

HOSPITALS AMENDMENT BILL

EXPLANATORY NOTE

Clause 1 relates to the Short Title.

Clause 2 amends section 3 of the principal Act and empowers the Minister of Health to ensure and encourage the provision by Hospital Boards of public mortuaries.

Clause 3 amends section 4 of the principal Act, which relates to the functions and duties of Hospital Boards.

Subclause (1): Under section 4 (1) (c) (v), Hospital Boards have the duty of providing for the care and treatment of any person who is prepared to undergo medical or surgical procedure or operation for the purpose of assisting the relief and medical or surgical care and treatment of some other person or for the advancement of medical knowledge, education, or research.

The amendment extends this provision by providing for Hospital Boards to have the duty of caring for and treating any person who is prepared to undergo medical or surgical procedure or operation for any other lawful purpose.

Subclause (2) provides that it shall be the duty of Hospital Boards to provide public mortuaries, to such extent and subject to such conditions and limitations as the Minister of Health thinks necessary.

Subclause (3): Section 4 (5) provides that a Hospital Board shall not be deemed to be the agent or servant of the Crown or to be an instrument of the Government. The amendment makes this provision subject to the new subsection (6) of section 4 set out in *subclause (4)* of this clause.

Subclause (4) adds a new subsection (6) to section 4.

The new subsection provides that for the purposes of sections 55 to 58 of the Patents Act 1953, the services of a Board shall be deemed to be the services of the Crown.

The effect of this will be to enable the Department of Health to authorise a Hospital Board to make, use, and exercise any patented invention for the Board's services. For example, the new provision would enable Hospital Boards to import and use drugs in breach of patent, subject to payment of royalty.

Clauses 4 and 5 amend sections 7 and 11 of the principal Act, which relate to the Hospitals Advisory Council.

The Council's membership is increased by 1. The additional member is to be a medical practitioner nominated by the Council of the Medical Association of New Zealand.

The 2 sections are to come into force on 1 April 1974.

Clause 6 amends section 51A of the principal Act, which relates to the Hospital Board Review Committee.

The amendments provide for the Review Committee to have the powers of a Commission of Inquiry, and empower the Committee to order a complainant or appellant to pay the costs of the hearing and the costs of the Hospital Board which is a party if it considers the complaint or appeal to be frivolous or vexatious or one that should not have been made.

These provisions are based on similar provisions relating to the Public Service Appeal Board.

Clause 7 amends section 59 of the principal Act, which relates to access by teachers and medical students to hospitals.

Subclause (1): Under paragraph (b) of section 59 (1) an agreement between a Hospital Board and the governing body of a medical school may provide for the appointment by the Board of a medical school teacher as a medical officer to perform duties relating to the treatment of patients in addition to tutorial duties, and the payment by the Board to him or to the governing body of the school of remuneration.

Under paragraph (c) of section 59 (1), the agreement may also provide for the carrying out by a hospital medical officer of tutorial duties, and the making of contributions to the Board by the governing body of the school towards the medical officer's remuneration.

The amendment provides that in both cases "remuneration" includes all payments made or proposed to be made in consideration of services rendered or to be rendered, and, subject to the terms of the agreement, shall not be limited by any determination fixing the remuneration of persons employed by Hospital Boards.

Subclause (2) extends the operation of section 59 to students in any other profession or activity associated with hospitals or health services.

Clause 8 amends section 62 of the principal Act, which relates to non-disclosure of medical information.

Subsection (3) of section 62 provides that nothing in the section shall prohibit the use or disclosure of information concerning a patient's condition or treatment for the purposes of the advancement of medical knowledge or research.

The amendment extends the exemption to other knowledge or research relating to any profession or activity associated with hospitals or health services.

Clause 9 amends section 64A of the principal Act, which relates to health centres.

The amendment provides that, notwithstanding anything in the Public Bodies Leases Act 1969, a Hospital Board may lease the whole or any part of a health centre by private contract for any term not exceeding 10 years with a right of renewal for 1 further term not exceeding 10 years. The rent for the renewed term is to be determined in accordance with the Public Bodies Leases Act 1969.

Clause 10 amends section 65 of the principal Act, which relates to the making of bylaws by Hospital Boards.

The purpose of the amendments is to remove doubts as to the right of a Board to charge parking fees and to discriminate between different classes of vehicle owners such as staff and visitors.

Clause 11 amends section 77A of the principal Act.

That section provides that a Hospital Board may provide care and treatment free of charge to any person who is willing to donate any organ or other part of his body or who is otherwise prepared to undergo medical or surgical procedure or operation for the purpose of assisting the relief and medical or surgical treatment of some other person or for the advancement of medical knowledge, education, or research.

The amendment is similar to the amendment contained in *clause 3 (1)* of this Bill, namely, it extends section 77A by providing that Hospital Boards may provide such care and treatment for any other lawful purpose.

Clause 12 amends section 78A of the principal Act, which relates to liability for cost of treatment.

Subclause (1): Section 78A (2) provides that any person not entitled to a social security hospital benefit is liable for the cost of treatment provided to him by a Hospital Board.

The amendment makes that provision subject to section 77A of the principal Act (see *clause 11* above).

Subclause (2) adds a new subsection (11) to section 78A.

The new subsection provides that nothing in section 78A is to apply in respect of the cost of any treatment to the extent that such cost is payable by the Accident Compensation Commission under the Accident Compensation Act 1972.

Clause 13 amends section 91 of the principal Act to empower Hospital Boards to pay money not only by cheques but also by other instruments, other than promissory notes or bills.

Clause 14 amends section 93 of the principal Act, which relates to the application of Hospital Boards' funds.

The amendment empowers a Hospital Board, with the approval of the Minister of Health, to pay travelling allowances and expenses incurred or to be incurred by persons for the purpose of taking up appointments in the service of the Board.

Clause 15 inserts a new section 99A in the principal Act.

The new section provides for the surcharge of members of a Hospital Board, under section 90 of the Public Revenues Act 1953, of the amounts of money paid or liabilities incurred in excess of its appropriation in reckless disregard of the Board's duty not to do so.

Clause 16 amends section 132 of the principal Act, which relates to the revocation of private hospital licences.

The amendment adds to the grounds on which a licence may be revoked, namely that the licensee is a mentally disordered person or has been adjudged a bankrupt.

Clause 17 amends section 135 of the principal Act, which relates, *inter alia*, to the qualifications required to be held by managers of private hospitals.

The amendment provides that a registered nurse is not qualified to manage a private hospital while suspended from practice under the Nurses Act 1971.

Hon. Mr Tizard

HOSPITALS AMENDMENT

ANALYSIS

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3. Functions, duties, and status of Hospital Boards	11. Free care
4. Hospitals Advisory Council	12. Liability for cost of treatment
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6. Review Committee to be Commission of Inquiry	14. Application of Board's funds
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A BILL INTITULED

An Act to amend the Hospitals Act 1957

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Hospitals Amendment Act 1973, and shall be read together with and deemed part of the Hospitals Act 1957* (hereinafter referred to as the principal Act).

10 **2. Functions of Minister**—Section 3 of the principal Act is hereby amended by inserting, after paragraph (aa) (as inserted by section 2 of the Hospitals Amendment Act 1966), the following paragraph:

*Reprinted 1970, Vol. 3, p. 1865
Amendments: 1971, No. 31; 1971, No. 49; 1972, No. 68

“(ab) To ensure and encourage, to such extent and subject to such conditions and limitations as he considers necessary, the provision, maintenance, and equipment by Hospital Boards of public mortuaries:”.

3. Functions, duties, and status of Hospital Boards— 5

(1) Subsection (1) of section 4 of the principal Act is hereby amended by adding to subparagraph (v) of paragraph (c) (as substituted by section 3 (1) of the Hospitals Amendment Act 1966) the words “or for any other lawful purpose”.

(2) The said section 4 is hereby further amended by adding to subsection (1) (as amended by section 3 (2) of the Hospitals Amendment Act 1966) the following paragraph:

“(g) To provide, maintain, and equip, to such extent and subject to such conditions and limitations as the Minister thinks necessary, a public mortuary, whether or not the same mortuary is used for the Board’s purposes.” 15

(3) The said section 4 is hereby further amended by inserting in subsection (5), after the word “Act”, the words “but subject to subsection (6) of this section” 20

(4) The said section 4 is hereby further amended by adding the following subsection:

“(6) For the purposes of sections 55 to 58 of the Patents Act 1953, the services of a Board shall be deemed to be the services of the Crown.” 25

4. Hospitals Advisory Council—(1) Section 7 of the principal Act is hereby amended by omitting from subsection (2) the figure “6”, and substituting the figure “7”.

(2) The said subsection (2) is hereby further amended by adding the following paragraph: 30

“(f) A medical practitioner nominated by the Council of the Medical Association of New Zealand.”

(3) The said section 7 is hereby further amended by inserting in subsection (3), after the words “paragraph (e)”, the words “or paragraph (f)” 35

(4) This section shall come into force on the 1st day of April 1974.

5. Meetings of Council—(1) Section 11 of the principal Act is hereby amended by omitting from paragraph (a) of the proviso to subsection (5) the word “two-thirds”, and substituting the expression “4”.

5 (2) The said section 11 is hereby further amended by inserting, after subsection (7), the following subsection:

“(7A) For the purposes of meetings of the Council, the Council of the Medical Association of New Zealand may, with the approval of the Minister, nominate a medical
10 practitioner as the deputy of the member of the Council referred to in paragraph (f) of subsection (2) of the said section 7, and such deputy may attend any meeting of the Council in the absence from that meeting of that member. He shall continue to be the deputy of that member during
15 the term for which that member was appointed, but may from time to time, with the approval of the Minister, be renominated or may at any time resign his office as deputy by writing addressed to the Secretary of the Medical Association of New Zealand. If such deputy dies or resigns
20 another deputy may be so nominated in his place for the residue of such term.”

(3) The said section 11 is hereby further amended by inserting in subsection (8), after the words “subsection (7)”, the words “or subsection (7A)”.

25 (4) This section shall come into force on the 1st day of April 1974.

6. Review Committee to be Commission of Inquiry—Section 51A of the principal Act (as inserted by section 6 of the Hospitals Amendment Act 1968) is hereby amended by
30 inserting, after subsection (5), the following subsections:

“(5A) The Review Committee shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908; and, subject to the provisions of this Act, all the provisions of that Act
35 except sections 11 and 12 (which relate to costs) shall apply accordingly.

“(5B) If, in the opinion of the Review Committee, any complaint or appeal under sections 51c to 51f of this Act is frivolous or vexatious, or one that should not have been
40 made, the Committee may order the complainant or appellant to pay the costs of the hearing and determination of the

complaint or appeal, and the costs of the Hospital Board which is a party thereto, in whole or in part, and the sum so ordered to be paid shall be recoverable by deduction from the salary of the complainant or appellant, whether he is for the time being employed by that Board or by another Hospital Board, or as a debt due to the Crown.” 5

7. Access by teachers and students—(1) Section 59 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) For the purposes of paragraphs (b) and (c) of subsection (1) of this section, the term “remuneration” includes all payments made or proposed to be made in consideration of services rendered or to be rendered, and, subject to the terms of the agreement, shall not be limited by any determination fixing the remuneration of persons employed by Hospital Boards.” 10 15

(2) The said section 59 is hereby further amended by adding the following subsection:

“(9) In addition to their application in respect of instruction for students of any school of medicine or surgery under the control of any university in New Zealand, the provisions of this section shall apply in respect of instruction for students in any other profession or activity associated with hospitals or health services, and, for that purpose, references to any such school shall be read as references to any institution providing such instruction, and references to the medical staff or medical officers of a Board shall be read as references to other classes of persons employed by the Board.” 20 25

8. Non-disclosure of medical information—Section 62 of the principal Act is hereby amended by inserting in subsection (3), after the word “research”, the words “or of other knowledge or research relating to any profession or activity associated with hospitals or health services.” 30

9. Health centres—Section 64A of the principal Act (as inserted by section 8 of the Hospitals Amendment Act 1970) is hereby amended by inserting, after subsection (5), the following subsection: 35

“(5A) Notwithstanding anything in the Public Bodies Leases Act 1969 or in section 71 of this Act, a Board may lease the whole or any part of a health centre by private contract for any term not exceeding 10 years with a right of
5 renewal for 1 further term not exceeding 10 years. The rent for the renewed term shall be determined by valuation in accordance with the provisions of the First Schedule to the Public Bodies Leases Act 1969.”

10. Bylaws—Subsection (1) of section 65 of the principal Act is hereby amended by repealing subparagraphs (i) and (ii) of paragraph (ff) (as inserted by section 9 of the Hospitals Amendment Act 1970), and substituting the following subparagraphs:

15 “(i) Prohibiting or restricting the entry of vehicles or any specified class of vehicle, or of vehicles owned or operated by members of any specified class of person or by persons not belonging to any such specified class, on to any such land:

20 “(ii) Prohibiting or restricting vehicles or any specified class of vehicle, or vehicles owned or operated by members of any specified class of person or by persons not belonging to any such specified class, from being stopped or parked on
25 any such land, and prescribing charges to be paid to the Board in respect of the stopping or parking of vehicles or any specified class of vehicle, or of vehicles so owned or operated, on any such land.”.

11. Free care—Section 77A of the principal Act (as inserted
30 by section 10 of the Hospitals Amendment Act 1966) is hereby amended by adding to paragraph (b) the words “, or for any other lawful purpose”.

12. Liability for cost of treatment—(1) Section 78A of the principal Act (as inserted by section 10 (1) of the Hospitals
35 Amendment Act 1968) is hereby amended by inserting in subsection (2), after the words “section 77”, the words “, but subject to section 77A,”.

(2) The said section 78A (as so inserted) is hereby further amended by adding the following subsection:

“(11) Nothing in this section shall apply in respect of the cost of any treatment to the extent that such cost is payable by the Accident Compensation Commission under the Accident Compensation Act 1972.”

13. Money to be paid into bank—Section 91 of the principal Act is hereby amended— 5

- (a) By omitting from subsection (1) the word “cheques” where it first occurs, and substituting the words “a cheque or other instrument (not being a promissory note or bill)”: 10
- (b) By omitting from the said subsection (1) the words “to sign cheques on its behalf”, and substituting the words “for that purpose”.

14. Application of Board’s funds—Section 93 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (n), the following paragraph: 15

- “(na) The payment, with the approval of the Minister, of travelling allowances and expenses incurred or to be incurred by persons for the purpose of taking up appointments in the service of the Board:” 20

15. Application of surcharge provisions of Public Revenues Act 1953—The principal Act is hereby further amended by inserting, after section 99, the following section:

- “99A. (1) If in any financial year a Board— 25
- “(a) Fails to perform the duty imposed on it by subsection (4A) of section 89 of this Act to control expenditure made or due to be made within the limits of the grant, including any supplementary grant, appropriated to it in respect of that year; or 30
- “(b) Otherwise fails to perform the duty imposed on it by the said subsection (4A); or
- “(c) Incurs expenditure in excess of any limit imposed by or under section 94 of this Act—

and the Audit Office is satisfied that any payment made or liability incurred by the Board during that year was made or incurred in reckless disregard of the said duty, or of the provisions of the said section 94, as the case may require, section 90 of the Public Revenues Act 1953 shall apply as if the amount of any such payment were money administrable by the Board which has been unlawfully expended, and as if any such liability were a liability which has been unlawfully incurred. 35 40

“(2) Except as provided in subsection (1) of this section, section 90 of the Public Revenues Act 1953 shall not apply to members of a Hospital Board by reason only of the fact that the Board has failed to perform a duty, or incurred
5 expenditure, in terms of paragraph (a) or paragraph (b) or paragraph (c) of that subsection.”

16. Revocation of licence to conduct private hospital—
Section 132 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (a), the
10 following paragraph:

“(aa) That the licensee is a mentally disordered person within the meaning of the Mental Health Act 1969, or has been adjudged a bankrupt:”.

17. Managers of licensed hospitals—Section 135 of the
15 principal Act is hereby amended by adding to subsection (8) (as added by section 3 of the Hospitals Amendment Act 1967) the words “, but do not include any person who is for the time being suspended from practice under the provisions of that Act”.