Legislation Reform Facilitates and Coerces Health Sector Changes

7 June 2010

Legislative amendment is required for the health sector changes to a more regional and national approach – beyond a local focus for DHBs. In another article we drill down on the detail relating to health sector procurement. Here we overview the broader picture.

Following the report on health and disability services by the Ministerial Review Group, Government is overhauling the way DHBs acquire and use goods and services, particularly to take a more regional and national approach.

Why?

Health and disability services must be improved, given, for example, an increasing and aging population, the expanding array of health care technologies (i.e. more cost), the challenge in getting skilled professionals, and the relatively smaller workforce to pay for health and disability services.

This calls for a more strategic and regional/national approach.

There have been sporadic initiatives by DHBs to take more than a local perspective. Overall, the highly localised DHB model has not worked optimally for a broader national strategy.

Many consider there are too many DHBs and this is both inefficient and unduly focuses on local issues. (How can 2 DHBs covering Wellington, Kapiti and the Hutt Valley be justified for example? Some would say this is an inefficient postage-stamp-sized approach to health and disability services).

How?

Government will, at least initially,[1] retain the basic DHB model, but make changes, which facilitate – and coerce – DHBs to take a broader national and regional approach. This in practice should overcome some of the inefficiencies and sub-optimal use of funding. In due course it should lead to greater coordination, amalgamation of DHBs, etc (i.e. this is a stepping stone on the path to much needed rationalisation).

DHBs' statutory objectives and functions in the NZ Public Health and Disability Act do not overtly require them to have a focus beyond local issues toward regional and national concerns. Having said that, this limitation does not stop fiscally prudent cooperation between DHBs. DHBs' existing functions and objectives enable a regional and national strategic focus. But this has not happened beyond ad hoc solutions. To overcome this problem, the legislative will explicitly require a more strategic and collaborative approach.

In addition, Government has not had sufficient tools to require DHBs to take a more regional and national approach.

The proposed changes to the NZ Pubic Health and Disability Act put a strong emphasis on DHBs having a focus on regional and national issues. This starts with strategy – such as in the annual planning round – and flows through to the detail of "back-office" procurement,

[1] Page 1 Regulatory Impact Statement for the Bill

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shared services, etc. We deal with those last issues in our article, Health Procurement: Major Changes.

In addition the legislation would add greater Ministerial powers to direct DHBs to fulfil regional and national objectives.

Legislation is part of a wider package

These legislative changes, which are part of an overall integrated suite of solutions, are intended to help drive a more strategic regional and national approach with: better outcomes; better value for money; a trend toward shared services rather than just services acquired on a locally focussed basis; and so on.

The Ministry is running other initiatives in parallel such as in relation to funding and accountability.

Objectives and functions

Under the Act, DHBs have long lists of objectives and functions.

The changes would include an explicit objective for DHBs to seek the optimal arrangement for the most effective and efficient delivery of services in order to meet not just local but also regional and national needs.

As part of their stated functions they would collaborate with others (including service providers and other DHBs) to achieve that objective.

Governance issues

It is important to get the balance right between (a) ownership of issues by DHBs and their boards (and management respectively) and (b) control "from the centre" (i.e. MOH and Ministerial controls). Division of responsibilities between the DHBs, their boards, and their management, and "the centre", can easily be jeopardised by short-term expediencies.

The proposed amendments include some safeguards aimed at getting this right. For example:

- As we outline in our article on procurement (a) the Minister has backstop powers at two levels before he or she can intervene in procurement, and (b) sign-off by the Minister of Finance is required. In practice this is a coercive power: DHBs and others are likely to resolve issues short of unilateral Ministerial intervention;

- As noted below, where DHBs can't agree an approach in a shared annual plan, the Minister makes a call as to the approach, preceded by advice on the issue by an advisory panel of at least 3 members, which the Minister must take into account before making a decision.

Planning and strategy

Regional and national issues are made an explicit component of the annual planning cycle. In addition to their own plans, the Minister can direct DHBs to be involved in other plans too.
Plans must address:

- regional and national needs and coordination;
- optimum arrangements for the most effective and efficient delivery of health services, as well as fiscally responsible operations;
- NZ health and disability strategies

The DHB must give effect to each plan that it and the Minister have signed-off.
If the DHBs can't agree a plan between them, the Minister can proceed as noted above: making a decision taking into account the advisory panel's advice.
There is room to have a dispute resolution process between DHBs as well. This is potentially binding.[2]

Overriding Ministerial ability to give directions to all DHBs

The Minister of Health, with sign-off from the Minister of Finance, can give directions to all DHBs, preceded by consulting with DHBs and other stakeholders. The Minister of Finance sign-off and consultation obligation provides some restraint in the process. Again, this can be seen as a back-stop coercive power: generally, the DHBs and "the Centre" will end up agreeing via the planning and other processes.

[2] As noted in the Regulatory Impact Statement

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Ministerial powers legitimise DHB action?

However, this and other Ministerial powers might be used also where there might be some doubt about the legality of the DHB proceeding without formal mandate.

Cross-membership of boards

Appointed members are of course appointed to more than one board, in the interests of coordination, etc. The amendment would also enable an elected member of one board to be appointed to another.

Conclusion

Working within the existing DHB framework, Government is making major changes, supported by these legislative changes. The changes include some safeguards around governance and the division between DHB obligations and control from "the centre"

We welcome your feedback on this article and any enquiries in relation to its contents. This article is intended to provide a summary of the material covered and does not constitute legal advice. We can provide specialist legal advice on the full range of matters contained in this article.

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