

HEALTH REFORM BILL

EXPLANATORY NOTE

THIS Bill amends the Area Health Boards Act 1983 and Part II of the Social Security Act 1964.

PART I

AREA HEALTH BOARDS

This Part, which amends the Area Health Boards Act 1983,—

- (a) Reconstitutes each area health board as a corporation sole (consisting of a single commissioner appointed by the Minister of Health), and makes the necessary consequential amendments;
- (b) Provides that each commissioner may, with the consent of the Minister of Health, appoint a deputy;
- (c) Imposes two qualifications on the duty of the general manager to act independently in matters relating to decisions on individual employees.

Those qualifications (which are set out in *subsections (2) and (3)* of the new *section 39B*) are—

(i) That the State Services Commissioner may from time to time, after consultation with the Director-General of Health, promulgate conditions of employment to any general manager (not being conditions that are inconsistent with any terms and conditions of any applicable collective employment contract) and any such general manager shall ensure that the conditions of employment entered into with any person employed by the board are consistent with the conditions of employment so promulgated; and

(ii) That the State Services Commissioner may from time to time declare that all or any part of the conditions of employment fixed under a collective employment contract for persons employed in the Health Service are to be the actual conditions of employment.

It is expressly provided that nothing in the new subsections authorises the reduction of the individual conditions of employment of any person employed in the Health Service immediately before the commencement of the section.

No. 82—1

PART II
SOCIAL SECURITY

This Part amends Part II of the Social Security Act 1964, which is administered by the Department of Health and which relates to medical and hospital benefits and other related benefits.

Clause 27 repeals section 94 of the principal Act (which relates to fees for specialist medical services), and substitutes a new section. The new section comes into force on 12 September 1991 and applies to specialist medical services provided on or after that date.

Under the new section—

- (a) A medical benefit will be payable only in respect of the first consultation with a specialist following the referral by another medical practitioner; and
- (b) A medical benefit will not be payable in respect of any self-referral to a specialist.

Clause 28, which comes into force on 1 August 1991, repeals section 101 of the principal Act (which relates to hospital treatment afforded by area health boards), and substitutes a new section.

Under section 101 (as it stood immediately before the introduction of this Bill) hospital treatment in a hospital maintained by an area health board or hospital board is free to a hospital patient who is entitled to receive hospital benefits.

The only exceptions are where the cost of the hospital treatment is covered by compensation under the Workers' Compensation Act 1956 or a claim for special damages.

Under the new section a hospital patient who is entitled to receive hospital benefits may be required (up to a prescribed maximum) to pay for hospital treatment in a hospital maintained by an area health board. The maximum will be prescribed by regulations in respect of the class or type of hospital treatment, and different maximum amounts may be prescribed in respect of different classes of patients.

The maximum will not apply if a greater amount may be recovered by virtue of a claim for compensation under the Workers' Compensation Act 1956 or a claim for special damages.

The section continues to allow an area health board to accept from the Crown payments in respect of long-term hospital treatment provided by the board for any intellectually handicapped person or physically handicapped person.

Clause 29, which comes into force on 1 August 1991, inserts new *paragraphs (ba) and (bb)* into section 123 (1) of the principal Act (which empowers the making of regulations). Under the new paragraphs regulations may be made—

- (a) Prescribing the maximum amounts that, under section 101, may be charged by an area health board for hospital treatment; and
 - (b) Prescribing the maximum amounts that may be charged by an area health board for other services or treatment provided by that board; and
 - (c) Defining classes of patients for the purposes of regulations made under the Act.
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Hon. Simon Upton

HEALTH REFORM

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A BILL INTITULED

An Act to amend the Area Health Boards Act 1983 and the Social Security Act 1964

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

- 5 **1. Short Title**—This Act may be cited as the Health Reform Act 1991.

PART I

AREA HEALTH BOARDS

2. This 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* (in this Part referred to as the principal Act). 5

*1983, No. 134

Amendments: 1986, No. 16; 1988, No. 21; 1988, No. 50; 1988, No. 100; 1989, No. 32; 1989, No. 42; 1990, No. 79; 1991, No. 24

3. Establishment of area health districts—(1) The principal Act is hereby amended by repealing sections 5 to 5D, and substituting the following section:

“5. (1) Subject to **subsection (2)** of this section, the Governor-General may, by Order in Council, declare that the hospital district or hospital districts named in the order shall, on a date to be specified in the order, become an area health district. 10

“(2) No such order shall be made otherwise than on the advice of the Minister tendered at the request of any hospital board concerned. 15

“(3) Before tendering any advice under **subsection (2)** of this section, the Minister shall consult with each of the hospital boards concerned and shall satisfy himself or herself that there has been adequate consultation, planning, and preparation for the establishment of an area health board in the proposed area health district. 20

“(4) Notwithstanding anything in **subsection (1)** of this section, where an area health district is being or has been established under that subsection, the Governor-General may, from time to time, by Order in Council made on the advice of the Minister, vary the boundaries of the area health district— 25

“(a) By including within the area health district any land forming part of an area health district of an area health board or part of the hospital district of any hospital board other than the initiating hospital board; or 30

“(b) By excluding from the area health district any land that comprised part of the hospital district of the initiating hospital board. 35

“(5) Every order made under **subsection (4)** of this section shall specify a date (hereafter in this section called the operative date) from which the order is to take effect.

“(6) In every case to which **subsection (4) (a)** of this section applies, upon the operative date— 40

“(a) The included land shall, notwithstanding anything in the Hospitals Act 1957, cease to form part of the area

health district or hospital district in which that land was included before the order took effect; and

5 “(b) All real and personal property (if any) vested in the hospital board and used by it within the boundaries of the included land shall, without conveyance or assignment, vest in the area health board, subject to all liabilities, charges, obligations, or trusts affecting that property; and

10 “(c) Section 7 (3) of this Act shall apply, with all necessary modifications, in respect of any security or document relating to the included land or any real or personal property referred to in paragraph (b) of this subsection.

15 “(7) In every case to which subsection (4) (b) of this section applies, the order shall specify the hospital district of which the excluded land shall form part, and upon the operative date that land shall form part of that hospital district, notwithstanding anything in the Hospitals Act 1957.”

20 (2) The following enactments are hereby consequentially repealed:

(a) Section 4 of the Area Health Boards Amendment Act (No. 3) 1988:

(b) Sections 3 and 4 of the Area Health Boards Amendment Act 1989:

25 (c) Sections 3 and 4 of the Area Health Boards Amendment Act (No. 2)1989.

4. Establishment of area health boards—Section 6 (2) of the principal Act is hereby amended by omitting the words “body corporate”, and substituting the words “corporation sole”.

5. New sections substituted—(1) The principal Act is hereby amended by repealing section 8 (as substituted by section 5 of the Area Health Boards Amendment Act (No. 3) 1988 and section 8A (as inserted by section 6 of the Area Health Boards Amendment Act (No. 3) 1988), and substituting the following sections:

35 “8. **Constitution of boards**—(1) Each area health board shall consist of a commissioner appointed by the Minister.

40 “(2) Each commissioner shall be appointed in writing and shall hold office during the pleasure of the Minister.

“8A. **Deputies of commissioners**—(1) Subject to this section, any commissioner may from time to time appoint any person to be the deputy of that commissioner.

“(2) No commissioner shall appoint a deputy under this section unless the Minister has first given his or her written consent to— 5

“(a) The appointment of a deputy; and

“(b) The conditions on which a deputy may be appointed.

“(3) Consent under **subsection (2)** of this section—

“(a) May be given unconditionally or subject to such conditions as the Minister thinks fit to impose; and 10

“(b) May, by notice in writing to the commissioner, be revoked by the Minister.

“(4) Any condition imposed under **subsection (3) (a)** of this section may, by notice in writing to the commissioner, be amended or revoked by the Minister. 15

“(5) Every deputy appointed under **subsection (1)** of this section shall be appointed in writing and shall hold office during the pleasure of the commissioner.

“(6) The deputy of any commissioner may, subject to the control of the commissioner, perform such general official duties (including the exercise of functions, duties, and powers of the commissioner) as are from time to time assigned to the deputy by the commissioner. 20

“(7) On the occurrence from any cause of a vacancy in the office of a commissioner (whether by reason of death, resignation, or otherwise) and in the case of absence from duty of a commissioner (from whatever cause arising), and so long as any such vacancy or absence continues, the deputy of that commissioner shall have and may exercise all the functions, duties, and powers of that commissioner. 25 30

“(8) The fact that the deputy of a commissioner exercises any function, duty, or power of that commissioner shall be conclusive evidence of the authority of the deputy to do so.

“8AA. **Remuneration**—Each commissioner and each deputy of a commissioner shall be paid out of the funds of the board such fees, salary, and allowances and such travelling allowances and expenses as may from time to time be determined by the Minister. 35

“8AB. **Union or reconstitution of districts**—(1) If at any time it appears to the Governor-General, on the recommendation of the Minister made after consultation by the Minister with each of the boards concerned, to be expedient that any 2 or more area health districts, or any area 40

health district and any hospital district, that constitute a single continuous area should be united or reconstituted to form the same or a smaller number of area health districts, the Governor-General may, by Order in Council,—

5 “(a) Abolish those districts, as from a date to be specified in the order; and

“(b) Constitute, as from the same date, the same or a smaller number of new area health districts, or one new area health district, as the Governor-General thinks fit, under a name or names to be specified in the order and comprising the whole of the area included in the districts so abolished.

10 “(2) Each area health district so constituted shall comprise such areas as are specified in the order.

15 “(3) Two or more area health boards, or any area health board and any hospital board, whose districts constitute a single continuous area may request the union or reconstitution of their districts under this section.

20 “(4) All the provisions of this Act relating to area health districts constituted by this Act shall apply, so far as they are applicable and with the necessary modifications, to an area health district constituted by an Order in Council under this section.”

25 (2) Section 2 (1) of the principal Act (as substituted by section 2 (1) of the Area Health Boards Amendment Act 1991) is hereby consequentially amended by repealing the definition of the term “combined district”.

(3) The following enactments are hereby consequentially repealed:

30 (a) Section 5 of the Area Health Boards Amendment Act (No. 3) 1988:

(b) Subsections (1) to (3) of section 5 of the Area Health Boards Amendment Act (No. 2) 1989:

35 (c) Section 6 of the Area Health Boards Amendment Act (No. 2) 1989.

6. Boards of united districts or reconstituted districts—

(1) Section 8B of the principal Act (as inserted by section 6 of the Area Health Boards Amendment Act (No. 3) 1988) is hereby amended by repealing subsection (1), and substituting the following subsection:

40 “(1) The area health board of any area health district constituted under section 8AB of this Act shall come into existence as a corporation sole on the day on which the district

comes into existence, and the boards of the districts abolished by the order shall thereupon be deemed to be dissolved.”

(2) Section 8B of the principal Act (as so inserted) is hereby further amended by omitting from subsection (4) the words “body corporate”, and substituting the words “corporation sole”.

7. Property and contracts of boards of abolished districts—Section 8c of the principal Act (as inserted by section 6 of the Area Health Boards Amendment Act (No. 3) 1988) is hereby amended by omitting from subsection (1), and also from subsection (3), the expression “section 8A”, and substituting in each case the expression “**section 8AB**”.

8. Transmission of rights of boards of abolished districts—Section 8D of the principal Act (as inserted by section 6 of the Area Health Boards Amendment Act (No. 3) 1988) is hereby amended by omitting from subsection (1) the expression “section 8A”, and substituting the expression “**section 8AB**”.

9. Repeal of provisions relating to election and appointment of members—The following enactments are hereby repealed:

- (a) Sections 10A to 27 of the principal Act:
- (b) So much of the First Schedule to the Local Government Amendment Act 1986 as relates to the principal Act:
- (c) Sections 7 to 9 of the Area Health Boards Amendment Act (No. 3) 1988:
- (d) Sections 6 to 8 of the Area Health Boards Amendment Act 1989:
- (e) Sections 7 and 8 of the Area Health Boards Amendment Act (No. 2) 1989.

10. Committees—Section 28 of the principal Act is hereby amended—

- (a) By repealing subsections (3) and (5); and
- (b) By omitting from subsection (6) the words “, without confirmation by the board,”.

11. Community committees—Section 31 (3) of the principal Act is hereby repealed.

12. Repeal—Section 32 of the principal Act is hereby repealed.

13. Duties of Minister—Section 35 of the principal Act (as amended by section 4 (4) of the Health Amendment Act 1988) is hereby amended by adding, after paragraph (a), the following paragraph:

5 “(aa) To appoint, in respect of each board, a commissioner pursuant to **section 8** of this Act.”

14. Duty to act independently—(1) The principal Act is hereby amended by repealing section 39B (as enacted by section 4 of the Area Health Boards Amendment Act 1988),
10 and substituting the following section:

 “39B. (1) Notwithstanding anything in section 39A of this Act, but subject to **subsections (2) and (3)** of this section, in matters relating to decisions on individual employees (whether matters relating to the appointment, promotion, demotion, transfer,
15 disciplining, or the cessation of employment of any employee, or other matters), the general manager shall not be responsible to the area health board but shall act independently.

 “(2) The State Services Commissioner may from time to time, after consultation with the Director-General of Health,
20 promulgate in writing to any general manager or general managers, either generally or specifically, for persons who have their conditions of employment determined by the general manager, conditions of employment (not being conditions that are inconsistent with any terms and conditions of any
25 applicable collective employment contract). Every general manager to whom any conditions of employment are promulgated under this subsection shall ensure that the conditions of employment entered into with any person
30 employed by the board are consistent with the conditions of employment so promulgated.

 “(3) The State Services Commissioner may from time to time declare that all or any part of the conditions of employment fixed under a collective employment contract for persons
35 employed in the Health service are to be the actual conditions of employment.”

 (2) Nothing in **subsections (2) and (3) of section 39B** of the principal Act (as substituted by **subsection (1)** of this section) shall authorise the reduction of the individual conditions of employment of any person employed in the Health Service immediately before
40 the commencement of this section.

15. Liability for costs of treatment—Section 53 (12) of the principal Act is hereby amended by omitting the words “, by resolution in open meeting,”.

16. Repeal—Section 62 of the principal Act is hereby repealed.

17. Annual estimate of payments and receipts—Section 78 (3) of the principal Act is hereby repealed.

18. Imprest accounts—The principal Act is hereby amended by repealing section 83, and substituting the following section: 5

“83. (1) An area health board may establish imprest accounts in the name of the board.

“(2) The money belonging to any imprest account so established shall be kept at such bank as may be approved from time to time by the Minister of Finance. 10

“(3) An imprest account established under **subsection (1)** of this section may be operated on by an officer of the board, authorised in that behalf by the board. 15

“(4) Every area health board shall from time to time fix the maximum amount that may be held at any time in each imprest account established under this section.

“(5) Money in any imprest account established under **subsection (1)** of this section shall be available only for such purposes as the board may determine.” 20

19. Application of board’s funds—(1) Section 84 (1) of the principal Act is hereby amended by repealing paragraph (m) (as amended by section 15 (b) of the Area Health Boards Amendment Act (No. 3) 1988) and paragraph (n). 25

(2) Section 84 (1) (o) of the principal Act is hereby amended by inserting, after the word “under”, the words “**section 8AA** or”.

(3) Section 15 (b) of the Area Health Boards Amendment Act (No. 3) 1988 is hereby consequentially repealed.

20. Accounts to be kept by board—Section 87 (3) of the principal Act is hereby repealed. 30

21. Execution of documents—(1) The principal Act is hereby amended by repealing section 93 (as amended by section 15 of the Area Health Boards Amendment Act 1988), and substituting the following section: 35

“93. (1) Where an area health board desires or is required to execute a document that is not required by any enactment to be under seal, that document may be signed by the commissioner.

“(2) Where an area health board desires or is required to execute a document that is required by any enactment to be under seal, that document shall be executed by affixing the seal of the board in the presence of the commissioner who shall
5 attest to that fact on the document.”

(2) Section 15 of the Area Health Boards Amendment Act 1988 is hereby consequentially repealed.

Amendments to Other Acts

22. Amendment to Local Government Act 1974—

10 Section 101ZZF of the Local Government Act 1974 (as inserted by section 15 (1) of the Local Government Amendment Act (No. 2) 1989) is hereby amended by adding the following subsection:

15 “(5) Nothing in this section authorises the Minister to determine the fees, salary, or allowances payable to any commissioner appointed pursuant to **section 8** of the Area Health Boards Act 1983 or any deputy appointed pursuant to **section 8A** of that Act.”

23. Amendment to Local Elections and Polls Act

20 **1976—**(1) Section 2 of the Local Elections and Polls Act 1976 is hereby amended by omitting from the definition of the term “local authority” the words “an area health board” (as inserted by section 98 of the principal Act).

25 (2) The principal Act is hereby consequentially amended by repealing so much of the Schedule as relates to the Local Elections and Polls Act 1976.

Transitional Provisions

24. Vacation of office by members of boards—(1) Every

30 person who, immediately before the commencement of this section, holds office, whether by election or appointment, as a member of an area health board shall be deemed, as from the commencement of this section, to have vacated that office.

35 (2) No person who, under **subsection (1)** of this section, is deemed to have vacated office as a member of an area health board shall be entitled to compensation for loss of office as a member of an area health board.

25. Identity of boards not affected—Each area health

40 board reconstituted by this Act as a corporation sole is hereby declared to be the same area health board as the area health board of the same name existing immediately before the commencement of this section.

PART II

SOCIAL SECURITY

26. This Part to be read with Social Security Act 1964—

(1) This Part of this Act shall be read together with and deemed part of the Social Security Act 1964* (in this Part referred to as the principal Act). 5

(2) Except as provided in **section 27 (3)** of this Act, this Part of this Act shall come into force on the 1st day of August 1991.

*R.S. Vol. 13, p. 403

Amendments: 1983, No. 138; 1984, No. 8; 1984, No. 19; 1985, No. 111; 1985, No. 159; 1986, No. 39; 1987, No. 106; 1988, No. 147; 1989, No. 13, Part V; 1989, No. 58; 1990, No. 5; 1990, No. 74; 1990, No. 132

27. Fees for specialist medical services—(1) The principal Act is hereby amended by repealing section 94 (as enacted by section 21 (1) of the Social Security Amendment Act 1986), and substituting the following section: 10

“94. (1) Subject to the provisions of this Part of this Act, every specialist who provides any specialist medical services for a patient who has been referred to the specialist by another medical practitioner for that purpose shall be entitled to receive from the Department, in respect of the first occasion on which, following the referral, such services are provided to that patient by that specialist, such fee as may be prescribed by regulations made under section 95 of this Act. 15 20

“(2) A fee shall not be payable under **subsection (1)** of this section—

“(a) In respect of specialist medical services provided by a specialist for a person referred to the specialist by another specialist, unless in a letter to the first-mentioned specialist the referring specialist states that the medical practitioner who first referred the person to the referring specialist concurs in the person being referred to the first-mentioned specialist; or 25 30

“(b) If some other benefit or supplementary benefit is available under this Part of this Act in respect of the specialist medical services provided.

“(3) Notwithstanding anything to the contrary in this Act, but subject to paragraphs (b) to (e) of the definition of the term ‘general medical services’ in section 88 (1) of this Act, for the purposes of this Part of this Act,— 35

“(a) The examination of a patient by an anaesthetist before an operation, without a specific request for the anaesthetists’ opinion on the condition of the patient 40

from the medical practitioner who referred the patient to the anaesthetist; and

“(b) The administration of an anaesthetic by an anaesthetist—

5 shall be deemed to be general medical services.

“(4) Every payment made by the Department to a medical practitioner under this section shall be deemed to have been made on behalf of the patient in respect of whom the payment was made.”

10 (2) The Social Security (Medical Fees) Regulations 1986 (S.R. 1986/290) are hereby amended by revoking—

(a) Clause 2 of Part I of the Fourth Schedule; and

(b) Part II of the Fourth Schedule.

15 (3) This section shall come into force on the 12th day of September 1991 and shall apply in respect of specialist medical services provided on or after that date. In respect of specialist medical services provided before that date, the principal Act and the Social Security (Medical Fees) Regulations 1986 (S.R. 1986/290) shall continue to apply as if this section had not been
20 enacted.

28. Hospital treatment afforded by area health boards—(1) The principal Act is hereby amended by repealing section 101, and substituting the following section:

25 “101. (1) Subject to **subsections (2) to (4)** of this section, no area health board shall demand or accept or be entitled to recover from any hospital patient who is entitled to receive hospital benefits under this Act or from any other person any payment for hospital treatment afforded to any such hospital patient.

30 “(2) Where an area health board affords, in a hospital maintained by that area health board, hospital treatment to a hospital patient who is entitled to receive hospital benefits under this Act and regulations made under this Act prescribe, in respect of the affording of that type of hospital treatment to
35 any such patient or any class of such patient, a maximum amount that may be recovered by an area health board, that area health board may demand and accept, and shall be entitled to recover, from the patient or from any other person liable to meet the cost of the hospital treatment an amount not exceeding the prescribed maximum amount.

40 “(3) Where an area health board affords, in a hospital maintained by that area health board, hospital treatment to a hospital patient who has recovered or is or has been entitled to recover—

- “(a) Compensation under the Workers’ Compensation Act 1956 on account of that hospital treatment; or
- “(b) Special damages in respect of that hospital treatment,— that area health board may demand and accept, and shall be entitled to recover from the patient or from any other person liable to meet the cost of the treatment, the greater of—
- “(c) The prescribed maximum amount; or
- “(d) The amount recovered by that person—
- “(i) By way of compensation on account of that hospital treatment; or
- “(ii) By way of special damages in respect of that hospital treatment.
- “(4) Nothing in **subsection (1)** of this section or in any regulations made under this Act prevents an area health board from accepting from the Crown payments to that area health board in respect of long-term hospital treatment provided by the board for any intellectually handicapped person or physically handicapped person.
- “(5) The provisions of section 92 (4) of this Act, with the necessary modifications, shall apply for the purposes of **subsection (3)** of this section.”
- (2) The following enactments are hereby consequentially repealed:
- (a) So much of the Schedule to the Area Health Boards Act 1983 as relates to section 101 of the Social Security Act 1964:
- (b) Section 38 (3) of the Social Welfare (Transitional Provisions) Act 1990.
- 29. Regulations**—Section 123 (1) of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraphs:
- “(ba) Prescribing (whether by a scale or otherwise) the maximum amounts that area health boards may charge—
- “(i) For hospital treatment or any class or type of hospital treatment afforded, in a hospital maintained by an area health board, to hospital patients who are entitled to receive hospital benefits under this Part of this Act or to any class of such hospital patients; or
- “(ii) For any other services or treatment provided by an area health board:
- “(bb) Defining classes of patients for the purposes of any regulations made under this Act, which classes may

be defined by reference to such criteria, circumstances, or matters as are specified in the regulations, including, but not by way of limitation, the income of the patients:”.