

[AS REPORTED FROM THE HEALTH AND WELFARE COMMITTEE]

House of Representatives, 9 October 1981.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr Gair

HOSPITALS AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Hospitals Act 1957

5 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 Hospitals Amendment Act 1981, and shall be read together with and deemed part of the Hospitals Act 1957* (hereinafter referred to as the principal Act).

*Reprinted R.S. Vol. 2, p. 757
Amendment: 1980, No. 25

No. 64—2

2. Anaesthetic Mortality Assessment Committee—The principal Act is hereby amended by inserting, after section 13, the following sections:

“13A. Establishment of Anaesthetic Mortality Assessment Committee—(1) In this section and sections 13B to 13F of this Act, unless the context otherwise requires,—

“‘Chairman’ means the Chairman of the Assessment Committee:

“‘Assessable death’ means a death that, in the opinion of a medical practitioner or dentist, may be related to anaesthesia or any anaesthetic procedure *(, and includes the death of any person within 48 hours of that person’s undergoing any anaesthetic procedure)*:

“‘Assessment Committee’ means the Anaesthetic Mortality Assessment Committee established under sub-section (2) of this section.

“(2) The Minister shall establish a committee, to be known as the Anaesthetic Mortality Assessment Committee, which shall have the function of receiving and considering information relating to assessable deaths, promoting the safe and efficient use of anaesthetic procedures, and, in relation to each assessable death in respect of which it receives information,—

“(a) Determining the extent (if any) to which anaesthesia or any anaesthetic procedure contributed to that death; and

“(b) Determining whether that death might have been averted had the effects or consequences of anaesthesia or of any anaesthetic procedure been better or more fully understood or provided for.

“(3) In performing its functions the Assessment Committee shall not allocate any blame to any medical practitioner or dentist or to any other person.

“(4) The Assessment Committee shall be deemed to be a committee appointed under section 13 of this Act.

“13B. Reporting of assessable deaths to Assessment Committee—(1) Every medical practitioner or dentist who administered any relevant anaesthetic procedure to a patient whose death is an assessable death shall, as soon as practicable, but in any case not more than 24 hours after he learns of the occurrence of that death, notify the Chairman, either directly or through the Medical Officer of Health for the Health District in which death occurred, of the name of the patient, his opinion as to the cause of the death, and his own name and address.

“(2) On the receipt of any notification under subsection (1) of this section, a Medical Officer of Health shall forthwith forward the information contained in it to the Chairman.

5 “13c. **Medical practitioners and dentists to provide information**—(1) For the purposes of the functions of the Assessment Committee, the Chairman may require any medical practitioner or dentist to supply all or any specified information in his possession relating to any assessable death and to the anaesthesia and anaesthetic procedures by virtue
10 of which that death was an assessable death, including clinical records and other material documents in his possession or under his control, notwithstanding section 62 of this Act or any rule of law or custom or practice to the contrary.

15 “(2) Every medical practitioner and dentist shall answer fully to the best of his knowledge and ability every relevant question asked of him by the Chairman under subsection (1) of this section.

20 “(3) The Chairman shall give to the Assessment Committee all the information he receives under this section or section 13b of this Act in relation to every assessable death, other than—

“(a) The name of the dead person; and

“(b) The names of the medical practitioners and dentists who carried out the anaesthetic procedures concerned; and

25 “(c) The name of the hospital or place where the death occurred,—
none of which he shall give.

30 “13d. **Publication of information**—(1) Subject to subsection (2) of this section, the Assessment Committee shall, in accordance with such directions as the Minister from time to time gives it, publish to persons concerned with anaesthesia and anaesthetic procedures, and to such other persons and classes of person as the Minister specifies, or, with the consent of the Minister, to the general public, any conclusions it reaches in
35 the performance of its functions.

“(2) No publication made under subsection (1) of this section shall contain the name of, or any information that could lead to the identification of, any person whose death has been considered by the Assessment Committee or any
40 medical practitioner or dentist who has in any way been involved with the case or treatment of that person.

“(3) Notwithstanding subsections (1) and (2) of this section, the ~~(Assessment Committee may)~~ Chairman shall supply any medical practitioner or dentist who has notified the Chairman under section 13B of this Act, or who has supplied the Assessment Committee with any information relating to an assessable death, with the conclusions it reaches in the performance of its functions with respect to that death. 5

“13E. **Secrecy of information obtained by Assessment Committee**—(1) Except as otherwise provided in this section, all information obtained by any member of the Assessment Committee, or by any other person, in the course of the exercise of the functions of the Assessment Committee shall be treated as confidential save for purposes connected with those functions, or for the purpose of the investigation of any alleged crime or of any criminal proceeding in respect thereof or of giving evidence in any such proceeding; and every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who, otherwise than for such purposes, directly or indirectly divulges any information relating to an assessable death that he has acquired in the course of his duties under section 13B or section 13c of this Act. 10 15 20

“(2) No person shall be compelled or permitted to divulge, in any civil proceeding, any information relating to an assessable death that he has acquired in the course of his duties under section 13B or section 13c of this Act; and no such information shall be admissible as evidence in any civil proceedings. 25

“(3) Nothing in this section shall in any way limit or affect the provisions of section 13B or section 13c of this Act. 30

“(4) Section 62 of this Act shall be read subject to this section.

“(5) Nothing in this section shall limit or affect the Births and Deaths Registration Act 1951, the Coroners Act 1951, or the Maternal Mortality Research Act 1968. 35

“13F. **Protection of persons acting under authority of Act**—(1) No person who does any act for purposes connected with the functions of the Assessment Committee shall be under any civil or criminal liability in respect of any such act, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he has acted in bad faith or without reasonable care. 40

“(2) No proceedings, civil or criminal, shall be brought against any person in any Court in respect of any such act except by leave of a Judge of the High Court; and such leave shall not be granted unless the Judge is satisfied that there
5 is substantial ground for the contention that the person against whom it is sought to bring the proceedings has acted in bad faith or without reasonable care.

“(3) Notice of any application under subsection (2) of this section shall be given to the person against whom it is sought
10 to bring the proceedings concerned; and that person shall be entitled to be heard against the application.

“(4) Leave to bring such proceedings shall not be granted unless application for the leave is made within 6 months after the act complained of, or, in the case of a continuance of
15 injury or damage, within 6 months after the cessation of the injury or damage.

“(5) In granting leave to bring any such proceedings, the Judge may limit the time within which the leave may be exercised.”

20 **3. Reappointment after absence for child care purposes—**
The principal Act is hereby amended by inserting, after section 50A, the following section:

“50B. (1) In this section, ‘eligible period’, in relation to any person, means a period—

25 “(a) During which that person has cared for one or more pre-school children (being a child or children dependant on that person); and

“(b) No substantial part of which has been devoted by that person to paid employment.

30 “(2) Any person who has at any time resigned from employment by a Hospital Board may apply to that Board for a declaration that the period between the resignation and the application is an eligible period; and if that Board is satisfied that period is an eligible period it shall make such a declara-
35 tion.

“(3) Subject to subsections (4) and (8) of this section, where a Hospital Board makes a declaration under subsection (2) of this section in respect of any person, that person shall be eligible for reappointment by that Board in
40 accordance with this section.

“(4) No person shall be eligible for reappointment in accordance with this section if, in the opinion of the Board concerned, the total of the following periods (calculated in accordance with subsection (5) of this section) exceeds 4 years: 5

“(a) The eligible period concerned:

“(b) Every other eligible period immediately following that person’s resignation from employment in any part of the State Services (within the meaning of the State Services Conditions of Employment Act 1977); 10

“(c) Every period immediately following the resignation from any part of the State Services of any other person—

“(i) During which that person cared for the child, or one or more of the children, cared for by that first-mentioned person during any of the eligible periods to which paragraph (a) or paragraph (b) of this subsection relates (being a child or children dependent on that other person); and 15 20

“(ii) No substantial part of which has been devoted by that person to paid employment.

“(5) In the calculation of any period to which subsection (4) of this section relates, no account shall be taken of any period during which, but for the resignation concerned, the person resigning would have been entitled to maternity leave. 25

“(6) A person who is eligible for reappointment to a Board under this section may be appointed, as if he were already employed by that Board, to fill any vacancy in a position in the employment of the Board for which that person is qualified. 30

“(7) Where the position to which a person who is eligible for reappointment under this section is appointed—

“(a) Involves duties and responsibilities that are the same or substantially the same as those of the position held at the time of resignation; and 35

“(b) Does not have a current maximum salary that exceeds the current maximum salary for the position held at the time of resignation—

section 51b of this Act shall not apply to the appointment, and 40
no appeal by any employee shall lie against that appointment.

“(8) Notwithstanding that a Board has declared a person to be eligible for appointment under this section, that person shall cease to be eligible for appointment under this section if he is not appointed under subsection (4) of this section within
5 3 months of the expiration of the period applicable under subsection (1) (b) of this section.”

4. Review Committee established—(1) The principal Act is hereby amended by repealing section 51A (as inserted by section 6 of the Hospitals Amendment Act 1968 and
10 amended by section 17 of the Hospitals Amendment Act (No. 2) 1971, section 2 of the Hospitals Amendment Act 1972, and section 7 of the Hospitals Amendment Act 1973), and substituting the following section:

“51A. (1) There is hereby established for the purposes
15 of this Act a committee to be known as the Review Committee.

“(2) The Review Committee shall have the following functions:

“(a) To inquire into any complaint relating to the dis-
20 missal from employment by a Board of any person who is employed in a whole-time capacity, or of any other person declared to be subject to the Review Committee’s jurisdiction pursuant to section 51B of this Act:

25 “(b) To hear any appeal made under section 51D or section 51E of this Act by any person employed in a whole-time capacity by a Board:

“(c) To determine every such complaint or appeal, and to report its findings in respect of any such com-
30 plaint or appeal to the complainant or appellant, as the case may be, and to the Board concerned:

“(d) To direct Boards to implement its decisions.

“(3) Subject to subsection (4) of this section, the Minister may from time to time recognise any organisation as
35 representing, for the purposes of this section, the interests of any specified group or groups of Board employees; and may at any time (*withdraw that*), after consultation with any organisation so recognised, withdraw its recognition.

40 “(4) The New Zealand Medical Association shall at all times be deemed to be recognised under subsection (3) of this section as representing, for the purposes of this section, the interests of all Board employees who are medical practitioners.

“(5) Every organisation for the time being recognised under subsection (3) of this section, and the executive committee of the Hospital Boards’ Association of New Zealand Incorporated, may, at any time, by notice in writing to the Secretary of the Review Committee, nominate— 5

“(a) A person to be a member of the Review Committee from time to time; and

“(b) A person to act as that first-mentioned person’s alternate—

and may similarly withdraw the nomination of either of those persons and nominate another person in his place; and the nomination of every person under this subsection shall lapse after 3 years, but he may from time to time be renominated. 10

“(6) The same person may be nominated under subsection (5) of this section by 2 or more employee organisations.” 15

“(7) The Review Committee shall comprise—

“(a) One member appointed by the Minister to be chairman of the Review Committee, who shall hold office for 3 years but may from time to time be reappointed; and 20

“(b) The person for the time being nominated by the executive committee of the Hospital Boards’ Association of New Zealand Incorporated under subsection (5) (a) of this section; and 25

“(c) Subject to subsection (8) of this section, the person for the time being nominated under subsection (5) (a) of this section by the New Zealand Medical Association.

“(8) Where the Minister is satisfied that— 30

“(a) Any complainant under section 51c of this Act or any appellant under section 51b or section 51e of this Act, being a person under the Review Committee’s jurisdiction and not being a medical practitioner, is a member of a group or organisation representing the interests of which is for the time being recognised under subsection (3) of this section; and 35

“(b) There is for the time being a person nominated under subsection (5) of this section by that organisation,— 40

the person for the time being nominated under subsection (5) (a) of this section by that organisation shall, in place of the person so nominated by the New Zealand Medical

Association, be deemed to be a member of the Review Committee for the purpose of disposing of the complaint or appeal concerned.

New

5 “(8A) The Minister may from time to time appoint a person to be deputy to the chairman of the Review Committee.”

“(9) Where—

10 “(a) The chairman of the Review Committee is prevented by illness, absence, or other sufficient cause, from performing the duties of his office; or

 “(b) It appears to the Minister that it would be inconvenient or inappropriate for the chairman to act in respect of any particular complaint or appeal—

15 *(the Minister may appoint some other person to act in the)*
the person for the time being appointed to be deputy to the Chairman of the Review Committee may act in the

 chairman’s place while the prevention lasts, or during the hearing of the complaint or appeal concerned (and any other complaint or appeal heard on the same day), as the case may be; and the fact that any person so appointed performs the duties of chairman of the Review Committee shall be conclusive evidence of his authority to do so, and no person shall be concerned to inquire whether the occasion requiring or authorising his appointment has arisen or has ceased; and he shall be deemed to be the chairman of the Review Committee.

25 “(10) An alternate nominated under subsection (5) (b) of this section,—

30 “(a) Where the member of the Review Committee whose alternate he is dies or has his nomination withdrawn; and

 “(b) At any other time, unless that member otherwise directs,—

35 shall have and may exercise all the rights and powers as a member of the Review Committee of that member; and while exercising any of those powers shall be deemed to be a member of the Review Committee.

40 “(11) There shall be paid out of money appropriated by Parliament for the purpose to members of the Review Committee remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951 as if the Review Committee were a statutory Board within the meaning of that Act.

“(12) 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 this Act, all the provisions of that Act except sections 11 and 12 (which relate to costs) shall apply accordingly. 5

“(13) If, in the opinion of the Review Committee, any complaint or appeal under any of sections 51c to 51f of this Act is frivolous or vexatious, it 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 Board concerned, in whole or in part; and the sum so ordered to be paid shall, subject to any directions given by it, 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 Board, or as a debt due to the Crown. 10 15

“(14) Without limiting the general power to make regulations under section 152 of this Act, and subject to section 51f of this Act, regulations may be made under that section regulating the procedure of the Review Committee. 20

“(15) For the purposes of this section, and of sections 51b to 51f of this Act, the term ‘employee’ includes ‘officer.’”

(2) For the purposes of section 51a of the principal Act, as substituted by subsection (1) of this section, the term of office as a member of the Review Committee of every person who was a member of the Review Committee immediately before the commencement of this Act shall be deemed to have commenced on that commencement. 25

(3) The following provisions are hereby consequentially repealed: 30

(a) Section 17 of the Hospitals Amendment Act (No. 2) 1971:

(b) Section 2 of the Hospitals Amendment Act 1972:

(c) Section 7 of the Hospitals Amendment Act 1973.

5. Employees to have right of complaint against dismissal— 35

(1) Section 51c of the principal Act (as substituted by section 19 of the Hospitals Amendment Act (No. 2) 1971) is hereby amended—

(a) By omitting from subsection (1) (c) where it first occurs the word “Minister”, and substituting the words “Secretary of the Review Committee”: 40

- (b) By omitting from subsection (1) (c) where it secondly occurs the word "Minister", and substituting the words "Chairman of the Review Committee":
- 5 (c) By omitting from subsection (2) the words "or in accordance with any direction or advice given to it by the Minister under section 51F of this Act".
- (2) The said section 51c is hereby amended by adding the following subsections—
- 10 " (5) Where the Review Committee is satisfied that a complainant who has lodged a complaint under subsection (1) (c) of this section was unjustifiably dismissed, it may direct the Hospital Board concerned to do all or any of the following things:
- 15 " (a) To reimburse the complainant a sum equal to the whole or any part of the remuneration lost by him:
- " (b) To reinstate him in his former position or in a position not less advantageous to him:
- " (c) To pay compensation to him.
- " (6) A complaint under this section shall lapse if, before
- 20 the complaint is determined,—
- " (a) The complainant withdraws his complaint by notice in writing to the Secretary of the Review Committee; or
- " (b) The complainant without sufficient cause fails or
- 25 neglects to pursue the complaint."

6. Appeals in respect of certain appointments—

- (1) Section 51D (1) of the principal Act (as substituted by section 19 of the Hospitals Amendment Act (No. 2) 1971) is hereby amended by inserting, after the words "under this
- 30 section against", the words "the reappointment of a person under section 50B of this Act or against".
- (2) Section 51D (4) of the principal Act is hereby amended—
- 35 (a) By omitting the word "Minister" where it first occurs, and substituting the words "Secretary of the Review Committee":
- (b) By omitting the word "Minister" where it secondly occurs, and substituting the words "Chairman of the Review Committee".
- 40 (3) Section 51D (6) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:
- " (a) If an appeal has been made in accordance with sub-section (4) of this section, until the Review

Committee has disposed of the appeal and has given a direction or an advice to the Board that made the appointment or has informed that Board that it does not intend to give any direction or advice in respect of the appeal; or”.

(4) Section 51D (9) of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraphs:

“(ca) The appellant withdraws his appeal by notice in writing to the Secretary of the Review Committee; or

“(cb) The appellant, without sufficient cause, fails or neglects to pursue the appeal.”

(5) The said section 51D is hereby amended by adding the following subsection:

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“(11) In deciding any appeal against an appointment, the Review Committee may direct the appointment of the appellant to the position concerned or the cancellation of the appointment appealed against and readvertisement of that position.”

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“(11) In deciding any appeal against an appointment, the Review Committee may,—

“(a) Confirm the appointment; or

“(b) Direct that the appellant be appointed to the position concerned; or

“(c) Direct that the appointment be cancelled and that the position concerned be readvertised.”

7. Appeals by employees against transfer—(1) Section 51E (1) (c) of the principal Act (as substituted by section 19 of the Hospitals Amendment Act (No. 2) 1971) is hereby amended—

(a) By omitting the word “Minister” where it first appears, and substituting the words “Secretary of the Review Committee”:

(b) By omitting the word “Minister” where it secondly appears, and substituting the words “Chairman of the Review Committee”.

(2) Section 51E (3) of the principal Act is hereby amended—

(a) By omitting from paragraph (a) the word “Minister”, and substituting the words “Secretary of the Review Committee”:

- (b) By omitting from paragraph (b) the words “has reported its findings to the Minister, and the Minister”.
- (3) The said section 51E is hereby amended by repealing subsection (4), and substituting the following subsection:
- 5 “(4) An appeal under this section shall lapse if, before it is determined,—
- “ (a) The appellant withdraws his appeal by notice in writing to the Secretary of the Review Committee;
- 10 or
- “ (b) The appellant, without reasonable cause, fails or neglects to pursue the appeal; or
- “ (c) The appellant resigns or retires, or has his employment terminated in any other manner.”
- 15 **8. Procedure of Review Committee—**(1) Section 51F of the principal Act (as substituted by section 19 of the Hospitals Amendment Act (No. 2) 1971) is hereby amended by repealing subsection (1), and substituting the following subsection:
- 20 “(1) On receipt of any complaint or appeal in accordance with sections 51c to 51E of this Act, the Chairman of the Review Committee shall convene such meetings of that committee as may be necessary to enable it to inquire into the complaint or, as the case may be, hear the appeal.”
- (2) Section 51F (4) of the principal Act is hereby amended
- 25 by omitting the words “submitted to the Minister”.
- (3) The said section 51F is hereby amended by repealing subsections (6) to (10), and substituting the following subsections:
- 30 “(6) On completion of the inquiry or hearing, as the case may be, and after considering all representations made and evidence given to it, the Review Committee shall prepare a report of its finding (including the reasons therefor) and forward it, together with any direction or advice made under this Act, to the Hospital Board concerned.
- 35 “(7) For the purposes of this section, the decision and report of the majority of members of the Review Committee shall be the decision and report of that committee; but any member who disagrees with the majority may, if he so desires, submit to the Chairman a minority report.
- 40 “(8) When reporting its decision to a Hospital Board pursuant to subsection (6) of this section, the committee shall supply a copy of the report (together with any minority report) to the complainant or, as the case may be, the appellant, and, in the case of an appeal against an appointment, to the person appointed by the Board.

“(9) Every decision and direction of the Review Committee under this Act shall be binding on the complainant or, as the case may be, appellant and on the Hospital Board which made the decision complained of or appealed against, and, in the case of an appeal against an appointment, on the person appointed by the Board; and every Hospital Board shall forthwith comply with every such direction.” 5

9. Remuneration and conditions of employment of hospital employees—Section 52 (9) (b) of the principal Act is hereby amended by inserting, after the word “grading”, the words “of positions, and the grading”. 10

10. Provision of information to Accident Compensation Corporation—(1) Section 62 (4) (d) of the principal Act (as substituted by section 3 of the Hospitals Amendment Act 1980) is hereby amended by inserting, after the words “Social Welfare”, the words “, the Accident Compensation Corporation”. 15

(2) Section 62A (5) (b) of the principal Act (as inserted by section 4 of the Hospitals Amendment Act 1980) is hereby amended by inserting, after the words “Government Printer”, the words “, the Accident Compensation Corporation”. 20

11. Regulations to be laid before Parliament—Section 154 of the principal Act is hereby repealed.

12. Offences in respect of institutions under control of Hospital Boards—(1) The principal Act is hereby amended by inserting, after section 155, the following section: 25

“155A. Every person commits an offence against this Act, and shall be liable on summary conviction to a fine not exceeding \$200, who, in or in view of any institution under the control of a Hospital Board or the Department of Health (including any psychiatric hospital within the meaning of the Mental Health Act 1969), or within the hearing of any person who is in any such institution, wilfully— 30

“(a) Behaves in a riotous, offensive, indecent, threatening, insulting, or disorderly manner; or 35

“(b) Behaves in a manner detrimental or likely to be detrimental to the orderly conduct, good management, or cleanliness of that institution; or

“(c) Uses any threatening, abusive, insulting, or indecent words; or 40

“(d) Strikes or fights with any other person.”

(2) The following provisions are hereby consequentially repealed:

- (a) Section 3 (gg) of the Police Offences Act 1927:
- (b) Section 2 of the Police Offences Amendment Act 1952:
- 5 (c) Section 14 (7) of the Hospitals Amendment Act 1970.