

HOSPITAL ACTS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill comprises 2 Parts. *Part I* contains amendments to the Area Health Boards Act 1983. *Part II* contains amendments to the Hospitals Act 1957. It is intended that during the passage of the Bill it will be so amended that the 2 Parts will become separate amendment Bills.

These amendments are being presented as a single Bill because the amendments to the Area Health Boards Act 1983 contained in *clauses 3 to 7* are exactly the same as the amendments to the Hospitals Act 1957 contained in *clauses 10 to 14*.

Clause 1 relates to the Short Title.

PART I

Clause 2 provides that *Part I* is to be read with the Area Health Boards Act 1983 (in that Part referred to as the principal Act).

Clause 3 (1) makes various amendments to definitions in section 2 of the principal Act. These definitions all relate to computers. The definition of "access" is replaced by a definition of "operate". A new definition of "authorised" gives that term the meaning "authorised by the Director-General or a board", and omits the present reference to "authorised by or under regulations". A new definition of "health computer system" provides for the possibility of there being 2 or more health computer systems, rather than the unified system at present contemplated by the principal Act, and extends to cover systems entirely under the control of the Director-General. A new definition—of the term "terminal"—is introduced.

Clause 3 (2) makes it clear that where an Area Health Board has computer facilities that are connected to a health computer system only some of the time, those facilities are part of that system only when they are connected to it.

Clause 4 enables representatives of a constituent district of an area health board to be elected on a ward basis where that district is the district of a District Council formed by the amalgamation of a Borough Council and a County Council. The Minister of Health is empowered to direct that elections be held on that basis, but only if the board concerned has, by special resolution, recommended that the Minister do so. (The Minister is also given power to direct the formation of combined wards where the number of wards in the district is greater than the number of representatives to be elected.) The adoption of a ward system will have no effect in respect of any election held within 4 months of the Minister's direction.

Clause 5 empowers an area health board to delegate its power to appoint and dismiss employees.

Clause 6 replaces section 51 of the principal Act with a redrafted section. The principal amendment allows the use of fictitious information in health computer systems for certain limited purposes. These purposes are the training of officers in the use of health computer systems, the testing of health computer systems, and the detection of misuse of health computer systems. Except where it is being used to detect misuse of the system, fictitious information stored in a health computer system must be identified as being for training or testing purposes only, and kept distinct from other information stored in that system. In addition, express power is given for persons to be authorised to take certain actions that are (and will continue to be) offences if taken without authority, and authority is given for malfunctioning health computer systems to be connected to other systems for the purpose of diagnosing and rectifying the malfunctions.

Clause 7 amends section 96 of the principal Act so as to give express power to make regulations regulating the operation of health computer systems.

Clause 8 makes mechanical amendments to the Electoral Act 1956 and the Medical Practitioners Act 1968. These amendments are consequential on the passage of the principal Act, but were inadvertently omitted from the Schedule of consequential amendments.

PART II

Clause 9 provides that *Part II* is to be read with the Hospitals Act 1957 (in that Part referred to as the principal Act).

Clause 10 amends section 2 of the principal Act in the same way as *clause 3* amends the Area Health Boards Act 1983.

Clause 11 amends section 29 of the principal Act in the same way as *clause 4* amends the Area Health Boards Act 1983.

Clause 12 amends section 49 of the principal Act in the same way as *clause 5* amends the Area Health Boards Act 1983.

Clause 13 amends the principal Act in the same way as *clause 6* amends the Area Health Boards Act 1983.

Clause 14 amends section 152 of the principal Act in the same way as *clause 7* amends the Area Health Boards Act 1983.

Hon. Dr Michael Bassett

HOSPITAL ACTS 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 General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Hospital Acts Amendment Act 1985.

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* (hereafter in this Part of this Act referred to as the principal Act.)

*1983, No. 134

3. Interpretation—(1) Section 2 of the principal Act is hereby amended by omitting the definitions of the terms “access”, “authorised”, and “computer system”, and inserting, in their appropriate alphabetical order, the following definitions:

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“ ‘Authorised’,—

“(a) In relation to a health computer system under the control of the Director-General, means authorised by him; and

“(b) In relation to a health computer system under the control of a board, means authorised by that board:

“ ‘Health computer system’ means any system of computers and terminals—

“(a) Under the control of the Director-General; or 15

“(b) Part of which is under the control of the Director-General and part of which is under the control of a board;—

and includes any part of any such system:

“ ‘To operate’, in relation to any health computer system, 20 means to—

“(a) Enter information into; or

“(b) Modify information stored in; or

“(c) Delete information from; or

“(d) Retrieve information from— 25

that system; and ‘operation’ has a corresponding meaning:

“ ‘Terminal’, in relation to any health computer system, means any device or apparatus by the use of which any person may operate that system:” 30

(2) The said section 2 is hereby further amended by adding, as **subsection (2)**, the following subsection:

“(2) Where there is under the control of a board any computer or terminal that is connected to a health computer system from time to time only,— 35

“(a) When it is so connected, it shall be deemed to be part of that system; and

“(b) When it is not so connected, it shall be deemed not to be part of that system.”

(3) Section 50 (9) of the principal Act is hereby consequentially 40 amended by omitting the words “the computer system”, and substituting the words “a health computer system”.

4. Election of representatives of constituent districts—

Section 11 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

5 “(2A) Subject to **subsection (2E)** of this section, the representatives on an area health board of a constituent district shall be elected by the electors of the whole of that district.

“(2B) This subsection applies to every constituent district (not being a combined district) of an area health board that is the district of a District Council—

10 “(a) Formed by the amalgamation of one or more Borough Councils and one or more County Councils; and

“(b) For the time being required by the Local Government Act 1974 to be elected at the next general election of that council—

15 “(i) By the electors of each ward of that district; or

“(ii) Partly by the electors of that district as a whole and partly by the electors of each ward of that district.

20 “(2C) Subject to **subsection (2D)** of this section, the Minister may, by notice in the *Gazette*, direct the election of representatives on an area health board of a constituent district to which **subsection (2B)** of this section applies—

“(a) By the electors of each ward of that district; or

25 “(b) Partly by the electors of that district as a whole and partly by the electors of each ward of that district; or

30 “(c) Where the election of representatives on an area health board of such a district is for the time being required to be in accordance with **paragraph (a)** or **paragraph (b)** of this subsection, the election of those representatives by the electors of that district as a whole;—

35 and may, in respect of a direction under **paragraph (a)** or **paragraph (b)** of this subsection, also direct that any wards should be combined for the purposes of an election held in accordance with that direction.

40 “(2D) The Minister shall not give any direction under **subsection (2C)** of this section unless the area health board concerned has, since the last election of representatives, by special resolution recommended to the Minister that the Minister should do so.

45 “(2E) Where the Minister gives a direction under **subsection (2C)** of this section, all elections of representatives on the area health board concerned of the constituent district

concerned held more than 4 months after the publication of the notice concerned shall be held in accordance with that direction.”

5. Appointment and dismissal of employees—Section 39 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection: 5

“(1A) An area health board may, either absolutely or subject to conditions, delegate—

“(a) To any specified employees of that board, or to the holders for the time being of specified offices in the service of that board, the power to appoint any person to any position (other than a position for the time being designated in respect of that Board by Order in Council made under section 20 (2) of the Health Service Personnel Act 1983) in the employment of that board: 10

“(b) To the holders of positions for the time being designated in respect of that board by Order in Council made under section 20 (2) of the Health Service Personnel Act 1983 the power to dismiss any person from any position (other than another such position) in the employment of that board;— 20

and in that case the following provisions shall apply:

“(c) Subject to the conditions (if any) subject to which that power was delegated, it may be exercised as if it had been conferred directly and not by delegation: 25

“(d) The delegation shall be revocable at will, and shall continue in effect until revoked:

“(e) In the absence of proof to the contrary, where any person purports to act pursuant to a delegation under this subsection, the action concerned shall be presumed to be in accordance with that delegation: 30

“(f) No delegation under this subsection shall affect or prevent the exercise of the power of appointment or dismissal (as the case may be) contained in subsection (1) of this section.” 35

6. Health computer system—(1) The principal Act is hereby amended by repealing section 51, and substituting the following section:

“51. (1) Where the Director-General or a board has a health computer system under his or its control, he or it shall take all reasonable steps to ensure that— 40

“(a) No person not authorised to have physical access to that system has physical access to it:

“(b) No person not authorised to operate that system operates it:

5 “(c) A record is kept of every occasion on which a person authorised to operate that system operates it, the nature of the operation concerned, and the identity of that person:

“(d) That system keeps a record of every attempt (whether successful or not) to operate it by a person not authorised to operate it.

10 “(2) Subject to **subsection (3)** of this section, the Director-General may, if he thinks fit, authorise the use of a health computer system for the storage, processing, and retrieval, of fictitious information for all or any of the following purposes:

15 “(a) Training officers of the Department or employees of any board in the use of that system:

“(b) Testing that system or any part of it:

“(c) Detecting any misuse of that system (whether or not that misuse amounts to an offence against this Act).

20 “(3) All fictitious information stored in a health computer system for a purpose specified in **paragraph (a)** or **paragraph (b)** of **subsection (2)** of this section shall at all times be clearly identified as being for training or testing purposes, and shall be kept distinct from all other information stored in that system.

25 “(4) Any use of a health computer system authorised under **subsection (2)** of this section shall not be an offence against **subsection (5)** of this section.

30 “(5) Every person commits a crime, and is liable on conviction on indictment to imprisonment for a term not exceeding 3 years, who—

“(a) Knowing that he is not authorised to do so, connects any health computer system to any other computer or any terminal or other installation connected to or forming part of any other computer; or

35 “(b) Knowingly falsifies any information stored in a health computer system by the deletion or modification of all or any part of, or the addition of other information to, that information; or

40 “(c) Knowing that he is not authorised to do so, enters into or deletes from a health computer system any information; or

“(d) Knowing that he is required in the course of his duties to do so, wilfully fails or omits to enter any information into a health computer system; or

“(e) Knowingly provides false information with the intent that it be entered into a health computer system; or

“(f) Knowing that he is not authorised to do so, operates or attempts to operate a health computer system, whether by means of any device or apparatus that is part of that system or by any other means; or 5

“(g) Knowing that he is not authorised to do so, modifies the programming of a health computer system.

“(6) Nothing in this section shall limit the rights, powers, and duties of the Audit Office in relation to information stored in any health computer system. 10

“(7) Notwithstanding subsection (5) (a) of this section, but subject to subsection (8) of this section, no person commits an offence against this Act who with the consent of the Director-General or a board, connects a health computer system under his or its control to any other computer, or a terminal or other installation. 15

“(8) Neither the Director-General, nor a board, shall authorise any person to connect a health computer system under his or its control to any other computer, or to any terminal or other installation connected to or forming part of any other computer, unless he or it is satisfied that— 20

“(a) That system is or may be malfunctioning; and

“(b) The other computer concerned is under the control of a specialist in the maintenance and repair of computers; and 25

“(c) The connection concerned is necessary to accomplish all or any of the following things:

“(i) Ascertain whether or not that system is malfunctioning; 30

“(ii) Detect malfunctions in that system:

“(iii) Enable the rectification of any malfunctions in that system;—

and the authorisation concerned shall specify the things for whose accomplishment it is given, and shall expire once they have been accomplished or prove to be impossible or impracticable.” 35

(2) The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item: 40

“The Area Health Boards Act 1983		51. Offences in relation to health computer systems.”
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7. Regulations—Section 96 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Regulating the operation of health computer systems:”.

5 **8. Amendments consequential on passage of principal Act**—(1) Section 2 (1) of the Electoral Act 1956 is hereby amended by adding to the definition of the term “hospital” the words “or the Area Health Boards Act 1983”.

(2) Section 34 (1) of the Medical Practitioners Act 1968 is
10 hereby amended by—

(a) Adding to paragraph (a) of the definition of the term “hospital”; and

(b) Inserting in paragraph (a) of the definition of the term “Medical Superintendent”, after the expression
15 “1957”,—

the words “or the Area Health Boards Act 1983”.

(3) **Subsections (1) and (2)** of this section shall be deemed to have come into force on the commencement of the principal Act.

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PART II

AMENDMENTS TO HOSPITALS ACT 1957

9. 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* (hereafter in this Part of this Act referred
25 to as the principal Act).

*R.S. Vol. 2, p. 757

Amendments: 1980, No. 25; 1981, No. 144; 1982, No. 76; 1982, No. 143, 1983, No. 77

10. Interpretation—(1) Section 2 of the principal Act (as amended by section 4 (2) of the Hospitals Amendment Act 1980) is hereby further amended by omitting the definitions of the terms “access”, “authorised”, and “computer system”, and
30 inserting, in their appropriate alphabetical order, the following definitions:

“ ‘Authorised’,—

“(a) In relation to a health computer system under the control of the Director-General, means authorised
35 by him; and

“(b) In relation to a health computer system under the control of a Board, means authorised by that Board:

“‘Health computer system’ means any system of computers and terminals—

“(a) Under the control of the Director-General; or

“(b) Part of which is under the control of the Director-General and part of which is under the control of a Board; and includes any part of any such system: 5

“‘To operate’, in relation to any health computer system, means to—

“(a) Enter information into; or 10

“(b) Modify information stored in; or

“(c) Delete information from; or

“(d) Retrieve information from—

that system; and ‘operation’ has a corresponding meaning: 15

“‘Terminal’, in relation to any health computer system, means any device or apparatus by the use of which any person may operate that system.”.

(2) The said section 2 is hereby further amended by adding, as **subsection (2)**, the following subsection: 20

“(2) Where there is under the control of a Board any computer or terminal that is connected to a health computer system from time to time only,—

“(a) When it is so connected, it shall be deemed to be part of that system; and 25

“(b) When it is not so connected, it shall be deemed not to be part of that system.”

(3) Section 62 (9) of the principal Act is hereby consequentially amended by omitting the words “the computer system”, and substituting the words “a health computer system”. 30

11. Election of representatives of constituent districts—

Section 29 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) Subject to **subsection (2E)** of this section, the representatives on a Board of a constituent district shall be 35 elected by the electors of the whole of that district.

“(2B) This subsection applies to every constituent district (not being a combined district) of a Board that is the district of a District Council—

“(a) Formed by the amalgamation of one or more Borough 40 Councils and one or more County Councils; and

“(b) For the time being required by the Local Government Act 1974 to be elected at the next general election of that council—

- 5 “(i) By the electors of each ward of that district;
or
 “(ii) Partly by the electors of that district as a whole and partly by the electors of each ward of that district.

10 “(2C) Subject to **subsection (2D)** of this section, the Minister may, by notice in the *Gazette*, direct the election of representatives on a Board of a constituent district to which **subsection (2B)** of this section applies—

- “(a) By the electors of each ward of that district; or
15 “(b) Partly by the electors of that district as a whole and partly by the electors of each ward of that district;
or
 “(c) Where the election of representatives on a Board of such a district is for the time being required to be in accordance with **paragraph (a)** or **paragraph (b)** of this subsection, the election of those representatives by
20 the electors of that district as a whole;—

and may, in respect of a direction under **paragraph (a)** or **paragraph (b)** of this subsection, also direct that any wards should be combined for the purposes of an election held in accordance
25 with that direction.

 “(2D) The Minister shall not give any direction under **subsection (2C)** of this section unless the Board concerned has, since the last election of representatives, by special resolution recommended to the Minister that the Minister should do so.

30 “(2E) Where the Minister gives a direction under **subsection (2C)** of this section, all elections of representatives on the Board concerned of the constituent district concerned held more than 4 months after the publication of the notice concerned shall be held in accordance with that direction.”

35 **12. Appointment and dismissal of employees**—Section 49 of the principal Act (as substituted by section 65 (1) of the Area Health Boards Act 1983) is hereby amended by inserting, after subsection (1), the following subsection:

40 “(1A) A Board may, either absolutely or subject to conditions, delegate—

- “(a) To any specified employees of that Board, or to the holders for the time being of specified offices in the service of that Board, the power to appoint any person to any position (other than a position for

the time being designated in respect of that Board by Order in Council made under section 20 (2) of the Health Service Personnel Act 1983) in the employment of that Board:

“(b) To the holders of positions for the time being designated in respect of that Board by Order in Council made under section 20 (2) of the Health Service Personnel Act 1983 the power to dismiss any person from any position (other than another such position) in the employment of that Board;—

and in that case the following provisions shall apply:

“(c) Subject to the conditions (if any) subject to which that power was delegated, it may be exercised as if it had been conferred directly and not by delegation:

“(d) The delegation shall be revocable at will, and shall continue in effect until revoked:

“(e) In the absence of proof to the contrary, where any person purports to act pursuant to a delegation under this subsection, the action concerned shall be presumed to be in accordance with that delegation:

“(f) No delegation under this subsection shall affect or prevent the exercise of the power of appointment or dismissal (as the case may be) contained in subsection (1) of this section.”

13. Health computer system—The principal Act is hereby amended by repealing section 62A (as inserted by section 4 of the Hospitals Amendment Act 1980), and substituting the following section:

“62A. (1) Where the Director-General or a Board has a health computer system under his or its control, he or it shall take all reasonable steps to ensure that—

“(a) No person not authorised to have physical access to that system has physical access to it:

“(b) No person not authorised to operate that system operates it:

“(c) A record is kept of every occasion on which a person authorised to operate that system operates it, the nature of the operation concerned, and the identity of that person:

“(d) That system keeps a record of every attempt (whether successful or not) to operate it by a person not authorised to operate it.

“(2) Subject to subsection (3) of this section, the Director-General may, if he thinks fit, authorise the use of a health

computer system for the storage, processing, and retrieval, of fictitious information for all or any of the following purposes:

- “(a) Training officers of the Department of Health or employees of any Board in the use of that system:
- 5 “(b) Testing that system or any part of it:
- “ (c) Detecting any misuse of that system (whether or not that misuse amounts to an offence against this Act).
- “(3) All fictitious information stored in a health computer system for a purpose specified in **paragraph (a)** or **paragraph (b)** of **subsection (2)** of this section shall at all times be clearly identified as being for training or testing purposes, and shall be kept distinct from all other information stored in that system.
- 10 “(4) Any use of a health computer system authorised under **subsection (2)** of this section shall not be an offence against **subsection (5)** of this section.
- 15 “(5) Every person commits a crime, and is liable on conviction on indictment to imprisonment for a term not exceeding 3 years, who—
- 20 “(a) Knowing that he is not authorised to do so, connects any health computer system to any other computer or any terminal or other installation connected to or forming part of any other computer; or
- “ (b) Knowingly falsifies any information stored in a health computer system by the deletion or modification of all or any part of, or the addition of other information to, that information; or
- 25 “(c) Knowing that he is not authorised to do so, enters into or deletes from a health computer system any information; or
- 30 “(d) Knowing that he is required in the course of his duties to do so, wilfully fails or omits to enter any information into a health computer system; or
- “ (e) Knowingly provides false information with the intent that it be entered into a health computer system; or
- 35 “(f) Knowing that he is not authorised to do so, operates or attempts to operate a health computer system, whether by means of any device or apparatus that is part of that system or by any other means; or
- 40 “(g) Knowing that he is not authorised to do so, modifies the programming of a health computer system.
- “(6) Nothing in this section shall limit the rights, powers, and duties of the Audit Office in relation to information stored in any health computer system.

“(7) Notwithstanding **subsection (5) (a)** of this section, but subject to **subsection (8)** of this section, no person commits an offence against this Act who, with the consent of the Director-General or a Board, connects a health computer system under his or its control to any other computer, or a terminal or other installation. 5

“(8) Neither the Director-General, nor a Board, shall authorise any person to connect a health computer system under his or its control to any other computer, or to any terminal or other installation connected to or forming part of any other computer, unless he or it is satisfied that— 10

“(a) That system is or may be malfunctioning; and

“(b) The other computer concerned is under the control of a specialist in the maintenance and repair of computers; and 15

“(c) The connection concerned is necessary to accomplish all or any of the following things:

“(i) Ascertain whether or not that system is malfunctioning:

“(ii) Detect malfunctions in that system: 20

“(iii) Enable the rectification of any malfunctions in that system;—

and the authorisation concerned shall specify the things for whose accomplishment it is given, and shall expire once they have been accomplished or prove to be impossible or impracticable.” 25

14. Regulations—(1) Section 152 of the principal Act is hereby amended by inserting in subsection (2), after paragraph (lm), the following paragraph: 30

“(ln) Regulating the operation of health computer systems:”.

(2) The said section 152 is hereby further amended by repealing subsection (3) (as inserted by section 8 of the Hospitals Amendment Act 1980).

(3) Section 8 of the Hospitals Amendment Act 1980 is hereby consequentially repealed. 35