

MEMORANDUM TO CABINET SOCIAL POLICY AND HEALTH COMMITTEE

**SPECIFIC SANCTIONS FOR DISTRICT HEALTH BOARDS REQUIRED FOR
INCLUSION IN LEGISLATION**

PROPOSAL

1. With this paper I propose that the sanctions presented in Figure 1 below are included in the drafting of the New Zealand Public Health and Disability Bill. The incorporation of these specific sanctions in legislation will support transparency and provide certainty to both the public and Government that the appropriate measures will be taken to ensure the Government's and public's health and disability expectations are achieved over time.

Figure 1: Proposed Sanctions for Inclusion in Legislation

<i>Sanction</i>	<i>Currently in Health Legislation</i>
Ministerial power to direct.	Yes
Appointment of a Crown Monitor to report back to the Minister on the performance of the Board.	Yes
Replacement of the Chair and/or the Deputy Chair of the Board.	Yes
Replacing the Board with a Commissioner.	No

EXECUTIVE SUMMARY

2. Having a majority elected Board members is a unique variant to the Crown entity model. It will be important that both the elected members and their associated electorates are clear as to the Board's and individual Board member's duties for transparency, particularly where failure against duties results in sanctions. Their duties, therefore, should be included in legislation. The Crown Entity Reform Initiative proposes comprehensive and consistent duties for Crown entity Boards and individual Board members. These will be sufficient for DHB purposes.
3. An incentives structure of rewards and sanctions is used to motivate and promote good performance. Rewards are applied for exceeding performance and expectations, and sanctions are applied for failure against the duty of the Board.
4. I consider that it is not necessary to include provisions for specific rewards in legislation, because rewards are inherent in the regime, which is based on DHBs moving from an initially controlled environment to one with more

autonomy. Rewards are also likely to occur at levels below that required in legislation.

5. The incorporation of specific sanctions in the legislation supports transparency. The sanctions also provide certainty to both the public and Government that inferior performance will be sanctioned, and that the appropriate measures will be taken to ensure the Government's and public's expectations are achieved over time. The sanctions in legislation also provide a safety net to protect the Crown's fiscal and other interests in DHBs.
6. These sanctions involve high levels of intervention in the DHBs' governance and operations and would be applied where there is failure at a governance level to resolve a performance problem. They are 'last resort' sanctions that would be applied after less serious sanctions, such as more intrusive monitoring by the Ministry of Health, have not resolved the issue. That is unless the specific situation warrants that a more severe sanction is imposed on the DHB first.
7. The removal of specific functions from a DHB would be used where a DHB has shown a significant inability to meet the expectations of the Minister as set out in the Funding Agreement.
8. The Minister of Health will have the power to direct DHBs, but this power should be balanced with the following checks to ensure that this power is used appropriately:
 - i. the Minister of Health shall consult the affected Board(s) as to the direction given in the notice
 - ii. no direction given by the Minister of Health may require the supply to any person of any information relating to an individual that would enable the identification of the individual concerned
 - iii. the Minister of Health shall take account of the objectives of the DHB as specified in legislation before issuing a notice of direction
 - iv. the written notice of direction shall be published in the *Gazette* and tabled before Parliament as soon as practicable after the direction has been issued. This will make the Minister's direction transparent and give Parliament the opportunity to debate the issue.
9. Notices of direction will be subject to judicial review, as are all ministerial decisions.
10. The appointment of one or more Crown Monitors to the Board will be part of a move to a more intensive monitoring regime. This allows closer scrutiny of the DHBs' decisions. A Crown Monitor would report back to the Minister of Health on the performance of the Board. Crown Monitors will not have voting rights and will not be Board members.

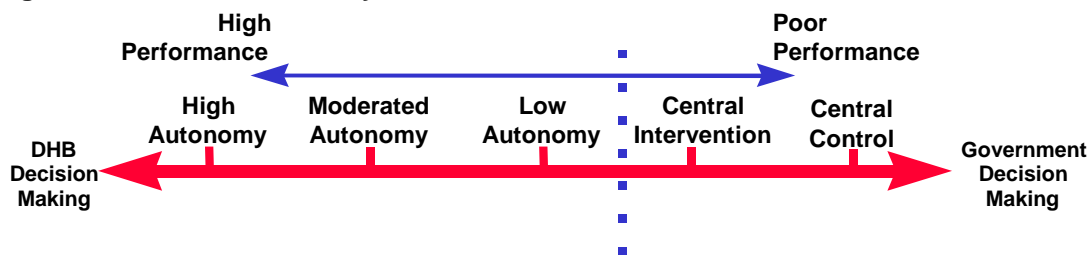
11. In situations where unsatisfactory leadership of the Board results in poor Board and organisational performance it may be appropriate for the Minister to sanction the Board by removing the Chair and/or Deputy Chair. This could be done by either dismissing them from being Board members, or demoting them to be ordinary Board members.
12. In situations where the performance of the Board is under serious question, and the Minister has no confidence in the Board, it may be appropriate for the Minister to sanction the Board by replacing it with a Commissioner.
13. I recommend that specific routine performance reports should be put in the public domain.
14. I recommend that a DHB, or more specifically its populations, should not be sanctioned by merging it with another DHB in response to persistent poor performance. The Minister of Health should, however, have reserve powers drafted into legislation to merge DHBs where there are significant benefits to the local communities in question and the DHBs have not been able to agree.

BACKGROUND

15. Ministers have sought advice on the rewards and sanctions for District Health Boards (DHBs) [SPH (00) M 9/6 refers]. The purpose of this paper is to inform Ministers' decisions on the specific rewards and sanctions to be included in the New Zealand Public Health and Disability Bill.
16. This report has been approved by the Ad Hoc Ministerial Committee on Health Sector Change for submission to the Cabinet Social Policy and Health Committee.
17. This paper explores the sanctions for inclusion in legislation that the Minister of Health may place on the Boards of the DHBs, in terms of a Board's collective performance in respect of meeting its statutory and other specific performance expectations set out in the Board's Funding Agreement. This paper does not explore explicit sanctions that could be applied against individual Board members. These decisions have already been taken by Cabinet [CAB (00) M 11/1A refers].
18. Advice in this paper expands on Ministers' decisions, and responds to report backs requested by Ministers in the following papers:
 - i. Accountability Arrangements for DHBs [SPH (00) M 9/6 refers]
 - ii. Governance of DHBs [CAB (00) M 11/1A(3) refers].
19. Further advice will be provided to Ministers on the detailed framework for rewards and sanctions by 31 August 2000. This will also include advice on the criteria for applying the rewards and sanctions, and an escalation path for their use.

20. The accountability framework for DHBs will give effect to the accountability relationship between the Board of each DHB and the Minister of Health (on behalf of the Crown) [SPH (00) M 9/6 refers].
21. Officials will develop a detailed framework for rewarding and sanctioning DHB performance, including the criteria for the application of a complete rewards and sanctions framework, by 31 August 2000 [SPH (00) M 9/6 refers]. However, decisions are required now on which rewards and sanctions should be incorporated in the new legislation.
22. The DHBs' environment will initially be highly regulated and prescribed, but will then be progressively relaxed as each DHB moves towards the maximum-envisaged degree of autonomy [CAB (00) M 11/1/A refers]. Ministers have also decided on the broad framework for the levels of autonomy that will be granted to DHBs [SPH (00) M 9/6 refers].
23. The ability to vary the degree of autonomy granted to a DHB, as outlined in Figure 2 below, provides powerful rewards and sanctions to the Minister of Health. However, Government may want increased levels of control over DHBs to achieve its desired outcomes.

Figure 2: Modes of Autonomy Continuum



24. Whilst specific DHB accountability documentation and the use of subordinate legislation will provide important mechanisms for rewarding and sanctioning performance, the primary legislation provides the ultimate mechanism for the Minister to exercise authority over the Board of each DHB. This specifically relates to Board performance, in terms of the Board meeting statutory responsibilities and other specific performance expectations as proposed for legislation and set out in the Board's Funding Agreement with the Crown.
25. The incorporation of specific sanctions in the enabling legislation supports transparency in the operation of the health and disability sector. These sanctions would provide a safety net to protect the Crown's fiscal and other interests in DHBs. They involve the Minister of Health intervening at a high level in DHB governance and operations. This will provide certainty to both the public and Government that inferior performance will be addressed, and that appropriate measures are available to the Minister of Health to ensure their expectations are achieved over time.
26. I consider that it is not necessary to include provisions for specific rewards in

legislation because these rewards are inherent in the regime. Rewards are also likely to occur at levels below that required in legislation. These rewards will be covered in detail in the report back on a complete rewards and sanctions framework by 31 August 2000.

27. The sanctions proposed for legislation involve high levels of intervention in the DHBs' governance and operations. They would be applied where there is failure at a governance level to resolve performance problems. They are also 'last resort' sanctions that would be applied after less serious sanctions, such as more intrusive monitoring by the Ministry of Health, have not resolved the issue. This is unless the specific situation warrants that a more severe sanction is imposed on the DHB as an initial step (for example a DHB refusing to implement Government policy).

DUTIES OF BOARD MEMBERS

28. Having majority elected Board members is a unique variant of the Crown entity model. It will be important that both the elected members and their associated electorates are clear as to Boards' and individual Board member's duties for transparency, particularly where failure against duties results in sanctions. The duties, therefore, should be included in legislation.
29. The Crown Entities Reform Initiative proposes comprehensive and consistent duties for Crown entity Boards and individual Board members. I expect that these duties will be sufficient for DHB purposes.
30. There is a timing issue as the proposed Crown Entities legislation is likely to follow the health legislation. However, it is expected that the Crown Entities legislation will precede the election of Board members in October 2001. It is therefore possible for the current provisions to stand in the interim until the Crown Entities legislation is passed. That is, all Board members will need to be advised that their duties are the same as directors under current guidelines and precedents established under case law.
31. It is recommended that there is provision to amend health legislation to include duties of the Board and individual Board members if the enactment of the Crown Entities Initiative is delayed beyond the October 2001 elections.

SPECIFIC SANCTIONS

32. In instances where a Board's performance has been identified as being unsatisfactory, and less serious sanctions have not resolved the situation, it may be appropriate for the Minister of Health to apply specific sanctions to the DHB Board to gain Government's desired performance objectives.
33. I propose that the New Zealand Public Health and Disability Bill should provide for the Minister of Health to impose the following sanctions on DHB Boards:

- i. the removal of specific functions from the DHB
 - ii. a ministerial power of direction
 - iii. the appointment of a Crown Monitor
 - iv. replacement of the Chair and/or the Deputy Chair of the Board
 - v. replacing the Board with a Commissioner.
34. These sanctions will form part of a cohesive graduated framework. Individual situations will dictate what sanction is selected and the extent to which it is applied. The trigger for applying these sanctions will be deterioration in the performance of the DHB against a graduated monitoring framework. This will be detailed in a report back which is due on 30 November 2000.

The Removal of Specific Functions from the DHB

35. The Government has agreed to a model that envisages DHBs initially being required to operate within a centrally constrained policy and regulatory framework but, over time, being given greater autonomy over decision-making if the Minister is satisfied with DHB's capability and performance track record. This scope for increased autonomy provides a strong incentive for DHBs to perform well and to develop the necessary infrastructure of management systems and controls.
36. There may be situations where a DHB has inadequate performance and/or capability to carry out one of its functions. In these instances it may be appropriate to temporarily withdraw those specific functions from the DHB and transfer them to another organisation, for example the Ministry of Health. This balances the desire to give DHBs greater autonomy over decision-making, with the need to ensure that this autonomy can be withdrawn if performance is unsatisfactory.
37. I consider that this sanction can be achieved through provisions in the Funding Agreement and via ministerial power to direct. However, more policy work needs to be undertaken to work through problems with applying this sanction. I recommend that this sanction be canvassed in more detail in the report back due on 31 August 2000 covering the detailed framework for rewards and sanctions.

Ministerial Power of Direction

38. The Minister of Health will have the power to:
- i. direct DHBs, subject to checks to avoid inappropriate use of this power [CAB (00) M 11/1A (ddd) refers]. This power of direction would need to be consistent with Government's health and disability policy, and be lawful
 - ii. require the DHBs to produce particular outputs [CAB (00) M 11/1A (fff) refers]. This is to provide, or arrange the provision of, particular services

- iii. direct DHBs on matters related to the development and provision of their accountability documents, including the ability to direct the Board to include certain matters in their Annual Plans [SPH (00) M 9/6 refers].
39. Following the passage of legislation, the DHBs must legally comply with such directions.
40. I recommend the following checks be included into legislation to ensure that this power is used appropriately:
- i. the Minister of Health shall consult the affected Board(s) as to the direction given in the notice
 - ii. no direction given by the Minister of Health may require the supply to any person of any information relating to an individual that would enable the identification of the individual concerned
 - iii. the Minister of Health shall take account of the objectives of the DHB as specified in legislation before issuing a notice of direction
 - iv. the written notice of direction shall be published in the *Gazette* and tabled before Parliament as soon as practicable after the direction has been issued. This will make the Minister's direction transparent and give Parliament the opportunity to debate the issue.
41. Ministerial directives will also be subject to judicial review as a matter of existing Government practice. Under judicial review the courts are concerned about whether the Minister acted within the scope of the power of discretion conferred and whether the Minister acted reasonably and fairly. The courts are concerned with the process of decision-making rather than the outcome [Cabinet Office Manual 5.136 refers].

The Appointment of a 'Crown Monitor'

42. The Minister may wish to appoint a monitor to the Board of a DHB if close monitoring and ministerial direction have not achieved a satisfactory improvement in performance, or as a first step to address serious concerns. This would provide closer scrutiny of DHB decisions.
43. The Crown Monitor's role would be to:
- i. observe the Board's decisions and decision-making processes
 - ii. assist the Board in understanding Government's policy and wishes so they can be reflected in the Board's decisions
 - iii. advise the Minister of Health on the performance of the Board, and how the Minister's specific expectations are being addressed by the Board.
44. If concerns are not being adequately addressed, then the Minister would seek advice from the Crown Monitor and the Ministry of Health on whether it is

appropriate to take further action, for example, dismissing individual members, or dismissing the collective Board.

45. I recommend that a Crown Monitor would attend Board meetings, but not be a member of the particular Board. As such, the Crown Monitor would not have voting rights on the Board's decisions, but would have all other rights of Board members, for example, the rights to attend all board meetings, and receive all reports and minutes for the Board and its committees.
46. I recommend that where DHB performance is unsatisfactory the Minister of Health is able to appoint one or more Crown Monitors to the Board. It is generally envisaged that there will be one Crown Monitor appointed to a Board. However, in circumstances where multiple skills are required it may be appropriate to appoint multiple Crown Monitors to a particular Board.
47. A Crown Monitor would not change the Board's accountability to the Minister of Health for the decisions it makes. As the Crown Monitor would not be a member of the Board, he or she would not be held accountable for the decisions made by the Board. The Crown Monitor would be directly accountable to the Minister of Health, to whom they would report directly on an on-going basis.
48. I consider that the appointment of a Crown Monitor would be the most effective in situations where there are specific problems that need addressing, for example financial performance. This sanction is likely to be less effective in situations where there is overall governance problems. In these situations other mechanisms identified in this paper, for example replacement of the Chair, may be more effective in addressing this type of problem.

Dismissal and/or Demotion of the Chair and/or Deputy Chair of the Board

49. Cabinet has decided that the Minister of Health will appoint the Chair and Deputy Chair of each DHB [CAB (00) M 11/1A(3) (v) refers]. Cabinet has also decided that the Minister can dismiss individual members from the Board [CAB (00) M 11/1A (s) refers]. This includes the power to dismiss the Chair and/or the Deputy Chair.
50. The role of the Chair of a DHB is pivotal in ensuring the success and smooth functioning of the organisation. The Chair will be responsible to the Minister of Health for the overall performance of the DHB in meeting expectations and delivering outcomes.
51. The Chair will also be expected to undertake performance monitoring of individual Board members and address any concerns as they arise. This would include, identify and address the failure of individual Board members to act:
 - i. in good faith
 - ii. with reasonable care, diligence and skill

- iii. with honesty, probity and integrity in accord with any code of conduct. This includes objectivity, impartiality, honesty, fiduciary responsibility, and accountability.
52. The ultimate individual sanction for failure to act in this manner would be dismissal from the Board by the Minister of Health [CAB (00) M 11/1A refers].
53. In situations where the leadership of the Board is unsatisfactory and it is leading to poor Board and/or organisational performance, it may be appropriate to replace the Chair and/or Deputy Chair of the Board as a sign of no confidence in the Board. I consider that additional flexibility is needed to give the Minister of Health the power to demote the Chair and/or Deputy Chair without dismissing them from the Board entirely. It is recognised that in some circumstances it may not be desirable for a poorly performing Chair and/or Deputy Chair to remain as a member of the Board.
54. I recommend that the legislation provides a mechanism for the Minister of Health to dismiss, or demote to ordinary Board members, the Chair and/or the Deputy Chair of a DHB.

Dismissal of the Entire Board and Replacement with a Commissioner

55. Cabinet has also decided that the Minister of Health will have the ability to dismiss the entire Board and replace them with a Commissioner in defined circumstances [CAB (00) M 2/4 (m) refers].
56. The dismissal of an entire Board and its replacement with a Commissioner is the ultimate sanction a Minister can impose on a DHB. It is likely that this will be applied when either the specific situation is immediate and so serious that dissolving the Board is the only feasible option to remedy the problem (for example a collective Board refusing to adhere to a ministerial directive), or when a number of other sub-legislative and legislative-level sanctions have not been able to rectify the problem (for example, increased intrusive monitoring, and dismissal of the Chair).
57. This sanction could be applied where the Board fails:
- i. to give effect to the purposes and objectives set out in the empowering legislation, Statement of Intent, or Funding Agreement with the Crown
 - ii. to act so that its activities are conducted efficiently and effectively
 - iii. to act in a manner consistent with the spirit of service to the public
 - iv. to maintain the financial viability of the organisation and have regard to the position of creditors.
58. Further detail will be provided on the criteria for applying this sanction in the report-back on a detailed framework for rewards and sanctions by 31 August 2000.

ADDITIONAL MECHANISMS TO REWARD OR SANCTION DHBs

59. There are additional, more subtle mechanisms that can be used to reward or sanction DHB performance. These include the public dissemination of performance information on a routine basis, and agreeing to DHBs retaining unspent funding.

Public Dissemination of Information

60. Ministers have agreed that performance reports should be publicly disseminated [SPH (00) M 9/6 refers]. This provides a subtle means of rewarding and/or sanctioning DHB performance. This will support a more open and transparent information process than currently exists, or has existed in the past.
61. The Official Information Act 1982 provides specific regulations around an individual, or a group of individuals, requesting information. It does not make provisions for the proactive dissemination of reports to the public. It is likely that the DHBs will consider performance reports, for example those detailing quarterly reporting, audits or reviews, to be sensitive. DHBs may thus be reluctant for reports highlighting poor performance to be made publicly available.
62. I consider that making specific performance information publicly available is likely to be a powerful incentive to motivate good DHB performance, particularly when the focus is on high performance and benchmarking practices rather than being used for punitive purposes. Elected Board members will want to be recognised for doing a good job for the community which elected them, and the community will rightly be interested in the performance of their elected representatives.
63. Considering the sensitive information that is likely to be made publicly available, and the possible reluctance of some DHBs to have poor performance made public, I recommend that provision for the public release of performance reports will be included in the New Zealand Public Health Services Bill. This will mean that from the outset the DHBs and the public will be aware that this will be part of the framework from within which the DHBs will operate.

Retention or Removal of Surpluses

64. Section 16 of the Public Finance Act 1989 (PFA) gives the Minister of Finance the power to require DHBs to repay “as the Minister thinks fit” any surpluses that are generated. This will allow the Crown to require the DHBs to repay any surpluses that have been generated through non-performance against its Funding Agreement with the Crown. Section 16 of the PFA does not, however, rule out surpluses being retained by DHBs. I recommend that the *status quo* provided in the PFA remains for DHBs. The freedom to use any unspent funds

in a discretionary fashion will provide incentives on the DHBs to make best use of their budgets.

MERGERS OF DHBs

65. Cabinet has sought further advice on the legislation containing reserve powers for the Minister to merge two or more District Health Boards as a sanction [CAB (00) M11/1A3 (nnn) (x) refers].
66. More conventional means of managing DHB performance, such as the Funding Agreement, provide the Minister with significant levers to intervene if there are performance concerns.
67. Merging of a DHB with one or more other DHBs (in effect a ministerially mandated take-over) would be a very serious intervention, and it is assumed such a reserve power would be invoked only after persistent performance failures, and after other forms of intervention have failed. It is therefore unlikely that the threshold for a merger, as a response to persistent performance failure, would ever be reached. This would, therefore, be a weak sanction.
68. A key disadvantage of a ministerially imposed merger is that this would reduce the local community's ability to participate in decisions about health and disability services. An imposed merger may be seen as a sanction on the community, rather than the Board (which is likely to have been replaced by a Commissioner). Another disadvantage is that DHBs and communities may perceive mergers to be negative events, that only occur in cases of performance failures. However, a high-performing Board could seek opportunities to merge with a neighbouring DHB if that would benefit the local population (for example, if a DHB is not able to deliver on its statutory obligations because its population-base is too small). Therefore, I recommend against using merger of DHBs as a sanction.
69. The legislation will allow for DHBs to merge voluntarily [CAB (00) M2/4 refers]. DHBs may do so if there are mutual benefits, in terms of better health and independence outcomes, improved ability to manage funds, improved quality of planning and funding of health and disability services, or more cost-effective administration.
70. It may be that DHB Boards do not merge with other Boards even if there are significant benefits to all local communities in question. In such circumstances, and given the Crown's significant purchase and ownership interests in DHBs, the Minister of Health may want to be able to require DHBs to merge.
71. A first step would be for the Minister of Health (assisted by the Ministry of Health) to facilitate negotiations between the relevant boards, for example as part of the normal production of Funding Agreements and the process around approving the respective Statements of Intent. It is proposed that the Minister of Health should have a reserve power to merge two or more DHBs only if an impasse is reached, and if the Minister finds that there is a compelling case

that a merger will result in significant benefits to the local communities in question (in terms of improved health and independence, and community participation).

CONSULTATION

72. This paper has been prepared by an interagency working group led by the Ministry of Health, working with the Health Funding Authority, The Treasury, State Services Commission, and Crown Company Monitoring Advisory Unit. In addition, the Department of Prime Minister and Cabinet has been consulted in the preparation of this advice.

FINANCIAL IMPLICATIONS

73. Full identification of the one-off costs and ongoing fiscal impacts of the proposed structural changes, including those related to the establishment of DHB accountability arrangements, are included in the report back of the Fiscal Implications Working Group [CAB (00) M 2/4 refers].

LEGISLATIVE IMPLICATIONS

74. This paper makes specific recommendations on matters to be included in the drafting of the New Zealand Public Health and Disability and Health Reforms (transfer and transitions provisions) Bill.

HUMAN RIGHTS ACT 1993

75. The advice provided in this paper does not have Human Rights Act 1993 implications.

REGULATORY IMPACT STATEMENT

76. A Regulatory Impact Statement prepared in accordance with the requirements set out in CO (98) 5 is attached.

PUBLICITY

77. Any publicity related to the establishment of DHB accountability arrangements will be managed within the overall Communications Strategy developed by the Communications Workstream Group [CAB (00) M 11/1A refers].

CABINET

- i agreed to the governance arrangements for District Health Boards (DHBs), including the Ministerial power of direction; and

- ii noted that further advice would be provided on governance and other issues, including the detail of a residual Ministerial power to merge DHBs [CAB (00) M 11/1A(3) refers];
- b noted that on 8 May 2000, Cabinet directed officials to report back to the Ad Hoc Ministerial Committee with advice on the development of specific rewards and sanctions for application by the Ministers of Health and Finance and criteria for their application, the report on those to be incorporated into legislation to be provided by 8 May 2000, and the report on the complete framework by 31 August 2000 [CAB (00) M 15/10 refers];
- c noted that the paper attached to CAB (00) 322 examines the specific rewards and sanctions required for inclusion in the New Zealand Public Health and Disability Bill;
- d noted that the report back on a detailed framework for rewards and sanctions to be provided by 31 August 2000 will include:
 - i the criteria for the use of rewards and sanctions, and an escalation path for their use; and
 - ii further advice to Ministers on the removal of specific functions from the DHBs as a sanction;

INTERACTION WITH CROWN ENTITIES REFORM

- e noted that Cabinet on 12 June considered recommendations from the Cabinet Committee on Government Expenditure and Administration on Crown entities reform and that its decisions are set out in CAB (00) M 19/11(1);
- f noted that the Crown Entities Reform legislation resulting from the consideration referred to in paragraph (e) above is likely to provide the legislative transparency required for the duties of individual DHB board members and the collective board;
- g agreed that, when enacted, the provisions in the Crown Entities Reform legislation on the duties of boards and individual board members would apply to DHBs;
- h agreed that the health legislation state that legislated sanctions will be applied for failure against the duties of boards or individual board members;
- i noted that the proposed Crown Entities Reform legislation is likely to follow the health reforms, but precede the election of DHB board members in October 2001;
- j agreed that a provision be made to amend the New Zealand Public Health and Disability Bill to include the duties of the DHB board and individual board members if enactment of the Crown Entities Initiative is delayed beyond October 2001;

MINISTERIAL POWER OF DIRECTION

- k agreed that the following checks be provided in the New Zealand Public Health and Disability Bill to ensure that the Ministerial power of direction is used appropriately:

the Minister of Health shall consult the affected board(s) as to the direction given in the notice;

no direction given by the Minister of Health may require the supply to any person of any information relating to an individual that would enable the identification of the individual concerned;

the Minister of Health shall take account of the objectives of the DHB as specified in legislation before issuing a notice of direction;

the written notice of direction shall be published in the *Gazette* and tabled before Parliament as soon as practicable after the direction has been issued;

CROWN MONITORS

- l agreed that the Minister of Health be enabled under the New Zealand Public Health and Disability Bill to appoint Crown Monitors to the boards of DHBs;

- m agreed that Crown Monitors will:

report directly to the Minister of Health;

not have voting rights on the board, but will have all other rights of board members, for example, the right to attend all board meetings, and receive all reports and minutes for the board and its committees;

- n agreed that a Crown Monitor's role will be to:

observe the board's decisions and decision-making processes;

assist the board in understanding the Government's policy and wishes so they can be reflected in the board's decisions;

advise the Minister of Health on the performance of the board, and how it is addressing the Minister's specific expectations;

- o noted that the appointment of Crown Monitors will be in addition to the routine monitoring of the board by central agencies, and board accountability;

DEMOTION / REPLACEMENT

- p agreed that the New Zealand Public Health and Disability Bill will provide a mechanism for the Minister of Health to sanction the DHB by demoting or replacing the Chair and/or Deputy Chair;

- q noted that on 31 January 2000, Cabinet agreed that the New Zealand Public Health and Disability Bill will give the Minister of Health the power to replace the board with a Commissioner [CAB (00) M 2/4 refers], and that this will provide a mechanism for sanctioning the board;

OTHER REWARDS AND SANCTIONS

- r agreed that the New Zealand Public Health and Disability Bill will provide for specific DHB performance reports to be made public;
- s noted that section 16 of the Public Finance Act 1989 will allow the DHBs to generate and retain surpluses, or repay their surpluses to the Crown “as the Minister thinks fit”;

MERGERS OF DHBs

- t agreed that the Minister of Health should have reserve powers in legislation to merge DHBs if the Minister considers there is a compelling case that a merger will result in significant benefits to the local community, and an impasse in negotiations is reached between the DHBs concerned;
- u agreed that DHBs should not be sanctioned through merging them together.

REGULATORY IMPACT STATEMENT

Objective

1. The policy objective is to motivate good DHB performance through using an incentives-based framework. This will support transparency, and provide certainty that the appropriate measures will be taken to ensure that the Government’s and the public’s expectations are achieved over time. The sanctions included in the New Zealand Public Health and Disability Bill will provide a safety net to protect the Crown’s fiscal and other interests in DHBs.

Statement of the Problem and the Need for Action

2. The problem is to ensure that DHBs are clear about the Government’s performance requirements and the associated rewards and sanctions that will apply in the case of performance/non-performance.

Feasible Options to Achieve the Desired Objectives

3. The paper concludes that the incentives-based framework will include using non-legislative and legislative rewards and sanctions. However, to ensure transparency, the more serious sanctions which involve high levels of

intervention in the DHBs' governance and operations should be included in legislation.

Non-regulatory Measures

4. The rewards and sanctions that will operate below a legislative level will be canvassed in a separate report back to Ministers due by 31 November 2000. This will cover criteria for their use and an escalation path.

Regulatory Measures

5. This paper recommends that the mechanisms outlined below are incorporated into the New Zealand Public Health and Disability Bill to sanction the Board of a DHB. These are 'last resort' sanctions that would be applied after non-legislative sanctions have not resolved issues, or the specific situation warrants a more severe sanction to be applied.
 - i. the ministerial power of direction
 - ii. the appointment of a Crown Monitor to report back to the Minister on the performance of the Board
 - iii. the replacement of the Chair and/or the Deputy Chair of the Board
 - iv. the replacement of the Board with a Commissioner.

Statement of the Net Benefit of this Proposal

Benefits

6. The key benefits of having the most severe sanctions incorporated in legislation will:
 - i. ensure that the Minister of Health has the legal ability to apply serious sanctions on the Boards of the DHBs
 - ii. mean that from the outset the DHBs and the public will be aware of the most severe sanctions the Government can use to ensure that its objectives are met.

Costs

7. The cost of including sanctions in legislation is that DHBs and the community may perceive these as being those sanctions that the Government will use on a routine basis. These sanctions, however, will only be used in the most extreme cases. Non-legislative sanctions, for example more intensive monitoring by the Ministry of Health, will be able to identify and resolve most performance issues.

Consultation

8. The following agencies were consulted in the preparation of the attached Cabinet paper: Health Funding Authority, Crown Company Monitoring Advisory Unit, Department of Prime Minister and Cabinet, The Treasury, and the State Services Commission.