

**Version
as at 1 July 2022**



New Zealand Public Health and Disability Amendment Act 2010

Public Act 2010 No 118
Date of assent 23 October 2010
Commencement see section 2

New Zealand Public Health and Disability Amendment Act 2010: repealed, on 1 July 2022, pursuant to section 103(1) of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Health.

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1 Title

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

2 Commencement

(1) 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.

(2) To the extent not previously brought into force under subsection (1), this Act comes into force 6 months after the date on which it receives the Royal assent.

Section 2(1): sections 1 to 3, 4(2), 5(2) and (3), 8(1), 9, 17 to 20, 24 to 26, and 28 to 30 brought into force, on 9 November 2010, by clause 2 of the New Zealand Public Health and Disability Amendment Act 2010 Commencement Order 2010 (SR 2010/390).

Section 2(1): sections 4(1), 5(1), 8(2) and (3), 10 to 15, 22, 23, and 27 brought into force, on 24 February 2011, by clause 2 of the New Zealand Public Health and Disability Amendment Act 2010 Commencement Order 2011 (SR 2011/7).

3 Principal Act amended

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

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”.

(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 59E, 60, 61, 66, 67, and 69 and Schedule 6), and has functions that relate to the improvement of the quality and safety of health and disability support services.

5 Interpretation

(1) The definitions of **annual plan** and **district strategic plan** in section 6(1) are repealed.

(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)

- (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”.

6 Ministerial committees

- (1) Section 11(2) is amended by omitting “18” and substituting “16”.
- (2) Section 11(5) is amended by omitting “18” and substituting “16”.

7 Sections 17 and 18 repealed

Sections 17 and 18 are repealed.

8 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:
- (2) Section 22(2) is amended by omitting “its district strategic plan, its annual plan” and substituting “any plan prepared under section 38”.
- (3) Section 22(2) is amended by omitting “section 33 of this Act” and substituting “section 33, 33A, or 33B of this Act,”.

9 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).

10 Co-operative agreements and arrangements

Section 24(2)(b) is amended by omitting “its district strategic plan or annual plan” and substituting “a plan prepared under section 38”.

11 Service agreements

Section 25(2) is amended by omitting “its annual plan” and substituting “a plan prepared under section 38”.

12 Duties of board

Section 27(1) is amended by omitting “the DHB’s district strategic plan, annual plan, and any directions under section 33” and substituting “any relevant plan prepared under section 38, and any directions under section 33, 33A, or 33B”.

13 Minister may require provision of services

Section 33(2)(a) is amended by omitting “the district strategic plan of the DHB” and substituting “any plan prepared under section 38 that the DHB is a party to”.

14 New sections 33A and 33B and heading inserted

The following sections and heading are inserted after section 33:

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

- (1) A proposal stating how administrative, support, and procurement services within the public health and disability sector 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.
- (2) If the Minister has reason to believe that the proposal will enhance the effective and efficient operation of the public health and disability sector and should be implemented, the Minister must—
 - (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
 - (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—
 - (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.
- (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**—

- (a) means 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:
 - (i) procurement of non-clinical and clinical supplies:
 - (ii) financial services:
 - (iii) human resources and payroll services:
 - (iv) clerical services:
 - (v) facilities management, engineering, and maintenance services:
 - (vi) information systems and technology.

Ministerial directions to all DHBs

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 public health and disability sector.
- (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,—
 - (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—
 - (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.
- (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.
- (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 of Health.

- (8) If the direction does not come into force, the Minister must, as soon as practicable, notify all DHBs that the direction has been disapplied and that it will not come into force.
- (9) Section 113 of the Crown Entities Act 2004 applies to a direction given under this section as if it were a Ministerial direction given under that Act.
- (10) No direction may be given under this section to Crown entity subsidiaries.
- (11) For the purposes of section 115(5) of the Crown Entities Act 2004, the procedure set out in this section is a procedure for giving directions.

Compare: 2004 No 115 ss 107–111, 113

15 New sections 38 and 39 substituted

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

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 2011; and
 - (b) may direct a DHB to prepare or contribute to 1 or more other plans.
- (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
 - (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
 - (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).
- (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
 - (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.
- (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.
- (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 the Minister directs 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; and
 - (b) as soon as practicable after making the decision, publish the decision in general terms on an Internet site operated by the Ministry of Health.
- (5) A DHB that is a party to the dispute must give effect to the Minister's decision.

16 DHBs to operate in financially responsible manner

Section 41 is amended by repealing subsection (1) and substituting the following subsection:

- (1) Every DHB must operate in a financially responsible manner and, for this purpose, must endeavour to cover all its annual costs (including the cost of capital) from its net annual income.

17 New heading and sections 59A to 59E 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 Objectives of HQSC

The objectives of HQSC are to lead and co-ordinate work across the health and disability sector for the purposes of—

- (a) monitoring and improving the quality and safety of health and disability support services; and
- (b) helping providers across the health and disability sector to improve the quality and safety of health and disability support services.

59C Functions of HQSC

- (1) The functions of HQSC are—
 - (a) to advise the Minister on how quality and safety in health and disability support services may be improved; and
 - (b) to advise the Minister on any matter relating to—
 - (i) health epidemiology and quality assurance; or
 - (ii) mortality; and
 - (c) to determine quality and safety indicators (such as serious and sentinel events) for use in measuring the quality and safety of health and disability support services; and
 - (d) to provide public reports on the quality and safety of health and disability support services as measured against—
 - (i) the quality and safety indicators; and
 - (ii) any other information that HQSC considers relevant for the purpose of the report; and
 - (e) to promote and support better quality and safety in health and disability support services; and
 - (f) to disseminate information about the quality and safety of health and disability support services; and
 - (g) to perform any other function that—
 - (i) relates to the quality and safety of health and disability support services; and

- (ii) HQSC is for the time being authorised to perform by the Minister by written notice to HQSC after consultation with it.
- (2) In performing its functions HQSC must, to the extent it considers appropriate, work collaboratively with—
 - (a) the Ministry of Health; and
 - (b) the Health and Disability Commissioner; and
 - (c) providers; and
 - (d) any groups representing the interests of consumers of health or disability support services; and
 - (e) any other organisations, groups, or individuals that HQSC considers have an interest in, or will be affected by, its work.
- (3) The Minister must, as soon as practicable after giving a notice to HQSC under subsection (1)(g)(ii), publish in the *Gazette*, and present to the House of Representatives, a copy of the notice.

59D Membership of board

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

59E HQSC may appoint mortality review committees

- (1) HQSC may appoint 1 or more committees to carry out any of the following functions that HQSC specifies by notice to the committee:
 - (a) to review and report to HQSC on specified classes of deaths of persons, or deaths of persons of specified classes, with a view to reducing the numbers of deaths of those classes or persons, and to continuous quality improvement through the promotion of ongoing quality assurance programmes;
 - (b) to advise on any other matters related to mortality that HQSC specifies in the notice.
- (2) A committee appointed under subsection (1) (a **mortality review committee**) must develop strategic plans and methodologies that—
 - (a) are designed to reduce morbidity and mortality; and
 - (b) are relevant to the committee's functions.
- (3) HQSC—
 - (a) must, at least annually, provide the Minister with a report on the progress of mortality review committees; and
 - (b) must include each such report in HQSC's next annual report.
- (4) The provisions of Schedule 5 apply in relation to a mortality review committee.

- (5) Every person who fails, without reasonable excuse, to comply with a requirement imposed under Schedule 5 by the chairperson of a mortality review committee commits an offence and is liable to a fine not exceeding \$10,000.
- (6) Every person who discloses information contrary to Schedule 5 commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (7) Any member of a registered occupational profession who commits an offence under subsection (5) or (6) is liable to any disciplinary proceedings of that profession in respect of the offence, whether or not he or she is fined under that subsection.

18 Interpretation

Section 60 is amended by adding the following paragraph:

- (d) HQSC.

19 Pharmac, NZBS, and CHFA to operate in financially responsible manner

- (1) The heading to section 66 is amended by omitting “and CHFA” and substituting “CHFA”.
- (2) Section 66 is amended by repealing subsection (1) and substituting the following subsection:
 - (1) Every organisation must operate in a financially responsible manner and for this purpose must endeavour to cover all its annual costs (including the cost of capital) from its net annual income.
- (3) Section 66 is amended by inserting the following subsection after subsection (1):
 - (1A) Subsection (1) does not apply to HQSC in respect of costs, which are to be met by the Ministry of Health in a financially responsible manner that allows HQSC to carry out its functions to a high standard.

20 Further provisions

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

21 Discussion required before inquiry board appointed

Section 74(b) is amended by omitting “section 75(3)(b))” and substituting “section 75(3)(b)”.

22 Saving of certain transactions

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

23 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”.

24 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”.

25 Schedule 5 heading amended

The Schedule 5 heading is amended by omitting “s 18(5)” and substituting “s 59E”.

26 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

Transitional arrangements

27 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 15 of this Act continues in force until the sooner of—
 - (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 15 of this Act continues in force until the sooner of—
 - (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.
- (4) In this section, unless the context otherwise requires,—

district annual plan means a plan determined under section 39 of the principal Act

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 15 of this Act; and
- (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

28 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:

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

29 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:

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”.

Amendment to Ombudsmen Act 1975

30 Amendment to Ombudsmen Act 1975

- (1) This section amends the Ombudsmen Act 1975.
- (2) Part 2 of Schedule 1 is amended by inserting the following item in its appropriate alphabetical order: “Health Quality and Safety Commission”.

Notes

1 *General*

This is a consolidation of the New Zealand Public Health and Disability Amendment Act 2010 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Pae Ora (Healthy Futures) Act 2022 (2022 No 30): section 103(1)

New Zealand Public Health and Disability Amendment Act 2010 Commencement Order 2011 (SR 2011/7)

New Zealand Public Health and Disability Amendment Act 2010 Commencement Order 2010 (SR 2010/390)