

# **New Zealand Public Health and Disability Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The public health and disability system faces the challenge of providing high-quality health care and disability support services that are affordable in a tight funding environment with mounting demands. On the one hand, New Zealand has an increasing and ageing population with more long-term health problems, and on the other, there are an expanding and expensive range of health care and disability support technologies, an international market for skilled professionals, and a relatively smaller number of workers and taxpayers to pay for publicly funded services.

This is a substantial challenge, and there is a clear need to improve the functioning of the health and disability system to maintain and enhance quality and gain efficiencies so that more of the available resources are devoted to direct care.

This Bill amends the New Zealand Public Health and Disability Act 2000 to support reforms that are required to meet this challenge. The Bill—

- amends planning requirements for district health boards in order to provide for a planning and accountability framework that takes account of national, regional, and local requirements; and

- amends the objectives and functions of district health boards to ensure that district health boards work together for the most effective and efficient delivery of health services to meet national, regional, and local needs; and
- includes amendments to support the provision of shared administrative, support, and procurement services across the public health system, including additional powers, such as ministerial direction, to enhance ministerial ability to require greater system collaboration and use of shared services; and
- amends regulation-making powers in the current Act relating to arbitration and mediation to enable these powers to have wider application, particularly where there are disputes between district health boards about how national, regional, and local requirements are best provided for; and
- makes structural changes to enhance quality improvement activity, including the establishment of a new Crown agent, the Health Quality and Safety Commission; and
- enables appointment of elected district health board members to the boards of other district health boards.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that this Bill commences on a date fixed by the Governor-General by Order in Council. Commencement by Order in Council is necessary to provide sufficient time for—

- the set-up of the Health Quality and Safety Commission (HQSC); and
- regulations relating to new planning and dispute resolution requirements to be made.

The expected timetable for commencement is 3 months after enactment. *Clause 2* also allows for the possibility of different provisions of this Bill commencing on different dates.

*Clause 3* provides that this Bill amends the New Zealand Public Health and Disability Act 2000 (the **principal Act**).

## Part 1

### Amendments to principal Act

Section 5 of the principal Act is an outline provision. *Clause 4* amends section 5 to incorporate changes made by this Bill.

*Clause 5* amends the interpretation section (section 6) by—

- repealing the definitions of annual plan and district strategic plan; and
- adding a definition of HQSC; and
- adding HQSC to the definition of publicly-owned health and disability organisation.

*Clause 6* repeals section 17, and in doing so removes the requirement on the Minister to appoint a committee under section 11 to advise on health epidemiology and quality assurance matters.

*Clause 7* adds a new objective to the objectives of district health boards (DHBs) set out in section 22(1). *New section 22(1)(ba)* requires every DHB to seek the optimum arrangement for the most effective and efficient delivery of health services in order to meet local, regional, and national needs. *Clause 7* also makes a consequential change to section 22(2).

*Clause 8* amends section 23(1) to provide that a function of DHBs (in addition to those already listed in that section) is to collaborate with relevant organisations (for example, other DHBs, or service organisations) to plan and co-ordinate at local, regional, and national levels for the most effective and efficient delivery of health services.

*Clause 9* inserts *new sections 33A and 33B*.

*New section 33A* deals with proposals on how administrative, support, and procurement services within the health and disability system should be obtained. This section—

- sets out how such a proposal should be considered; and
- allows the Minister to implement the proposal through a ministerial direction if the Minister considers that the proposal cannot be reasonably implemented in another way.

*New section 33B* allows the Minister to give a direction to all DHBs to comply with stated requirements for the purpose of supporting government policy on improving the effectiveness and efficiency of the health and disability system. This section sets out the process for

the giving of the direction and requires every DHB to give effect to it.

*Clause 10* repeals sections 38 to 40 and substitutes *new sections 38 and 39*.

*New section 38* replaces the requirements for district annual plans and district strategic plans with a planning framework that—

- requires the Minister to direct every DHB to prepare a plan for each financial year beginning on or after 1 July 2012; and
- enables the Minister direct a DHB to prepare or contribute to 1 or more other plans.

Every plan directed to be prepared or contributed to under *new section 38(1)* must meet the criteria set out in *new section 38(2)*. Those criteria include the requirement that the plan address—

- local, regional, and national needs for health services; and
- how health services can be properly co-ordinated to meet those needs; and
- the optimum arrangement for the most effective and efficient delivery of health services.

Further requirements relating to the plan are set out in *subsections (3) to (8)*. Of note, *subsection (5)* requires that a DHB that is a party to the plan must give effect to it.

*New section 39* provides a process that the Minister may use to resolve disputes over the contents of a plan that the Minister has directed a DHB to prepare or contribute to under *new section 38*.

*Clause 11* inserts *new sections 59A to 59C*. These sections establish the Health Quality and Safety Commission Crown entity. The functions of HQSC are set out in *new section 59B* and include the following:

- to advise the Minister on any health epidemiology and quality assurance matters:
- to determine quality and safety indicators for use in measuring the quality and safety of health services provided within the health and disability system:
- to lead and co-ordinate work for the purposes of monitoring and improving quality and safety across the health and disability system.

The Minister may, after consulting HQSC, authorise it to perform any other function that relates to quality and safety improvement within the health and disability system.

*Clauses 12 to 15* make consequential amendments to sections 60, 66, 70, and 87.

*Clause 16* amends section 92 to enable regulations to be made prescribing the form of, and imposing requirements relating to, plans to be prepared under *new section 38*.

*Clause 16* also amends section 92 to widen the power to make rules about mediation and arbitration of disputes between publicly-owned health and disability organisations, providers of services, or other persons. The effect of this amendment is to remove the limitation that the rules relate to mediation or arbitration with the agreement of the persons concerned.

*Clause 17* amends clause 3 of Schedule 3 to enable an elected member of a DHB to hold office as an appointed member of the board of 1 or more other DHBs.

*Clause 17* also amends clause 38(1)(a) of Schedule 3 to require the board of a DHB to obtain the Minister's approval before establishing any committee of the board for a particular purpose.

*Clause 18* amends Schedule 6 so that it also applies to HQSC. (Schedule 6 contains further provisions that apply to Pharmac, NZBS, and CHFA.)

## Part 2

### Transitional arrangements and amendments to other enactments

#### *Transitional arrangements*

*Clause 19* provides for transitional arrangements for district strategic plans and district annual plans that were in force immediately before the commencement of this Act.

#### *Amendment to Crown Entities Act 2004*

*Clause 20* amends Schedule 1 of the Crown Entities Act 2004 to establish HQSC as a Crown entity under that Act.

*Amendments to Health Sector (Transfers) Act  
1993*

*Clause 21* amends section 2(1) of the Health Sector (Transfers) Act 1993 to insert a definition of HQSC and to include HQSC in the definition of publicly-owned health and disability organisation.

*Amendment to Ombudsmen Act 1975*

*Clause 22* amends Part 2 of Schedule 1 of the Ombudsmen Act 1975 to include HQSC as an organisation to which that Act applies.

**Regulatory impact statement**

The regulatory impact statement relating to this Bill can be found at <http://www.moh.govt.nz/publications/compliance> and <http://www.treasury.govt.nz/publications/informationreleases/ris>.

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*Hon Tony Ryall*

# **New Zealand Public Health and Disability Amendment Bill**

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## Part 2

### Transitional arrangements and amendments to other enactments

#### *Transitional arrangements*

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### The Parliament of New Zealand enacts as follows:

#### **1 Title**

This Act is the New Zealand Public Health and Disability Amendment Act **2010**.

#### **2 Commencement**

This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more orders may be made appointing different dates for different provisions. 5

#### **3 Principal Act amended**

This Act amends the New Zealand Public Health and Disability Act 2000. 10

## Part 1 Amendments to principal Act

### 4 Outline

- (1) Section 5(3)(e) is amended by omitting “annual plans agreed with the Minister of Health” and substituting “plans prepared under **section 38**”. 5
- (2) Section 5 is amended by inserting the following subsection after subsection (7):
- “(7A) A statutory entity called the Health Quality and Safety Commission (**HQSC**) is established (Part 4—**sections 59A to 59C, 60, 61, 66, 67, and 69** and Schedule 6), and has functions that relate to the improvement of the quality of health and safety within the health and disability system.” 10

### 5 Interpretation

- (1) The definitions of **annual plan** and **district strategic plan** in section 6(1) are repealed. 15
- (2) Section 6(1) is amended by inserting the following definition in its appropriate alphabetical order:
- “**HQSC** means the Health Quality and Safety Commission established by **section 59A(1)**”. 20
- (3) The definition of **publicly-owned health and disability organisation** in section 6(1) is amended by omitting “and CHFA” and substituting “CHFA, and HQSC”. 25

### 6 Section 17 repealed

Section 17 is repealed. 25

### 7 Objectives of DHBs

- (1) Section 22(1) is amended by inserting the following paragraph after paragraph (b):
- “(ba) to seek the optimum arrangement for the most effective and efficient delivery of health services in order to meet local, regional, and national needs:”. 30
- (2) Section 22(2) is amended by omitting “its district strategic plan, its annual plan” and substituting “any plan prepared under **section 38**”. 35

**8 Functions of DHBs**

(1) Section 23(1) is amended by inserting the following paragraph after paragraph (b):

“(ba) to collaborate with relevant organisations to plan and co-ordinate at local, regional, and national levels for the most effective and efficient delivery of health services:”.

(2) Section 23 is amended by adding the following subsection:

“(8) In **subsection (1)(ba), relevant organisations** means 1 or more organisations that a DHB considers relevant to the provision of health services at a local, regional, or national level (for example, a DHB, the Ministry of Health, or an organisation that provides services under a service agreement).”

**9 New sections 33A and 33B and heading inserted**

The following sections are inserted after section 33: 15

**“33A Proposals and directions in relation to administrative, support, and procurement services**

“(1) A proposal stating how administrative, support, and procurement services within the health and disability system should be obtained may be submitted to the Minister by the Director-General or any person or body approved by the Minister for the purpose. 20

“(2) If the Minister has reason to believe that the proposal will enhance the effective and efficient operation of the health and disability system and should be implemented, the Minister must— 25

“(a) consider whether the proposal can be reasonably implemented without a direction under **subsection (3)**; and

“(b) consult any DHB that is not already a party to the proposal and is likely to be affected by it; and 30

“(c) consult any other person or body that the Minister considers appropriate.

“(3) If the Minister considers that the proposal cannot be reasonably implemented otherwise, he or she may give a direction to 1 or more DHBs— 35

- “(a) stating how administrative, support, and procurement services must be obtained (for example, specifying a process to be followed in obtaining those services); or
- “(b) stating who must provide particular administrative, support, and procurement services for the DHB or DHBs. 5
- “(4) The direction must be in writing and must be signed by the Minister and the Minister of Finance.
- “(5) Sections 113 and 114(3)(a) of the Crown Entities Act 2004 do not apply to this section.
- “(6) In this section, **administrative, support, and procurement services**— 10
- “(a) means health services that do not relate directly to, but are necessary for, the provision of care to patients or care or support to people with disabilities; and
- “(b) without limiting the generality of **paragraph (a)**, includes any of the following: 15
- “(i) procurement of non-clinical and clinical supplies:
- “(ii) financial services:
- “(iii) human resources and payroll services: 20
- “(iv) clerical services:
- “(v) facilities management, engineering, and maintenance services:
- “(vi) information systems and technology.
- “*Ministerial directions to all DHBs* 25
- “**33B Minister may give directions to all DHBs**
- “(1) The Minister may give a direction to all DHBs to comply with stated requirements for the purpose of supporting government policy on improving the effectiveness and efficiency of the health and disability system. 30
- “(2) The direction must be in writing and must be signed by the Minister and the Minister of Finance.
- “(3) Before giving the direction, the Minister must, to the extent (if any) that the Minister considers necessary in the circumstances,— 35
- “(a) consult all DHBs; and

- “(b) consult persons that the Minister considers are representative of the interests of persons likely to be substantially affected by the proposed direction.
- “(4) As soon as practicable after giving the direction, the Minister must— 5
  - “(a) notify all DHBs that the direction has been given and that it will come into force subject to **subsection (5)**; and
  - “(b) present a copy of the direction to the House of Representatives. 10
- “(5) The direction comes into force 15 sitting days after it is presented to the House of Representatives unless the House of Representatives resolves, in that period, to disapply the direction.
- “(6) Every DHB must give effect to the direction as soon as it comes into force. 15
- “(7) As soon as practicable after the direction comes into force, the Minister must ensure that a copy of it is published in the *Gazette* and on an Internet site operated by the Ministry.
- “(8) If the direction does not come into force, the Minister must, as soon as practicable, notify all DHBs that the direction has been disappplied and that it will not come into force. 20
- “(9) Section 113 of the Crown Entities Act 2004 applies, with any necessary modifications, to the direction.
- “(10) No direction may be given under this section to Crown entity subsidiaries. 25
  - “Compare: 2004 No 115 ss 107–111, 113”.

**10 New sections 38 and 39 substituted**

Sections 38 to 40 are repealed and the following sections substituted: 30

**“38 Planning framework and requirements**

- “(1) The Minister—
  - “(a) must direct every DHB to prepare a plan for each financial year beginning on or after 1 July 2012; and
  - “(b) may direct a DHB to prepare or contribute to 1 or more other plans. 35
- “(2) Every plan—

- “(a) must address—
- “(i) local, regional, and national needs for health services; and
  - “(ii) how health services can be properly co-ordinated to meet those needs; and 5
  - “(iii) the optimum arrangement for the most effective and efficient delivery of health services; and
- “(b) must demonstrate how a DHB that is a party to the plan is to give effect to the purposes of this Act; and
- “(c) must demonstrate how a DHB that is a party to the plan is to operate in a financially responsible manner; and 10
- “(d) must reflect the overall direction set out in, and not be inconsistent with, the New Zealand health strategy and the New Zealand disability strategy.
- “(3) A DHB that is a party to a plan must comply with any requirements (including any procedural requirements) relating to the plan that are stated in regulations (if any). 15
- “(4) The plan is finalised once it is—
- “(a) approved by the Minister after he or she is satisfied that the requirements of **subsections (2) and (3)** have been met; and 20
  - “(b) signed by the Minister and every DHB that is a party to the plan.
- “(5) A DHB that is a party to the plan must give effect to it and any amendments to it. 25
- “(6) The plan may be amended at any time in the same manner as it was made.
- “(7) A DHB that is a party to the plan must ensure that the plan and any amendments to it are publicly available as soon as is reasonably practicable after the plan is finalised. 30
- “(8) In making the plan (and any amendments to it) publicly available, a DHB may omit any information that may properly be withheld under the Official Information Act 1982 if a request for that information were made under that Act.

- “39 Resolution of disputes over contents of plan**
- “(1) The Minister may act under **subsection (2)** if, after directing 1 or more DHBs to prepare or contribute to a plan under **section 38**,—
- “(a) 2 or more DHBs that are parties to the plan cannot agree on its contents; or
- “(b) 1 or more DHBs that are parties to the plan and the Minister cannot agree on its contents.
- “(2) If **subsection (1)** applies, the Minister may establish an advisory body and refer the dispute to it for its consideration and advice.
- “(3) The advisory body must consist of at least 3 members, each appointed by the Minister on any terms and conditions (including terms and conditions as to remuneration and travelling allowances and expenses) that the Minister determines by written notice to the member.
- “(4) The Minister must—
- “(a) make a decision on the dispute by taking into account the advice given by the advisory body:
- “(b) as soon as practicable after making the decision, publish the decision in general terms on an Internet site operated by the Ministry.
- “(5) A DHB that is a party to the dispute must give effect to the Minister’s decision.”
- 11 New heading and sections 59A to 59C inserted**
- The following heading and sections are inserted after section 59:
- “Health Quality and Safety Commission*
- “59A Health Quality and Safety Commission**
- “(1) An organisation called the Health Quality and Safety Commission (**HQSC**) is established.
- “(2) HQSC is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- “(3) The Crown Entities Act 2004 applies to HQSC except to the extent that this Act expressly provides otherwise.

**“59B Functions of HQSC**

- “(1) The functions of HQSC are—
- “(a) to advise the Minister on any health epidemiology and quality assurance matters; and
  - “(b) to determine quality and safety indicators for use in measuring the quality and safety of health services provided within the health and disability system; and 5
  - “(c) to provide public reports based on—
    - “(i) the quality and safety indicators; and
    - “(ii) serious and sentinel events; and 10
  - “(d) to lead and co-ordinate work for the purposes of monitoring and improving quality and safety across the health and disability system; and
  - “(e) to perform any other function that—
    - “(i) relates to quality and safety improvement within the health and disability system; and 15
    - “(ii) HQSC is for the time being authorised to perform by the Minister by written notice to HQSC after consultation with it.
- “(2) The Minister must, as soon as practicable after giving a notice to HQSC under **subsection (1)(e)(ii)**, publish in the *Gazette*, and present to the House of Representatives, a copy of the notice. 20

**“59C Membership of board**

The board of HQSC consists of at least 7 members appointed under section 28 of the Crown Entities Act 2004.” 25

**12 Interpretation**

Section 60 is amended by adding the following paragraph:

“(d) HQSC.”

**13 Pharmac, NZBS, and CHFA to operate in financially responsible manner** 30

The heading to section 66 is amended by omitting “and CHFA” and substituting “CHFA, and HQSC”.

**14 Further provisions**

Section 70 is amended by omitting “and CHFA” and substituting “CHFA, and HQSC”.

**15 Saving of certain transactions**

Section 87(d) is amended by omitting “district strategic plan or annual plan” and substituting “plan prepared under **section 38**”.

**16 Regulations**

(1) Section 92(1) is amended by inserting the following paragraph after paragraph (f):

“(g) in relation to any plans to be prepared under **section 38(1)(a) or 38(1)(b)**,—

“(i) specifying the form of the plan; and

“(ii) imposing requirements relating to the content of the plan; and

“(iii) imposing procedural requirements (such as a requirement for consultation) that must be complied with in the preparation of the plan.”

(2) Section 92(2) is amended by omitting “may be mediated or arbitrated with the agreement of the persons concerned” and substituting “are to be mediated or arbitrated”.

**17 Schedule 3 amended**

(1) Clause 3 of Schedule 3 is amended by repealing paragraph (b) and substituting the following paragraphs:

“(b) are not to hold office as elected members of the board of any other DHB:

“(c) may hold office as appointed members of the board of 1 or more other DHBs.”

(2) Clause 38(1)(a) of Schedule 3 is amended by inserting “after first obtaining the Minister’s approval” before “establish”.

**18 Schedule 6 amended**

(1) The heading to Schedule 6 is amended by omitting “and CHFA” and substituting “CHFA, and HQSC”.

- (2) Clause 1 of Schedule 6 is amended by adding the following paragraph:  
“(d) HQSC.”

**Part 2**  
**Transitional arrangements and amendments to other enactments** 5

*Transitional arrangements*

**19 Transitional arrangements for district strategic plans and district annual plans**

- (1) Every district strategic plan of a DHB that is in force immediately before the commencement of **section 10** of this Act continues in force until the sooner of— 10
- (a) the expiry of the district strategic plan:
  - (b) the commencement of the new plan.
- (2) Every district annual plan of a DHB that is in force immediately before the commencement of **section 10** of this Act continues in force until the sooner of— 15
- (a) the expiry of the district annual plan:
  - (b) the commencement of the new plan.
- (3) While a plan that is continued in force by **subsection (1) or (2)** continues in force, the principal Act applies to it as if this Act had not been enacted. 20
- (4) In this section, unless the context otherwise requires,—
- district annual plan** means a plan determined under section 39 of the principal Act 25
- district strategic plan** means a plan determined under section 38 of the principal Act
- new plan** means, in relation to a DHB, a plan—
- (a) prepared under section 38 of the principal Act as substituted by **section 10** of this Act; and 30
  - (b) to which the DHB is a party; and
  - (c) that would apply in the place of the DHB’s district strategic plan, or as the case requires, district annual plan.

*Amendment to Crown Entities Act 2004*

**20 Amendment to Crown Entities Act 2004**

- (1) This section amends the Crown Entities Act 2004.
- (2) Part 1 of Schedule 1 is amended by inserting the following item in its appropriate alphabetical order: 5

Name	Exemption from acquisition of securities, borrowing, guarantee, and derivative rules				Exemption from section 165 (net surplus payable to Crown)
	s 161	s 162	s 163	s 164	
Health Quality and Safety Commission					

*Amendments to Health Sector (Transfers) Act 1993*

**21 Amendments to Health Sector (Transfers) Act 1993**

- (1) This section amends the Health Sector (Transfers) Act 1993.
- (2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order: 10  
 “**HQSC** means the Health Quality and Safety Commission established under **section 59A** of the New Zealand Public Health and Disability Act 2000”.
- (3) The definition of **publicly-owned health and disability organisation** in section 2(1) is amended by omitting “and Pharmac” and substituting “Pharmac, and HQSC”. 15

*Amendment to Ombudsmen Act 1975*

**22 Amendment to Ombudsmen Act 1975**

- (1) This section amends the Ombudsmen Act 1975. 20
- (2) Part 2 of Schedule 1 is amended by inserting “HQSC” in its appropriate alphabetical order.