports to the Minister on any matters referred to it by the Minister, and may submit such a report on any other matter within the scope of its functions. In addition, the Board is required to submit to the Minister an annual report, covering its activities during the year under review, and setting out its future planning for the next year.

Where a committee of the Board submits a report to it, the Board is required to forward a copy of the report to the Minister with any comments it may wish to make. Again, where such a committee or a subcommittee reports directly to the Minister, the Board is required to forward to the Minister any comments it thinks appropriate.

Subsection (5) provides that where the Board issues any report, information, advice, or warning in relation to any matter concerning health, it shall be protected by qualified privilege: that is, in the absence of bad faith, no action for defamation will lie against the Board.

Clause 9 rewrites section 18 of the principal Act relating to committees of the Board. At present, the power to appoint committees is left entirely to the discretion of the Board. Under the new provision, the Board must appoint sufficient committees to ensure that between them they cover the full range of the health services. However, the appointment of a committee, and of the members of the committee, requires the Minister's approval.

Each committee is to be appointed for a maximum term of 3 years, but may be altered or discharged by the Board at any time.

Subsection (4) provides that each committee's functions are to inquire into and report upon any matter referred to it by the Board, and to exercise any function or power delegated to it by the Board.

Subsection (5) relates to reports. Apart from its basic duty to report to the Board on any matter referred to it, a committee may report directly to the Minister on any matter that is urgent or purely technical. However, before doing so, it must consult with the Chairman of the Board. In addition, each committee must submit an annual report, and, at the end of its term of appointment, a report on the question whether or not it should be reappointed for a further period. Where it receives a report from one of its subcommittees, the committee must forward a copy to the Board with any comments it may wish to make. Similarly, where a subcommittee reports directly to the Minister, the committee must forward to the Board any comments it may wish to make on the report.

Clause 10 inserts in the principal Act a new *section 18A*, which empowers any committee of the Board to appoint a subcommittee to consider and report upon any particular matter. When it has submitted its report, the subcommittee will be deemed to be discharged. In general, its report must be sent to the committee by which it is appointed. However, in cases of urgency, that committee may direct that the subcommittee shall report directly to the Minister.

Hon. Mr Malcolm

HEALTH AMENDMENT (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to amend the Health Act 1956 in relation to the constitution, functions, and powers of the Board of Health, and to the Director-General's powers of delegation

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Health Amendment Act (No. 2) 1982, and shall be read together with and deemed part of the Health Act 1956* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

2. Director-General of Health and Deputies—Section 5 of the principal Act is hereby amended by adding the following subsection:

“(7) Nothing in subsections (4) to (6) of this section shall authorise the Deputy Director-General of Health or the Deputy Director-General of Health (Public Health)—

*Reprinted 1972, Vol. 2, p. 1449

Amendments: 1973, No. 111; 1975, No. 78; 1976, No. 91; 1978, No. 96; 1979, No. 64; 1980, No. 79

- “(a) To exercise and perform the functions, powers, and duties of the Chairman of the Board of Health, if the Minister has appointed an acting Chairman under section 11A (5) of this Act; or
- “(b) To attend any meeting of that Board, if, in respect of that meeting, the Director-General has appointed a deputy under section 13 (6) of this Act.” 5

3. Delegation of powers by Director-General—Section 5A of the principal Act (as inserted by section 2 (1) of the Health Amendment Act 1979) is hereby amended by 10 repealing subsection (1), and substituting the following subsections:

“(1) Subject to subsection (1A) of this section, the Director-General may from time to time, by writing under his hand, either generally or particularly, delegate to such person or 15 persons employed in the Department of Health as he thinks fit all or any of the powers conferred on him by, or delegated to him under, this or any other Act, except this power of delegation.

“(1A) The Director-General shall not delegate any powers 20 that are delegated to him—

“(a) By the Minister, without the written consent of the Minister; or

“(b) Under the State Services Act 1962, without the written consent of the State Services Commission.” 25

4. Board of Health—(1) The principal Act is hereby amended by repealing section 11, and substituting the following section:

“11. (1) There shall continue to be a Board to be called the Board of Health. 30

“(2) The Board shall hereafter consist of 12 members, being—

“(a) The Director-General; and

“(b) Eleven persons, to be appointed by the Governor-General on the recommendation of the Minister. 35

“(3) Before determining whom he should recommend for appointment under subsection (2) (b) of this section, the Minister shall have regard to—

“(a) The experience and interests of each person under consideration, including his commercial and 40 administrative experience:

“(b) The desirability of ensuring that the membership of the Board includes persons who have experience or an interest in any of the following areas:

- 5 “(i) Local government:
- “(ii) Career health services:
- “(iii) Social sciences relevant to health:
- “(iv) Academic medicine and academic health sciences:
- 10 “(v) Hospital Boards:
- “(vi) Voluntary agencies relevant to health:
- “(vii) Private agencies relevant to health:
- “(viii) Family health:
- “(ix) Health related to occupations.

15 “(4) Subject to the succeeding provisions of this section, every person appointed under subsection (2) (b) of this section shall hold office for a term of 3 years, but may from time to time be reappointed.

20 “(5) Any member of the Board may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may resign his office by writing addressed to the Minister.

25 “(6) If any member dies, resigns, or is removed from office, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made, and every person so appointed under this subsection shall hold office for the remainder of the term for which his predecessor was appointed.

30 “(7) Unless he sooner vacates his office under subsection (5) of this section, a member shall continue in office until his successor comes into office.

 “(8) The powers of the Board shall not be affected by any vacancy in its membership.”

35 (2) The persons holding office immediately before the date of the commencement of this Act as members of the Board, except the Director-General, shall cease to hold office as such on that date; but any such person may be appointed to the Board under section 11 of the principal Act (as substituted by subsection (1) of this section).

40 (3) The following enactments are hereby repealed:

- (a) Subsections (1) and (2) of section 3 of the Health Amendment Act 1960;
- (b) Section 39 (5) of the University of Otago Amendment Act 1961;
- 45 (c) Section 2 of the Health Amendment Act 1967;
- (d) Section 2 (3) of the Health Amendment Act 1970.

5. Chairman and Deputy Chairman—The principal Act is hereby amended by inserting, after section 11 (as substituted by section 3 of this Act), the following section:

“11A. (1) The Minister shall from time to time appoint one of the members of the Board to be the Chairman, who shall, unless he sooner ceases to be a member of the Board, hold office as Chairman during the pleasure of the Minister. 5

“(2) Notwithstanding anything in subsection (1) of this section, any person who is appointed as Chairman of the Board may resign that office by writing addressed to the Minister without resigning as a member of the Board. 10

“(3) The Director-General shall be the Deputy Chairman of the Board.

“(4) During every vacancy in the office of Chairman, and while the Chairman is for any reason unable to exercise and perform his functions, powers, and duties, the Deputy Chairman shall exercise and perform the functions, powers, and duties of the Chairman. 15

“(5) Where—

“(a) There is a vacancy in the office of Chairman or the Chairman is for any reason unable to exercise and perform his functions, powers, and duties; and 20

“(b) The Deputy Chairman is for any reason unable to exercise and perform the functions, powers, and duties of the Chairman,— 25

the Minister may appoint another member of the Board to exercise and perform the functions, powers, and duties of the Chairman while those circumstances subsist.”

6. Remuneration and travelling allowances—The principal Act is hereby amended by repealing section 12, and substituting the following section: 30

“12. There shall be paid out of money appropriated by Parliament for the purpose to the members of the Board, and to the members of any committee appointed by the Board, and to the members of any subcommittee appointed by any such committee, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Board and every such committee and subcommittee were a statutory Board within the meaning of that Act.” 35 40

7. Meetings and procedure of Board—(1) Section 13 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsections:

“ (3) The Chairman shall preside at every meeting of the Board at which he is present.

“ (3A) Where, at the time of any meeting,—

“ (a) There is a vacancy in the office of Chairman or the Chairman is absent; and

“ (b) The Deputy Chairman is absent; and

10 “ (c) There is no acting Chairman appointed under section 11A (5) of this Act or the acting Chairman is absent,—

the members present shall select 1 of their number to be the Chairman for the purposes of that meeting.”

15 (2) Section 13 (6) of the principal Act is hereby amended by adding the words “but shall not be deemed to be the Deputy Chairman of the Board merely because he is attending instead of the Director-General”.

8. Functions of Board—The principal Act is hereby amended by repealing section 16, and substituting the following section:

20 “ 16. (1) The principal functions of the Board shall be as follows:

25 “ (a) To make recommendations to the Minister in respect of such matters relating to health as the Board thinks fit or as the Minister may refer to it, and, in particular, any matters relating to—

“ (i) General health objectives and priorities:

30 “ (ii) Policies for health promotion and health protection, the prevention of disease and disability, the adequate and effective treatment of disease, and the allocation of available resources to implement those policies and achieve those objectives:

35 “ (iii) The relationship of the hospital service and other health services to general health policy:

40 “ (iv) The national aspects of the operation of medical, pharmaceutical, hospital, maternity, and other related benefits under the Social Security Act 1964, and their relationship to general health policy:

45 “ (v) The co-ordination of the activities of local authorities under this Act, and of the activities of private and voluntary organisations, and their relationship to general health policy:

“(b) At the request or with the consent of the Minister,—

“(i) To promote investigative work into, and the evaluation of any matter concerning, any of the health services:

“(ii) To publish reports, information, advice, or warnings in relation to any matter concerning health: 5

“(iii) To establish appropriate procedures for the attainment of its objectives, including consultation with public, private, and voluntary organisations: 10

“(iv) To establish and from time to time review guidelines for the health services through the activities of appropriate committees appointed under section 18 of this Act. 15

“(2) The Board shall hold such inquiries, make such decisions, awards, determinations, and recommendations, give such directions and consents, and do such other acts and things, as are provided for in this or any other Act, or as may in its opinion be necessary for the effective administration of this Act. 20

“(3) For the purpose of enabling the Board to carry out its functions, any Minister may arrange for any officer of his Department to attend such meetings of the Board, or of any committee appointed by the Board, or of any subcommittee appointed by any such committee, as may be considered necessary, and to submit such reports and other information as may be required for the deliberations of the Board or committee or subcommittee. 25

“(4) The Board shall— 30

“(a) Report to the Minister on any matter referred to it by the Minister, and every other matter that the Board inquires into under this section:

“(b) Submit to the Minister an annual report on its activities for the year, and on its aims and objectives for the next ensuing year including its proposals relating to the appointment, alteration, or discharge of any committees of the Board: 35

“(c) Forward to the Minister—

“(i) A copy of every report it receives from any committee under section 18 of this Act, together with any comments it may wish to make on the report: 40

“(ii) Any comments it may wish to make on any report sent directly to the Minister by any such committee or by a subcommittee appointed under section 18A of this Act.

- 5 “(5) All reports, information, advice, or warnings published by the Board under subsection (1) (b) (ii) of this section shall be protected by qualified privilege.”

9. Committees of Board—The principal Act is hereby amended by repealing section 18, and substituting the following section:

10 “18. (1) The Board shall from time to time, with the approval of the Minister, appoint sufficient committees under this section to ensure that between them they cover the full range of the health services.

- 15 “(2) Every such committee shall consist of 2 or more persons (who may or may not be members of the Board), to be appointed by the Board with the approval of the Minister.

“ (3) Subject to subsection (6) of this section, every such committee shall be appointed for a term not exceeding 3 years, but may from time to time be reappointed for a further term not exceeding 3 years.

“ (4) The functions of every such committee shall be to inquire into and report to the Board on such matters within the scope of the Board’s functions as are referred to the committee by the Board, and to exercise on behalf of the Board any of the Board’s functions and powers as the Board may from time to time delegate to it.

“ (5) Every such committee—

- 30 “(a) Shall report to the Board on any matter referred to it by the Board:

“ (b) May, with the consent of the Chairman of the Board, report directly to the Minister on any matter of urgency or of a purely technical nature:

35 “(c) Shall submit to the Board an annual report covering its activities for the preceding year:

40 “(d) Shall, at the expiration of its term of appointment, submit a report to the Board on whether or not it should be reappointed for a further term and, if it considers that it should be so reappointed, what its aims and objectives should be for that term:

“(e) Shall forward to the Board—

“(i) A copy of every report it receives from any subcommittee under section 18A of this Act, together with any comments it may wish to make on the report: 5

“(ii) Any comments it may wish to make on any report sent directly to the Minister by any such subcommittee.

“(6) Every such committee shall be subject in all things to the control of the Board, and may at any time be discharged, 10 altered, or reconstituted by the Board.

“(7) Subject to any general or special directions given or imposed by the Board, any committee to whom any power or function is delegated under this section may exercise that power or function in the same manner and with the same 15 effect as if it had been conferred directly by this Act and not by delegation.

“(8) Every committee purporting to act pursuant to any delegation under this section shall be presumed, in the absence of proof to the contrary, to be acting in accordance 20 with the terms of the delegation.

“(9) Any delegation under this section may be revoked at any time.

“(10) No delegation under this section shall prevent the exercise of any power or function by the Board.” 25

10. Ad hoc subcommittees—The principal Act is hereby amended by inserting, after section 18 (as substituted by section 9 of this Act), the following section:

“18A. (1) Any committee appointed under section 18 of this Act may from time to time, with the approval of the 30 Board, appoint a subcommittee to inquire into and report to the committee on any matter within the scope of the committee’s functions as may be referred to it by the committee.

“(2) Every such subcommittee shall consist of 2 or more 35 persons (who may or may not be members of the committee), to be appointed by the committee with the approval of the Board.

“(3) On referring to a subcommittee any matter that it considers urgent, a committee may, with the consent of the 40 Chairman of the Board, instruct the subcommittee to report

on the matter directly to the Minister; and, in any such case, the subcommittee shall, on forwarding its report to the Minister, also forward a copy of it to the committee and a copy to the Board.

5 “(4) Every such subcommittee shall be subject in all things to the control of the committee by which it is appointed, and may at any time be discharged, altered, or reconstituted by that committee.

10 “(5) Without limiting subsection (4) of this section, every such subcommittee shall be deemed to be discharged upon the submission of its report.”

