

**PUBLIC HOSPITALS (VISITING PRACTITIONERS) FURTHER
AMENDMENT BILL, 1984**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Health Administration (Medical Services Committee) Amendment Bill, 1984, is cognate with this Bill.

The objects of this Bill are—

- (a) to repeal the Public Hospitals (Visiting Practitioners) Amendment Act, 1984, and the amendments made by that Act to the Public Hospitals Act, 1929 (“the Principal Act”) (clause 4 and Schedule 1 (7), (8) (a));
- (b) to provide that the repeal of those amendments does not revive any notice of intention to resign given by medical practitioners (clause 5 (1));
- (c) to empower the Minister, on application, to exempt such a notice of intention from section 29U of the Principal Act (certain notices of resignation to be null and void), which is one of the provisions to be repealed by the proposed Act, so that the notice will be treated as never having been rendered null and void (clause 5 (2));
- (d) to provide that a regulation affecting visiting practitioners may not be made under section 42 of the Principal Act unless the Minister has received advice from the Medical Services Committee proposed to be established under the Health Administration Act, 1982 (Schedule 1 (8) (c));
- (e) to empower the Minister to publish model hospital by-laws, and to provide that a model by-law affecting visiting practitioners has no effect unless the Minister has received advice from the Medical Services Committee (Schedule 1 (4));
- (f) to provide that a hospital by-law affecting visiting practitioners may not be made under section 28 of the Principal Act unless the by-law is in substance the same as a model by-law or the Minister has received advice from the Medical Services Committee (Schedule 1 (3));
- (g) to provide greater flexibility as to the provisions of sessional contracts by which visiting practitioners are remunerated (Schedule 1 (5), (6));

- (h) to provide that the conditions subject to which a visiting practitioner is appointed to a hospital are to include conditions that the visiting practitioner—
 - (i) is not to discriminate between private patients and hospital patients to the detriment of any patient; and
 - (ii) is not to coerce or attempt to coerce a patient or prospective patient—
 - (A) to contribute for, or cease to contribute for, or alter, health benefits insurance; or
 - (B) to become a private patient instead of a hospital patient, (Schedule 1 (7));
 - (i) to omit section 42 (1A) of the Principal Act, which relates to regulations respecting certain conduct of visiting practitioners (Schedule 1 (8) (a)); and
 - (j) to make other provisions of a minor, consequential or ancillary nature.
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**PUBLIC HOSPITALS (VISITING PRACTITIONERS) FURTHER
AMENDMENT BILL, 1984**

No. , 1984.

A BILL FOR

An Act to amend the Public Hospitals Act, 1929, so as to omit certain provisions relating to visiting practitioners to hospitals and to provide that certain regulations and by-laws affecting visiting practitioners may be made only after certain advice has been furnished; to make further provisions relating to sessional contracts for and the conditions of appointment of visiting practitioners; to repeal the Public Hospitals (Visiting Practitioners) Amendment Act, 1984; and for other purposes.

See also Health Administration (Medical Services Committee) Amendment Bill, 1984.

Public Hospitals (Visiting Practitioners) Further Amendment 1984

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:—

5 Short title.

1. This Act may be cited as the "Public Hospitals (Visiting Practitioners) Further Amendment Act, 1984".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on 10 the date of assent to this Act.

(2) Schedule 1 (2), (3), (4) and (8) (c), and section 3 in its application to those provisions, shall commence on the day appointed and notified under section 2 (2) of the Health Administration (Medical Services Committee) Amendment Act, 1984.

15 Amendment of Act No. 8, 1929.

3. The Public Hospitals Act, 1929, is amended in the manner set forth in Schedule 1.

Repeal of Act No. 51, 1984.

4. The Public Hospitals (Visiting Practitioners) Amendment Act, 1984, 20 is repealed.

Savings as to notices of intention to resign as visiting practitioners.

5. (1) The repeal of Part VD of the Public Hospitals Act, 1929, by this Act does not revive any notice to which section 29U of that Act applied.

Public Hospitals (Visiting Practitioners) Further Amendment 1984

(2) On application made by a medical practitioner, the Minister for Health may, by instrument in writing, exempt a notice given by the medical practitioner from the operation of section 29U of the Public Hospitals Act, 1929, and that section shall be deemed never to have applied to a notice so
5 exempted.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929.

(1) Section 1 (2)—

10 Omit the subsection.

(2) Section 3, definition of “Medical Services Committee”—

After the definition of “In-patient”, insert:—

15 “Medical Services Committee” means the Medical Services Committee established under section 20B of the Health Administration Act, 1982.

(3) Section 28 (3), (4)—

After section 28 (2), insert:—

20 (3) A by-law may not (to the extent to which it would affect visiting practitioners in their capacity as such or to which it amends, modifies or omits a provision that would so affect visiting practitioners) be made under this section, unless—

(a) it is in substance the same as a model by-law under an order for the time being in force under section 28A; or

25 (b) the Minister has received advice from the Medical Services Committee in relation to the substance of the by-law.

*Public Hospitals (Visiting Practitioners) Further Amendment 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

5 (4) Subsection (3) does not apply to a by-law if the Medical Services Committee does not furnish advice in relation to the by-law to the Minister within 30 days after a notice from the Minister requesting such advice has been served on the Committee or within such further period as the Minister may specify in the notice or in another notice served on the Committee.

(4) Section 28A—

10 After section 28, insert:—

Model by-laws.

28A. (1) The Minister may cause to be published in the Gazette an order setting out the terms of model by-laws.

15 (2) An order has no effect for the purposes of subsection (1), to the extent to which a model by-law set out in the order—

- (a) would (if it were in force in relation to a hospital) affect visiting practitioners in their capacity as such; or
- (b) amends, modifies or omits a provision that would (if the provision were in force in relation to a hospital) so affect
- 20 visiting practitioners,

unless the Minister has received advice from the Medical Services Committee in relation to the substance of the model by-law.

25 (3) Subsection (2) does not apply to an order if the Medical Services Committee does not furnish advice in relation to the order to the Minister within 30 days after a notice from the Minister requesting such advice has been served on the Committee or within such further period as the Minister may specify in the notice or in another notice served on the Committee.

*Public Hospitals (Visiting Practitioners) Further Amendment 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

- (5) Section 29K, definition of “sessional contract”—
- 5 (a) After “the contract” where firstly occurring, insert “, during periods or sessions specified in the contract,”.
- (b) Omit “in consideration of remuneration on an hourly basis”.
- (6) (a) Section 29M—
- Omit “Subject to this Act and the regulations, the arbitrator” wherever occurring, insert instead “The arbitrator”.
- 10 (b) Section 29M (1)—
- Omit “and the rates on an hourly basis of remuneration”, insert instead “, the amounts or rates of remuneration and the bases on which those amounts or rates are applicable,”.
- (7) Part VD—
- 15 Omit the Part, insert instead:—

PART VD.

VISITING PRACTITIONERS.

Certain conditions of appointment of visiting practitioners.

- 20 29s. (1) In this section—
- “appointment” includes re-appointment;
- “hospital patient” means a patient who is not a private patient;
- “practitioner” means a medical practitioner or a dentist;
- 25 “private patient” means a patient who elects to be treated in a hospital by a practitioner while the practitioner is exercising a right of private practice.

*Public Hospitals (Visiting Practitioners) Further Amendment 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

(2) The conditions subject to which a person is appointed as a visiting practitioner to a hospital shall include the following:—

- 5 (a) The visiting practitioner shall not, to the detriment of any patient of the hospital, discriminate as to the nature of professional services or priority of treatment, between private patients of the visiting practitioner and hospital patients allocated to the care of the visiting practitioner.
- 10 (b) The visiting practitioner shall not, at or outside the hospital, coerce or attempt to coerce a patient or prospective patient of the hospital—
- 15 (i) to contribute or to cease to contribute for health benefits insurance or to alter the patient's or prospective patient's health benefits insurance; or
- (ii) to become a private patient instead of a hospital patient.

(3) For the purposes of subsection (2) (a), conduct of a visiting practitioner does not amount to discrimination if the visiting practitioner establishes that—

- 20 (a) the conduct was the subject of an arrangement made by the visiting practitioner, by which the visiting practitioner arranged for the treatment of a patient by another practitioner in circumstances of emergency or in accordance with
- 25 accepted teaching practices; or
- (b) the conduct was, on other grounds, reasonable in all the circumstances.

(4) Without affecting the generality of subsection (2) (b), a visiting practitioner coerces or attempts to coerce a patient or prospective patient to do a thing mentioned in subsection (2) (b) if the visiting practitioner—

- 30 (a) gives information that the visiting practitioner knows, or reasonably ought to know, to be false or misleading in a material particular; or

Public Hospitals (Visiting Practitioners) Further Amendment 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

- (b) refuses to provide professional services or alters the priority of those services,
- 5 in order to convince or attempt to convince the patient or prospective patient to do that thing.
- (5) Subsection (2) applies to a visiting practitioner to a hospital notwithstanding that the appointment to that position was made before the commencement of this section.
- 10 (6) The appointment of a visiting practitioner to a hospital is subject to the conditions referred to in subsection (2) whether or not they are included in an agreement between the visiting practitioner and the hospital.
- 15 (7) Nothing in this section shall be construed as preventing the prescription by regulations or by-laws made under this Act of conditions (other than those set out in subsection (2)) subject to which a person is appointed as a visiting practitioner to a hospital.
- (8) (a) Section 42 (1A)—
Omit the subsection.
- 20 (b) Section 42 (3B)—
After section 42 (3A), insert:—
- (3B) In the event of an inconsistency between a provision of the regulations and a provision of a by-law made under this Act, the firstmentioned provision shall prevail to the extent of
- 25 the inconsistency.

Public Hospitals (Visiting Practitioners) Further Amendment 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

(c) Section 42 (6), (7)—

After section 42 (5), insert:—

5 (6) A regulation may not be made pursuant to subsection
(1) (h1) unless the Minister has received advice from the
Medical Services Committee in relation to the substance of the
regulation.

10 (7) Subsection (6) does not apply to a regulation if the
Medical Services Committee does not furnish advice in relation
to the regulation to the Minister within 30 days after a notice
from the Minister requesting such advice has been served on the
Committee or within such further period as the Minister may
15 specify in the notice or in another notice served on the
Committee.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984

**PUBLIC HOSPITALS (VISITING PRACTITIONERS) FURTHER
AMENDMENT ACT, 1984, No. 110**

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 110, 1984.

An Act to amend the Public Hospitals Act, 1929, so as to omit certain provisions relating to visiting practitioners to hospitals and to provide that certain regulations and by-laws affecting visiting practitioners may be made only after certain advice has been furnished; to make further provisions relating to sessional contracts for and the conditions of appointment of visiting practitioners; to repeal the Public Hospitals (Visiting Practitioners) Amendment Act, 1984; and for other purposes. [Assented to, 20th September, 1984.]

See also Health Administration (Medical Services Committee) Amendment Act, 1984.

Public Hospitals (Visiting Practitioners) Further Amendment 1984

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 (Visiting Practitioners) Further Amendment Act, 1984".

Commencement.

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) Schedule 1 (2), (3), (4) and (8) (c), and section 3 in its application to those provisions, shall commence on the day appointed and notified under section 2 (2) of the Health Administration (Medical Services Committee) Amendment Act, 1984.

Amendment of Act No. 8, 1929.

3. The Public Hospitals Act, 1929, is amended in the manner set forth in Schedule 1.

Repeal of Act No. 51, 1984.

4. The Public Hospitals (Visiting Practitioners) Amendment Act, 1984, is repealed.

Savings as to notices of intention to resign as visiting practitioners.

5. (1) The repeal of Part VD of the Public Hospitals Act, 1929, by this Act does not revive any notice to which section 29U of that Act applied.

Public Hospitals (Visiting Practitioners) Further Amendment 1984

(2) On application made by a medical practitioner, the Minister for Health may, by instrument in writing, exempt a notice given by the medical practitioner from the operation of section 29U of the Public Hospitals Act, 1929, and that section shall be deemed never to have applied to a notice so exempted.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929.

(1) Section 1 (2)—

Omit the subsection.

(2) Section 3, definition of "Medical Services Committee"—

After the definition of "In-patient", insert:—

"Medical Services Committee" means the Medical Services Committee established under section 20B of the Health Administration Act, 1982.

(3) Section 28 (3), (4)—

After section 28 (2), insert:—

(3) A by-law may not (to the extent to which it would affect visiting practitioners in their capacity as such or to which it amends, modifies or omits a provision that would so affect visiting practitioners) be made under this section, unless—

- (a) it is in substance the same as a model by-law under an order for the time being in force under section 28A; or
- (b) the Minister has received advice from the Medical Services Committee in relation to the substance of the by-law.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

(4) Subsection (3) does not apply to a by-law if the Medical Services Committee does not furnish advice in relation to the by-law to the Minister within 30 days after a notice from the Minister requesting such advice has been served on the Committee or within such further period as the Minister may specify in the notice or in another notice served on the Committee.

(4) Section 28A—

After section 28, insert:—

Model by-laws.

28A. (1) The Minister may cause to be published in the Gazette an order setting out the terms of model by-laws.

(2) An order has no effect for the purposes of subsection (1), to the extent to which a model by-law set out in the order—

- (a) would (if it were in force in relation to a hospital) affect visiting practitioners in their capacity as such; or
- (b) amends, modifies or omits a provision that would (if the provision were in force in relation to a hospital) so affect visiting practitioners,

unless the Minister has received advice from the Medical Services Committee in relation to the substance of the model by-law.

(3) Subsection (2) does not apply to an order if the Medical Services Committee does not furnish advice in relation to the order to the Minister within 30 days after a notice from the Minister requesting such advice has been served on the Committee or within such further period as the Minister may specify in the notice or in another notice served on the Committee.

Public Hospitals (Visiting Practitioners) Further Amendment 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

- (5) Section 29K, definition of “sessional contract”—
- (a) After “the contract” where firstly occurring, insert “, during periods or sessions specified in the contract,”.
 - (b) Omit “in consideration of remuneration on an hourly basis”.
- (6) (a) Section 29M—
- Omit “Subject to this Act and the regulations, the arbitrator” wherever occurring, insert instead “The arbitrator”.
- (b) Section 29M (1)—
- Omit “and the rates on an hourly basis of remuneration”, insert instead “, the amounts or rates of remuneration and the bases on which those amounts or rates are applicable,”.
- (7) Part VD—
- Omit the Part, insert instead:—

PART VD.

VISITING PRACTITIONERS.

Certain conditions of appointment of visiting practitioners.

29s. (1) In this section—

“appointment” includes re-appointment;

“hospital patient” means a patient who is not a private patient;

“practitioner” means a medical practitioner or a dentist;

“private patient” means a patient who elects to be treated in a hospital by a practitioner while the practitioner is exercising a right of private practice.

*Public Hospitals (Visiting Practitioners) Further Amendment 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

(2) The conditions subject to which a person is appointed as a visiting practitioner to a hospital shall include the following:—

- (a) The visiting practitioner shall not, to the detriment of any patient of the hospital, discriminate as to the nature of professional services or priority of treatment, between private patients of the visiting practitioner and hospital patients allocated to the care of the visiting practitioner.
- (b) The visiting practitioner shall not, at or outside the hospital, coerce or attempt to coerce a patient or prospective patient of the hospital—
 - (i) to contribute or to cease to contribute for health benefits insurance or to alter the patient's or prospective patient's health benefits insurance; or
 - (ii) to become a private patient instead of a hospital patient.

(3) For the purposes of subsection (2) (a), conduct of a visiting practitioner does not amount to discrimination if the visiting practitioner establishes that—

- (a) the conduct was the subject of an arrangement made by the visiting practitioner, by which the visiting practitioner arranged for the treatment of a patient by another practitioner in circumstances of emergency or in accordance with accepted teaching practices; or
- (b) the conduct was, on other grounds, reasonable in all the circumstances.

(4) Without affecting the generality of subsection (2) (b), a visiting practitioner coerces or attempts to coerce a patient or prospective patient to do a thing mentioned in subsection (2) (b) if the visiting practitioner—

- (a) gives information that the visiting practitioner knows, or reasonably ought to know, to be false or misleading in a material particular; or

Public Hospitals (Visiting Practitioners) Further Amendment 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

(b) refuses to provide professional services or alters the priority of those services,

in order to convince or attempt to convince the patient or prospective patient to do that thing.

(5) Subsection (2) applies to a visiting practitioner to a hospital notwithstanding that the appointment to that position was made before the commencement of this section.

(6) The appointment of a visiting practitioner to a hospital is subject to the conditions referred to in subsection (2) whether or not they are included in an agreement between the visiting practitioner and the hospital.

(7) Nothing in this section shall be construed as preventing the prescription by regulations or by-laws made under this Act of conditions (other than those set out in subsection (2)) subject to which a person is appointed as a visiting practitioner to a hospital.

(8) (a) Section 42 (1A)—

Omit the subsection.

(b) Section 42 (3B)—

After section 42 (3A), insert:—

(3B) In the event of an inconsistency between a provision of the regulations and a provision of a by-law made under this Act, the firstmentioned provision shall prevail to the extent of the inconsistency.

Public Hospitals (Visiting Practitioners) Further Amendment 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PUBLIC HOSPITALS ACT, 1929—*continued.*

(c) Section 42 (6), (7)—

After section 42 (5), insert:—

(6) A regulation may not be made pursuant to subsection (1) (h1) unless the Minister has received advice from the Medical Services Committee in relation to the substance of the regulation.

(7) Subsection (6) does not apply to a regulation if the Medical Services Committee does not furnish advice in relation to the regulation to the Minister within 30 days after a notice from the Minister requesting such advice has been served on the Committee or within such further period as the Minister may specify in the notice or in another notice served on the Committee.

In the name and on behalf of Her Majesty, I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 20th September, 1984.*