

PUBLIC HOSPITALS (AMENDMENT) ACT 1986 No. 51

NEW SOUTH WALES



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RELATING TO THE REMUNERATION OF VISITING MEDICAL OFFICERS**

PUBLIC HOSPITALS (AMENDMENT) ACT 1986 No. 51

NEW SOUTH WALES



Act No. 51, 1986

An Act to amend the Public Hospitals Act 1929 as a consequence of and in connection with the enactment of the Area Health Services Act 1986, with respect to the remuneration of visiting medical officers and for other purposes. [Assented to, 14 May 1986]

Public Hospitals (Amendment) 1986

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Public Hospitals (Amendment) Act 1986".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by this section, this Act shall commence on the commencement of the Area Health Services Act 1986.

(3) Schedule 2, and section 3 in its application to that Schedule, shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 8, 1929

3. The Public Hospitals Act 1929 is amended in the manner set forth in Schedules 1 and 2.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE PUBLIC HOSPITALS ACT 1929

(1) Section 3 (**Interpretation**)—

(a) Section 3, definition of "Area health service"—

Before the definition of "Associated organisation", insert:

"Area health service" means an area health service constituted under the Area Health Services Act 1986.

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(b) Section 3, definition of “Board”—

Omit the definition, insert instead:

“Board” means—

- (a) the board of directors of a hospital; or
- (b) in the case of a hospital under the control of an area health service—the area health board for that area health service.

(c) Section 3, definition of “Hospital”—

After “includes”, insert “any hospital under the control of an area health service,”.

(2) Section 11 (**Powers and duties of Secretary as to inquiries and inspections**)—

(a) Section 11 (1) (a) (ii), (1) (b), (1) (b1) (ii), (1) (b2)—

Before “hospitals” wherever occurring, insert “area health services and”.

(b) Section 11 (1) (b1) (i)—

Before “hospital”, insert “area health service or”.

(c) Section 11 (1) (c), (d)—

Before “hospitals” wherever occurring, insert “area health services,”.

(d) Section 11 (1) (e)—

Before “hospital”, insert “area health service,”.

(e) Section 11 (6) (a)—

Before “a hospital”, insert “an area health service,”.

(f) Section 11 (6) (b) (ii)—

Omit “at a”, insert instead “of an area health service,”.

(g) Section 11 (6) (b) (ii)—

After “of a”, insert “of an area health service, a”.

Public Hospitals (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT 1929—*continued*

(h) Section 11 (6) (b) (iii)—

Before “hospital” where lastly occurring, insert “area health service.”.

(3) Section 11B (**Delegation of power to conduct inquiry**)—

(a) Section 11B (6)—

After “direction that”, insert “the area health board for an area health service.”.

(b) Section 11B (6)—

After “management of such”, insert “area health service.”.

(4) Section 13 (**Certain special powers**)—

Section 13 (4)—

After “hospital” where firstly occurring, insert “(other than a hospital under the control of an area health service)”.

(5) Section 17 (**Hospitals Fund**)—

(a) Section 17 (2) (a), (3)—

After “this Act” wherever occurring, insert “or the Area Health Services Act 1986”.

(b) Section 17 (2) (a)—

After “assistance to”, insert “area health services.”.

(c) Section 17 (5)—

Before “hospitals”, insert “area health services and”.

(d) Section 17 (5)—

Before “hospital” where firstly occurring, insert “area health service and”.

(e) Section 17 (5)—

Before “hospital” except where firstly occurring, insert “area health service or”.

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(f) Section 17 (7) (a)—

Before “hospitals”, insert “area health services,”.

(g) Section 17 (7) (b)—

Before “hospital”, insert “area health service,”.

(6) Section 22A—

After section 22, insert:

Board subject to Ministerial control, etc.

22A. (1) The Board of Directors of an incorporated hospital is subject to the control and direction of the Minister, except in relation to the contents of a recommendation or report made by the Board to the Minister.

(2) Notwithstanding anything to the contrary in this Act, an incorporated hospital does not represent the Crown.

(7) Section 29κ (**Interpretation**)—

(a) Section 29κ, definitions of “fee-for-service contract” and “sessional contract”—

(i) After “between” wherever occurring, insert “an area health service,”.

(ii) After “all patients of” wherever occurring, insert “hospitals under the control of that area health service or all patients”.

(iii) After “class of patients of” wherever occurring, insert “hospitals under the control of that area health service or any class of patients”.

(b) Section 29κ, definition of “visiting medical officer”—

Before “incorporated hospital” wherever occurring, insert “area health service,”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT 1929—*continued*

(8) Section 29s (**Certain conditions of appointment of visiting practitioners**)—

(a) Section 29s (6)—

After “hospital” where secondly occurring, insert “or, in the case of a hospital under the control of an area health service, between the visiting practitioner and the area health service”.

(b) Section 29s (7)—

After “this Act”, insert “, or the Area Health Services Act 1986,”.

(9) Section 29t—

After section 29s, insert:

Existing agreement with visiting practitioner to prevail over regulation or by-law

29t. Where a provision of a regulation or by-law under this Act is inconsistent with the rights and obligations under an agreement between a hospital and a visiting practitioner relating to the performance of work by the visiting practitioner at the hospital (being an agreement in force at the time the regulation or by-law was made), the provision of the regulation or by-law shall, to the extent of the inconsistency, have no force or effect in relation to the visiting practitioner.

(10) Section 31 (**Pensions, salaries, etc.**)—

Omit the section.

(11) Section 32B (**Charges in respect of sufferers from tuberculosis**)—

Omit the section.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT 1929—*continued*

(12) Section 33 (**Application to separate institutions, State hospitals and area health service hospitals**)—

Section 33 (3)—

After section 33 (2), insert:

(3) In the application of this Part to a hospital under the control of an area health service—

- (a) a reference to the “board”, in relation to a hospital, shall be construed as a reference to the area health service; and
- (b) a reference to the “secretary” shall be construed as a reference to the person prescribed by the regulations in that behalf.

(13) Section 36 (**Fees for medical attendance**)—

Section 36 (1)—

After “including”, insert “a hospital under the control of an area health service and”.

(14) Section 40A (**Samaritan Fund**)—

Section 40A (5)—

After section 40A (4), insert:

(5) Until the regulations under the Area Health Services Act 1986 otherwise provide, the provisions of subsections (1), (2) and (3) apply to hospitals under the control of an area health service and, for the purposes of the application of those provisions—

- (a) the area health service may establish a separate fund for each hospital or a single fund for all hospitals under its control; and
- (b) the money and personal effects referred to in those subsections shall be the property of the area health service.

Public Hospitals (Amendment) 1986

SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT 1929—*continued*

(15) Section 40AB—

After section 40A, insert:

Chief executive officers of incorporated hospitals

40AB. (1) This section applies to the chief executive officer of an incorporated hospital appointed after the commencement of the Area Health Services Act 1986.

(2) The appointment of a chief executive officer of an incorporated hospital shall be made by the Governor.

(3) A person of or above the age of 65 years is not eligible to be appointed as chief executive officer.

(4) A person appointed as chief executive officer shall, subject to this Act, hold office for such period, not exceeding 7 years, as may be specified in the instrument of appointment of the person, but is eligible (if otherwise qualified) for re-appointment.

(5) A chief executive officer may be removed from office by the Governor, but is not liable to be removed from office by the hospital concerned or the board of directors of that hospital.

(6) A chief executive officer may, after attaining the age of 60 years and before attaining the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Governor determines.

(7) A chief executive officer ceases to hold office, if the chief executive officer—

(a) dies;

(b) resigns the office by instrument in writing addressed to the Secretary;

(c) attains the age of 65 years; or

(d) is removed or retired from office by the Governor.

(8) A chief executive officer shall, while holding office as chief executive officer, be deemed to be employed by the hospital concerned.

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(9) The conditions of employment (including remuneration) of a chief executive officer shall, subject to the provisions of the instrument of appointment as chief executive officer, or any subsequent instrument executed by the Governor, be as determined in accordance with section 40BA.

(10) The Public Service Act 1979 does not apply to or in respect of the appointment of a person as chief executive officer and such a person is not, as chief executive officer, subject to that Act.

(11) In this section—

“chief executive officer”, in relation to an incorporated hospital, means the person (however designated) who is responsible to the board of the hospital for the carrying out of the directions of the board in the government and management of the hospital or for the supervision of the administration of the hospital.

(16) Section 40B (**Chief executive officers and matrons of hospitals**)—

Section 40B (1), (2)—

After “chief executive officer” wherever occurring, insert “of a hospital (other than an incorporated hospital or a hospital under the control of an area health service)”.

(17) Section 40BB (**Minister entitled to certain payments under Local Government (Superannuation) Act 1927**)—

Section 40BB (1), definition of “hospital”—

After “Schedule” where lastly occurring, insert “, and includes an area health service”.

(18) Section 42 (**Regulations**)—

(a) Section 42 (1) (b), (c)—

After “hospitals” wherever occurring, insert “or area health services”.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT 1929—*continued*

(b) Section 42 (1) (i)—

After “incorporated hospitals”, insert “and hospitals under the control of area health services”.

SCHEDULE 2

(Sec. 3)

AMENDMENTS TO THE PUBLIC HOSPITALS ACT 1929 RELATING
TO THE REMUNERATION OF VISITING MEDICAL OFFICERS

(1) Section 29L (**Appointment of arbitrator**)—

Section 29L (2)—

Omit the subsection.

(2) Section 29N (**Manner of exercise of arbitrator’s functions**)—

Section 29N (2)—

At the end of section 29N, insert:

(2) The arbitrator in making a determination shall have regard to—

- (a) the economic consequences of the proposed determination;
- (b) the most recent determination of the Industrial Commission of New South Wales under section 57 of the Industrial Arbitration Act 1940 of—

- (i) the amount; or

- (ii) the method by which an amount may be determined,

by which rates of wages in awards made under that Act shall be varied; and

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TO THE REMUNERATION OF VISITING MEDICAL OFFICERS—
continued

- (c) the principles of wage fixation for the time being adopted as a general ruling or declaration of principle, by that Commission, in connection with awards made under that Act.

(3) Section 29Q (**Notification of determination and finality thereof**)—

Section 29Q (2)—

Omit “A determination”, insert instead “Except as provided in section 29QA, a determination”.

(4) Section 29QA—

After section 29Q, insert:

Appeals

29QA. (1) In this section, “Commission” means the Industrial Commission of New South Wales.

(2) An appeal lies from a determination made under this Part to the Commission in court session, by leave of the Commission in court session, where the Commission in court session is of the opinion that the matter raised on appeal is of such importance that an appeal should lie.

(3) For the purposes of an appeal under this section—

- (a) the Industrial Arbitration Act 1940 applies to and in respect of the determination appealed against as if it were a decision of a member of the Commission sitting alone and as if the appeal were authorised under section 14 (8) (b) of that Act; but
- (b) the Commission in court session shall be constituted by not less than 3 members of the Commission chosen by the President of the Commission.

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SCHEDULE 2—*continued*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT 1929 RELATING
TO THE REMUNERATION OF VISITING MEDICAL OFFICERS—
continued

(4) If the Commission varies the determination on appeal, the determination as varied shall be final and shall be deemed to be the determination of the arbitrator who made the determination appealed against.

(5) An appeal does not lie in respect of a determination made before the commencement of this section.
