

[AS REPORTED FROM THE HEALTH AND WELFARE COMMITTEE]

House of Representatives, 21 July 1982.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

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 consult with such persons and organisations as

he thinks appropriate, and shall have regard to—

“(a) The experience and interests of each person under consideration, including *(his commercial and administrative)* that person’s administrative, commercial, community, and domestic experience:

5 “(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:

“(i) Local government:

“(ii) Career health services:

10 “(iii) Social sciences relevant to health:

“(iv) Academic medicine and academic health sciences:

“(v) Hospital Boards:

“(vi) Voluntary agencies relevant to health:

15 “(vii) Private agencies relevant to health:

“(viii) Family health:

“(ix) Health related to occupations.

“(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.

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25 “(4A) The following provisions shall apply in respect of the first persons appointed as members of the Board under subsection (2) (b) of this section:

“(a) Four of those members shall retire from office on the expiry of 1 year after the date of their appointment:

30 “(b) Another four of those members shall retire from office on the expiry of 2 years after the date of their appointment:

35 “(c) The members who are to retire from office under paragraph (a), and those who are to retire from office under paragraph (b), of this subsection shall be determined either by unanimous agreement between all of the members to whom this subsection applies or (failing such agreement) by lot conducted by the Chairman.

40 “(4B) No appointed member who has held office for 3 consecutive terms (including any term that lasted less than 3 years by virtue of subsection (4A) of this section) shall be eligible for reappointment before the expiry of 1 year after he has last ceased to hold office.

“(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. 5

“(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 10 was appointed.

“(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 15 vacancy in its membership.”

(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 20 Board under section 11 of the principal Act (as substituted by subsection (1) of this section).

(3) The following enactments are hereby repealed:

- (a) Subsections (1) and (2) of section 3 of the Health Amendment Act 1960: 25
- (b) Section 39 (5) of the University of Otago Amendment Act 1961:
- (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 30 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 35 office as Chairman during the pleasure of the Minister.

“(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. 40

“(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.

“(5) Where—

5 “(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

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

10 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:

“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.”

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:

30 “(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

35 “(b) The Deputy Chairman is absent; and

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

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

(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:

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

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“(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: 10

“(ii) Policies for health promotion, health
education, 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 15 those objectives:

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

“(iv) The national aspects of the operation of medical, pharmaceutical, hospital, maternity, and 20 other related benefits under the Social Security Act 1964, and their relationship to general health policy:

“(v) The co-ordination of the activities of local authorities under this Act, and of the activities of 25 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 30 health services:

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

“(iii) To establish appropriate procedures for 35 the attainment of its objectives, including consultation with public, private, and voluntary organisations:

“(iv) To establish and from time to time review guidelines for the health services through the 40 activities of appropriate committees appointed under section 18 of this Act.

“(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
5 in its opinion be necessary for the effective administration of this Act.

“(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
10 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.

15 “(4) The Board shall—

“(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:

20 “(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:

“(c) Forward to the Minister—

25 “(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:

30 “(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) All reports, information, advice, or warnings published by the Board under subsection (1) (b) (ii) of this
35 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:

40 “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.

“(2) Every such committee shall consist of 2 or more persons (who may or may not be members of the Board), to
45 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 10

“(5) Every such committee—

“(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 15 urgency or of a purely technical nature:

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

“(d) Shall, at the expiration of its term of appointment, submit a report to the Board on whether or not it 20 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 25 subcommittee under section 18A of this Act, together with any comments it may wish to make on the report:

“(ii) Any comments it may wish to make on any report sent directly to the Minister by any such 30 subcommittee.

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

“(7) Subject to any general or special directions given or 35 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 effect as if it had been conferred directly by this Act and not by delegation. 40

“(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 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.”

5 **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:

10 “18A. (1) Any committee appointed under section 18 of this Act may from time to time, with the approval of the 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.

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

20 “(3) On referring to a subcommittee any matter that it considers urgent, a committee may, with the consent of the 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.

25 “(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.

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

