

AREA HEALTH AND HOSPITAL BOARDS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Area Health Boards Act 1983 and the Hospitals Act 1957. Its principal purpose is to empower area health boards and hospitals boards to make decisions with regard to capital expenditure and assets without the need to seek the prior consent of the Minister of Health.

Clause 1 relates to the Short Title and commencement of the Bill.

PART I

AMENDMENTS TO AREA HEALTH BOARDS ACT 1983

Clause 3 changes the financial year for area health boards. At present, the year ends on 31 March. Under this clause, it will end on 30 June.

Clauses 4 and 5 change the constitution of area health boards. At present, boards consist of between 8 and 14 elected members, except that in a particular case the Minister may allow up to 17 elected members. Under *clause 4*, the minimum number remains at 8, the maximum is reduced to 12, and the Minister may allow up to 14 in a particular case.

In addition, section 8 of the principal Act allows for appointed members. They are appointed by the Governor-General on the advice of the Minister, and no more than 1 member may be appointed for every 4 elected members. By section 18 of the principal Act, the nomination of any person for appointment requires the agreement of the majority of the elected members.

Clause 5 changes these requirements. It allows the Minister to appoint up to 5 members. The agreement of the elected members is not required.

Clause 6 removes the requirement of prior ministerial consent for the acquisition of land by an area health board under the Public Works Act 1981.

Clause 7 relates to the borrowing powers of area health boards.

Subclause (1) removes the requirement of prior ministerial consent for the borrowing of money by an area health board.

Subclause (2) removes the guarantee of the Crown in respect of such borrowing, but *subclause (3)* preserves that guarantee in respect of money borrowed before the date of commencement of the clause (1 July 1989).

Clause 8 expressly empowers area health boards to accumulate reserve funds. Such funds may be expended, in accordance with a resolution of the board in open meeting, for any of the purposes specified in section 84 of the Area Health Boards Act 1983.

Clause 9 empowers an area health board to delegate to the general manager decisions relating to capital expenditure. The delegation does not prevent the

board itself making decisions, nor does it affect the responsibility of the board for the decisions of the general manager while acting under the delegation.

Clause 10 repeals section 85 of the Area Health Boards Act 1983 (and consequentially revokes the regulations made under that section) whereby capital expenditure by an area health board requires the prior consent of the Minister of Health.

Clause 11, in effect, reduces from 6 to 2 months the period following the financial year within which a board is required to prepare its accounts for that year.

Clause 12 corrects a drafting error that was made in the Schedule to the principal Act.

PART II

AMENDMENTS TO HOSPITALS ACT 1957

Clauses 14, 15, 21, 22, 23, 24, and 25 equate to *clauses 3, 6, 7, 8, 9, 10, and 11* respectively.

Clause 16 removes the requirement of prior ministerial consent for the sale or disposition of land by a hospital board, or for the use of the proceeds of any such sale or disposition in the acquisition of other land.

Clause 17 removes the requirement of prior ministerial consent for the leasing of land by a hospital board.

Clause 18 relates to the acceptance by a hospital board of the gift of any land, and to the use of any such land by the board. At present, the land may be accepted and used for the purposes of any particular institution or service under the control of the board, or for the general purposes of the board, or for such other purpose as the Minister of Health may approve. This latter provision is removed by this clause.

Clause 19 removes the requirement of prior ministerial consent to the sale, exchange, mortgage, or charge of any land held on trust by a hospital board.

Clause 20 relates to the application of income derived by a hospital board from the investment of trust money. At present, the income must be applied in terms of the trust or, where the trust is not for any special purpose, in accordance with the Hospitals Act 1957 for the purposes of any institution or service under the control of the board, or for any purpose for which the board may lawfully apply its own property, or for any other purpose for the time being approved by the Minister. The last option is removed by this clause.

Clause 26 repeals section 157 (c) of the Hospitals Act 1957, and the Sixth Schedule to that Act, which make special provision in respect of Picton Hospital. In particular, under that provision, the Marlborough Hospital Board is required to keep open and maintain the hospital, and provision is made for a local committee of management in respect of the hospital.

Hon. Helen Clark

**AREA HEALTH AND HOSPITAL BOARDS
AMENDMENT**

ANALYSIS

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A BILL INTITULED

An Act to amend the Area Health Boards Act 1983 and the Hospitals Act 1957

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

- 5 **1. Short Title and commencement**—(1) This Act may be cited as the Area Health and Hospital Boards Amendment Act 1989.
- (2) This Act shall come into force on the **1st day of July 1989**.

PART I

10 **AMENDMENTS TO AREA HEALTH BOARDS ACT 1983**

2. Part to be read with Area Health Boards Act 1983—
This Part of this Act shall be read together with and deemed

part of the Area Health Boards Act 1983* (in this Part referred to as the principal Act).

*1983, No. 134

Amendments: 1986, No. 16; 1988, No. 21; 1988, No. 50; 1988, No. 100

3. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “financial year” (as inserted by section 2 (1) of the Area Health Boards Amendment Act (No. 3) 1988), and substituting the following definition: 5

“‘Financial year’ means a period of 12 months ending with the 30th day of June.”

(2) Section 2 (1) of the Area Health Boards Amendment Act (No. 3) 1988 is hereby consequentially repealed. 10

4. Constitution of boards—(1) Section 8 of the principal Act (as substituted by section 5 of the Area Health Boards Amendment Act (No. 3) 1988) is hereby amended by omitting from subsection (1) (a) the expression “14”, and substituting the expression “12”. 15

(2) Section 8 of the principal Act (as so substituted) is hereby further amended by repealing paragraph (b) of subsection (1), and substituting the following paragraph:

“(b) Such number (if any) of members appointed by the Minister in accordance with section 18 of this Act.” 20

(3) Section 8 of the principal Act (as so substituted) is hereby further amended by omitting from subsection (2) the expression “17”, and substituting the expression “14”.

5. Appointed members—The principal Act is hereby amended by repealing section 18, and substituting the following section: 25

“18. (1) At any time after the election of members of a board (whether in accordance with section 14 of this Act following the establishment of the board or following a subsequent election of members in accordance with section 15 of this Act), the Minister may, by notice in the *Gazette*, appoint further members of the board, so long as the number of appointed members in office at any one time does not exceed 5. 30

“(2) Every appointed member shall hold office until the expiration of the term of office of the elected members, and may from time to time be reappointed.” 35

6. Acquisition of land under Public Works Act 1981—(1) The principal Act is hereby amended by repealing section 68, and substituting the following section: 40

“68. An area health board may take or otherwise acquire under the Public Works Act 1981 any land required, whether as a site for any institution or service or otherwise, for the purposes of any of its functions under this Act.”

5 (2) Section 2 of the Area Health Boards Amendment Act (No. 2) 1988 is hereby consequentially repealed.

7. Borrowing powers—(1) Section 77 of the principal Act is hereby amended by omitting from subsection (1), and also from subsection (2), and also from subsection (4), the words “, with
10 the prior consent of the Minister,”.

(2) Section 77 (6) of the principal Act is hereby repealed.

(3) The repeal by **subsection (2)** of this section of section 77 (6) of the principal Act shall not apply in respect of any money borrowed by an area health board before the **1st day of July 1989**;
15 and the repayment of all such money, and the payment of interest on that money, shall continue to be deemed to be guaranteed by the Crown.

8. Application of board's funds—(1) Section 84 (1) of the principal Act is hereby amended by inserting, after paragraph
20 (e), the following paragraph:

“(ea) The accumulation of reserve funds for the repayment from time to time of the whole or any part of the money borrowed under subsection (1) of section 77 of this Act, or to meet the whole or any part of
25 planned future expenditure for any of the purposes specified in paragraphs (a) to (d) of that subsection, and, pending such repayment or expenditure, the investment of such reserve funds for such period or periods as the board thinks fit:”.

30 (2) Section 84 (2) of the principal Act is hereby repealed.

9. Board may delegate expenditure decisions to general manager—The principal Act is hereby amended by inserting, after section 84, the following section:

“84A. (1) An area health board may from time to time, either
35 generally or particularly, delegate to the general manager the power to expend or approve the expenditure of the board's funds, up to such limit and subject to such other conditions as the board may impose, in respect of any of the following matters:

40 “(a) Erecting buildings or making additions or alterations to buildings; or

“(b) Purchasing or developing land; or

“(c) Purchasing equipment; or

“(d) Repaying or converting the whole or any part of any loan that has previously been raised by the board or for which the board is liable.

“(2) Subject to any general or special directions given or imposed by the board, the general manager may exercise any power delegated to the general manager under this section in the same manner and with the same effect as if the power had been conferred on the general manager directly by this Act and not by delegation. 5

“(3) When purporting to act pursuant to any delegation under this section, the general manager shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. 10

“(4) No delegation under this section shall affect or prevent the exercise of any function or power by the board, nor shall any such delegation affect the responsibility of the board for the actions of the general manager acting under the delegation. 15

“(5) Every delegation under this section shall be revocable by the board at will. 20

“(6) Every delegation under this section, until it is revoked, shall continue in force according to its tenor, notwithstanding that the general manager to whom the power was delegated may have ceased to hold office, and shall continue to have effect as if the power had been delegated to the successor in office of that general manager.” 25

10. Control of expenditure—(1) Section 85 of the principal Act is hereby repealed.

(2) The Area Health Boards (Control of Expenditure) Regulations 1987 (S.R. 1987/324) are hereby revoked. 30

11. Annual balance and statement—Section 88 of the principal Act is hereby amended—

(a) By omitting from subsection (1), and also from subsection (4), and also from subsection (5) (b), the expression “30th day of September”, and substituting in each case the expression “31st day of August”: 35

(b) By omitting from subsection (4) the expression “1st day of October”, and substituting the expression “1st day of September”.

12. Mental Health Act 1969 amended—Section 7 of the Mental Health Act 1969 (as substituted by section 98 of the Area Health Boards Act 1983 is hereby amended) by omitting 40

from subsection (4) the expression “section 68” where it first occurs, and substituting the expression “section 69”.

PART II

AMENDMENTS TO HOSPITALS ACT 1957

5 **13. Part to be read with Hospitals Act 1957**—This Part of this Act shall be read together with and deemed part of the Hospitals Act 1957* (in this Part referred to as the principal Act).

*R.S. Vol. 19, p. 665

Amendments: 1988, No. 22; 1988, No. 65; 1988, No. 101

10 **14. Interpretation**—Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “financial year”, and substituting the following definition:

“‘Financial year’ means a period of 12 months ending with the 30th day of June.”

15 **15. Acquisition of land**—(1) Section 67 (1) of the principal Act is hereby amended by omitting the words “, with the prior consent of the Minister,”.

(2) Section 67 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

20 “(2) Any Board may take or otherwise acquire under the Public Works Act 1981 any land required for any purpose referred to in subsection (1) of this section.”

(3) Section 5 of the Hospitals Amendment Act (No. 2) 1988 is hereby consequentially repealed.

25 **16. Sale or disposal of land**—(1) Section 69 (1) of the principal Act is hereby amended by omitting the words “, with the prior consent of the Minister,”.

30 (2) Section 69 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) Any Board may sell or exchange any land vested in it, whether by any Provincial Ordinance, Act, grant, or Order in Council, or in any other manner, as an endowment, and pay or receive any money by way of equality of exchange.

35 “(2A) The proceeds of the sale or exchange of any land held as an endowment shall be applied by the Board—

“(a) In or towards the acquisition of other land for the purpose of providing any service within the functions of the Board; or

“(b) In or towards any other capital expenditure for any such purpose.”

(3) Section 6 (a) of the Hospitals Amendment Act (No. 2) 1988 is hereby consequentially repealed.

17. Leases of land—Section 71 (1) of the principal Act is hereby amended by omitting the words “, with the prior consent of the Minister,”.

18. Power to accept property in trust—The principal Act is hereby amended by repealing section 73, and substituting the following section: 10

“73. (1) A Board may accept any real or personal property, by way of devise, bequest, or gift, in trust—

“(a) For the purpose of any existing or future institution or service under the control of the Board; or

“(b) For any purpose to which the Board may lawfully apply its own property. 15

“(2) All property accepted by a Board in trust under this section, and all income derived from that property, shall be appropriated and dealt with by the Board for the purposes, and in accordance with the terms, of the trust, so far as those purposes and terms are consistent with this Act. 20

“(3) Any money received by a Board by way of bequest or gift for the general purposes of the Board may, except so far as it is otherwise provided by the terms of the will or gift, be applied by the Board for— 25

“(a) The purposes of any institution or service under the control of the Board; or

“(b) For any purpose to which the Board may lawfully apply its own property.”

19. Power to deal with trust lands—Section 74 of the principal Act is hereby amended— 30

(a) By omitting from subsection (1) the words “, with the prior consent of the Minister in each case,”:

(b) By omitting from the proviso to that subsection the words “approved by the Minister”. 35

20. Investment of trust money—Section 75 (2) of the principal Act (as substituted by section 9 of the Hospitals Amendment Act 1968) is hereby amended by repealing paragraph (b) (iii).

21. Borrowing powers—(1) Section 87 of the principal Act is hereby amended by omitting from subsection (1), and also from subsection (2), and also from subsection (3), the words “, with the prior consent of the Minister,”.

5 (2) Section 87 (4) of the principal Act is hereby repealed.

(3) The repeal by **subsection (2)** of this section of section 77 (4) of the principal Act shall not apply in respect of any money borrowed by a Board before the **1st day of July 1989**; and the repayment of all such money, and the payment of interest on
10 that money, shall continue to be deemed to be guaranteed by the Crown.

22. Application of Board's funds—(1) Section 93 (1) of the principal Act is hereby amended by inserting, after paragraph (e), the following paragraph:

15 “(ea) The accumulation of reserve funds for the repayment from time to time of the whole or any part of the money borrowed under subsection (1) of section 87 of this Act, or to meet the whole or any part of
20 planned future expenditure for any of the purposes specified in that subsection, and, pending such repayment or expenditure, the investment of such reserve funds for such period or periods as the Board thinks fit:”.

(2) Section 93 (2) of the principal Act is hereby repealed.

25 **23. Board may delegate expenditure decisions to acting general manager**—The principal Act is hereby amended by inserting, after section 93, the following section:

“93A. (1) A Board may from time to time, either generally or particularly, delegate to the acting general manager the power
30 to expend or approve the expenditure of the Board's funds, up to such limit and subject to such other conditions as the Board may impose, in respect of any of the following matters:

“(a) Erecting buildings or making additions or alterations to buildings; or

35 “(b) Purchasing or developing land; or

“(c) Purchasing equipment; or

“(d) Repaying or converting the whole or any part of any loan that has previously been raised by the Board or for which the Board is liable.

40 “(2) Subject to any general or special directions given or imposed by the Board, the acting general manager may exercise any power delegated to the acting general manager under this section in the same manner and with the same effect

as if the power had been conferred on the acting general manager directly by this Act and not by delegation.

“(3) When purporting to act pursuant to any delegation under this section, the acting general manager shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. 5

“(4) No delegation under this section shall affect or prevent the exercise of any function or power by the Board, nor shall any such delegation affect the responsibility of the Board for the actions of the acting general manager acting under the delegation. 10

“(5) Every delegation under this section shall be revocable by the Board at will.

“(6) Every delegation under this section, until it is revoked, shall continue in force according to its tenor, notwithstanding that the acting general manager to whom the power was delegated may have ceased to hold office, and shall continue to have effect as if the power had been delegated to the successor in office of that acting general manager.” 15

24. Control of expenditure—(1) Section 94 of the principal Act is hereby repealed. 20

(2) Section 13 of the Hospitals Amendment Act 1970 is hereby consequentially repealed.

(3) The following regulations are hereby consequentially revoked: 25

- (a) Part I of the Hospital Boards Finance Regulations 1958 (S.R. 1958/52);
- (b) The Hospital Boards Finance Regulations 1958, Amendment No. 1 (S.R. 1960/74);
- (c) Regulation 3 of the Hospital Boards Finance Regulations 1958, Amendment No. 2 (S.R. 1969/265); 30
- (d) The Hospital Boards Finance Regulations 1958, Amendment No. 3 (S.R. 1971/24).

25. Annual balance and statement—Section 99 of the principal Act (as amended by section 7 of the Hospitals Amendment Act 1980) is hereby amended— 35

- (a) By omitting from subsection (1) the expression “30th day of September”, and substituting the expression “31st day of August”;
- (b) By omitting from subsection (1A) the expression “1st day of October”, and substituting the expression “1st day of September”;

(c) By omitting from subsection (1A) the expression “30th day of September” in both places where it occurs, and substituting in each case the expression “31st day of August”.

- 5 **26. Special provisions relating to Picton Hospital repealed**—(1) Section 157 (c) of the principal Act is hereby repealed.
- (2) The Sixth Schedule to the principal Act is hereby repealed.
- 10 (3) Sections 19 (2) and 20 of the Hospitals Amendment Act 1966 are hereby consequentially repealed.
- (4) Part III of the Hospital Boards and Committees of Management Regulations 1959 (S.R. 1959/130) is hereby consequentially revoked.