



ANALYSIS

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1996, No. 6

An Act to amend the Hospitals Act 1957

[13 March 1996]

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

1. Short Title and commencement—(1) This Act may be cited as the Hospitals Amendment Act 1996, and shall be read together with and deemed part of the Hospitals Act 1957 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the day after the date on which it receives the Royal assent.

2. Interpretation—Section 118 of the principal Act (as substituted by section 5 of the Hospitals Amendment Act 1993) is hereby amended by inserting, after the definition of the term “Crown health enterprise”, the following definition:

“‘Exemption’ means an exemption granted under section 136b of this Act.”.

3. New sections inserted—The principal Act is hereby amended by inserting, after section 136 (as substituted by section 13 (1) of the Hospitals Amendment Act 1966), the following sections:

“136A. Classes of hospital that may be exempted from application of regulations—(1) The Minister may from time to time, by notice in the *Gazette*, declare that hospitals of such class or classes as are specified in the notice are eligible to be granted an exemption under section 136B of this Act.

“(2) A notice issued under subsection (1) of this section may define the class or classes of hospital to which the notice relates in such manner as the Minister thinks fit, including (without limitation) by reference to such criteria as are specified in the notice.

“(3) The Minister may from time to time, by notice in the *Gazette*, amend or revoke any notice issued under subsection (1) of this section.

“(4) All notices issued under this section shall be deemed to be regulations for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.

“136B. Minister may grant exemption from application of regulations—(1) Any person who is—

“(a) An applicant for a licence to keep a hospital; or

“(b) The licensee of a hospital—
may apply to the Minister for an exemption, in respect of the hospital to which the application for the licence relates or, as the case may be, the hospital to which the licence relates, from all or any of the provisions of any regulations made under section 152 of this Act.

“(2) Every application for an exemption shall—

“(a) Be made in writing to the Director-General; and

“(b) Be in the form provided or approved by the Director-General for that purpose; and

“(c) Be accompanied by the prescribed fee (if any).

“(3) On receiving an application made under this section, the Minister, if he or she is satisfied—

“(a) That the hospital to which the application relates falls within a class of hospital in respect of which a notice issued under section 136A of this Act is for the time being in force; and

“(b) That the granting of the exemption would not compromise the health or safety of any patient,—
may exempt the hospital to which the application relates from all or any of the provisions of any regulations made under section 152 of this Act.

“(4) An application under this section for an exemption may be made in conjunction with an application under section 120 of this Act for a licence, but in any such case no exemption

shall be granted unless the application for the licence is successful.

“(5) Subject to the terms of subsection (3) of this section, the grant or refusal of an exemption under this section shall in all cases be in the absolute discretion of the Minister.

“136c. **Terms of exemption**—(1) Every exemption shall specify the terms of the exemption, including the provision or provisions of the regulations made under section 152 of this Act in respect of which the hospital to which the exemption relates is exempt.

“(2) Subject to subsection (5) of this section, the Minister may from time to time vary the terms of an exemption, by endorsement on the exemption or otherwise in writing.

“(3) An exemption may be unconditional or subject to such conditions as the Minister thinks fit and specifies in the exemption.

“(4) Subject to subsection (5) of this section, the Minister may at any time, by written notice to the holder of an exemption, revoke, amend, or add to any conditions imposed pursuant to subsection (3) of this section.

“(5) Except where any variation to any exemption is made, pursuant to subsection (2) or subsection (4) of this section, on the application of the holder of the exemption and in accordance with the terms of that application, the Minister shall not vary any exemption under this section without giving the holder of the exemption a reasonable opportunity to make written submissions to the Minister in relation to the matter.

“136d. **Duration of exemption**—Every exemption—

“(a) Shall come into force on the date of its issue; and

“(b) Shall continue in force until—

“(i) It is revoked pursuant to section 136E (1) of this Act; or

“(ii) It ceases to be in force in accordance with section 136F (2) of this Act; or

“(iii) It is surrendered pursuant to section 136G of this Act.

“136e. **Revocation of exemption**—(1) Subject to subsection (2) of this section, the Minister may at any time, by notice in writing to the holder of an exemption, revoke an exemption issued in respect of a hospital if the Minister is satisfied—

“(a) That the hospital no longer meets all the requirements for the issue of an exemption; or

“(b) That the licensee of the hospital has failed to comply with any condition imposed by the Minister in respect of that exemption.

“(2) The Minister shall not revoke an exemption unless the Minister has first given the holder of the exemption an opportunity to be heard.

“136F. **Exemption to follow licence**—(1) Where an exemption is granted in respect of a hospital, the person who is for the time being the licensee of that hospital shall be the holder of the exemption for the purposes of this Part of this Act.

“(2) An exemption shall cease to be in force if the hospital to which the exemption relates ceases for any reason to be a licensed hospital.

“136G. **Surrender of exemption**—(1) Subject to this section, the holder of an exemption may at any time surrender that exemption by notice in writing to that effect sent to the Director-General.

“(2) The surrender shall take effect on the expiry of 3 months after the date of the receipt of the notice by the Director-General, or on such earlier date as the Director-General may approve.

“(3) On or before the surrender takes effect, the holder of the exemption shall send the exemption to the Director-General for cancellation.

“136H. **Substituted exemptions**—Section 128A of this Act, so far as applicable, shall apply in respect of an exemption—

“(a) As if it were a licence; and

“(b) With all necessary modifications.”

4. Burden of proof in prosecutions to be on defendant—Section 146 of the principal Act is hereby amended by adding the following subsection:

“(3) In any prosecution for an offence against any regulations made under section 152 of this Act, the burden of proving—

“(a) That an exemption is in force in respect of any hospital; and

“(b) The terms of that exemption—shall lie upon the defendant.”