

FIRST PRINT

**PUBLIC HOSPITAL SERVICES (CONTROL OF
PRIVATISATION) BILL 1992**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to ensure that the management of health services delivered from hospitals to public patients is substantially retained in public hands. The Bill provides for Parliamentary control of contractual arrangements whereby the management of the provision of public hospital services on more than a strictly limited scale is vested in a private individual or private corporation. Proposals for contracts of this kind will be required to be laid before Parliament where they may be examined confidentially by a Parliamentary committee.

The Bill provides that a contract that does not have the approval of Parliament is, to the relevant extent, void.

The proposed Act will have effect as from the date of introduction of the Bill into the Legislative Assembly. It will, accordingly, apply to privatisation proposals currently under consideration in relation to the Port Macquarie and Liverpool areas.

It is not the object of the Bill to require Parliamentary scrutiny of proposals for the privatisation of public hospital services on a relatively small scale. Contractual arrangements for the use of excess capacity in a private hospital will be permitted, to the extent of 25 per cent of the bed capacity of the hospital, without prior approval of Parliament.

The Bill also makes provision for exemption of short-term contractual arrangements entered into in consequence of a state of emergency.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is taken to have commenced on the day on which the Bill for the proposed Act is introduced into the Legislative Assembly.

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Clause 3 defines "public hospital authority", "public hospital services" and other terms used in the proposed Act. A "public patient" within the meaning of relevant Commonwealth legislation is an in-patient in respect of whom a hospital provides comprehensive care, including all necessary medical, nursing and diagnostic services and, if they are available at the hospital, dental and paramedical services, by means of its own staff or by other agreed arrangements.

Clause 4 describes the kind of agreement (called a "public hospital management contract") to which the proposed Act applies.

Clause 5 exempts from the operation of the proposed Act:

- an agreement by which public patients would be provided with public health services from a private hospital, as long as not more than 25 per cent of the accommodation facilities of the hospital would be required to be given over to public patient use as a result of the agreement; and
- a short-term agreement (for a term not greater than 2 years) that would otherwise be caught by the proposed Act but which is entered into because of a state of emergency.

Clause 6 provides that a public hospital management contract that has not been approved by both Houses of Parliament is of no effect.

Clause 7 specifies a procedure by which Parliament may be notified of hospital management contracts intended to be entered into.

Clause 8 provides that any committee (a "Public Hospital Services Committee") constituted by the Legislative Assembly or by both Houses of Parliament to inquire into and report on a proposed public hospital management contract is to be furnished with a copy of the terms of the proposed contract.

Clause 9 provides that draft contracts furnished to the Committee are to be treated confidentially, except to the extent that the Minister, Parliament or the parties to the contract determine otherwise.

Clause 10 declares that the proposed Act has effect regardless of the terms of any agreement.

Clause 11 provides that a contract is not affected by the proposed Act to the extent that it deals with matters other than the privatisation of public health services.

Clause 12 provides that the proposed Act will bind the Crown.

Clause 13 allows regulations to be made by the Governor-in-Council.

Clause 14 provides for review of the terms and policy objectives of the proposed Act after 5 years and requires a report of the outcome of the review to be tabled in Parliament.

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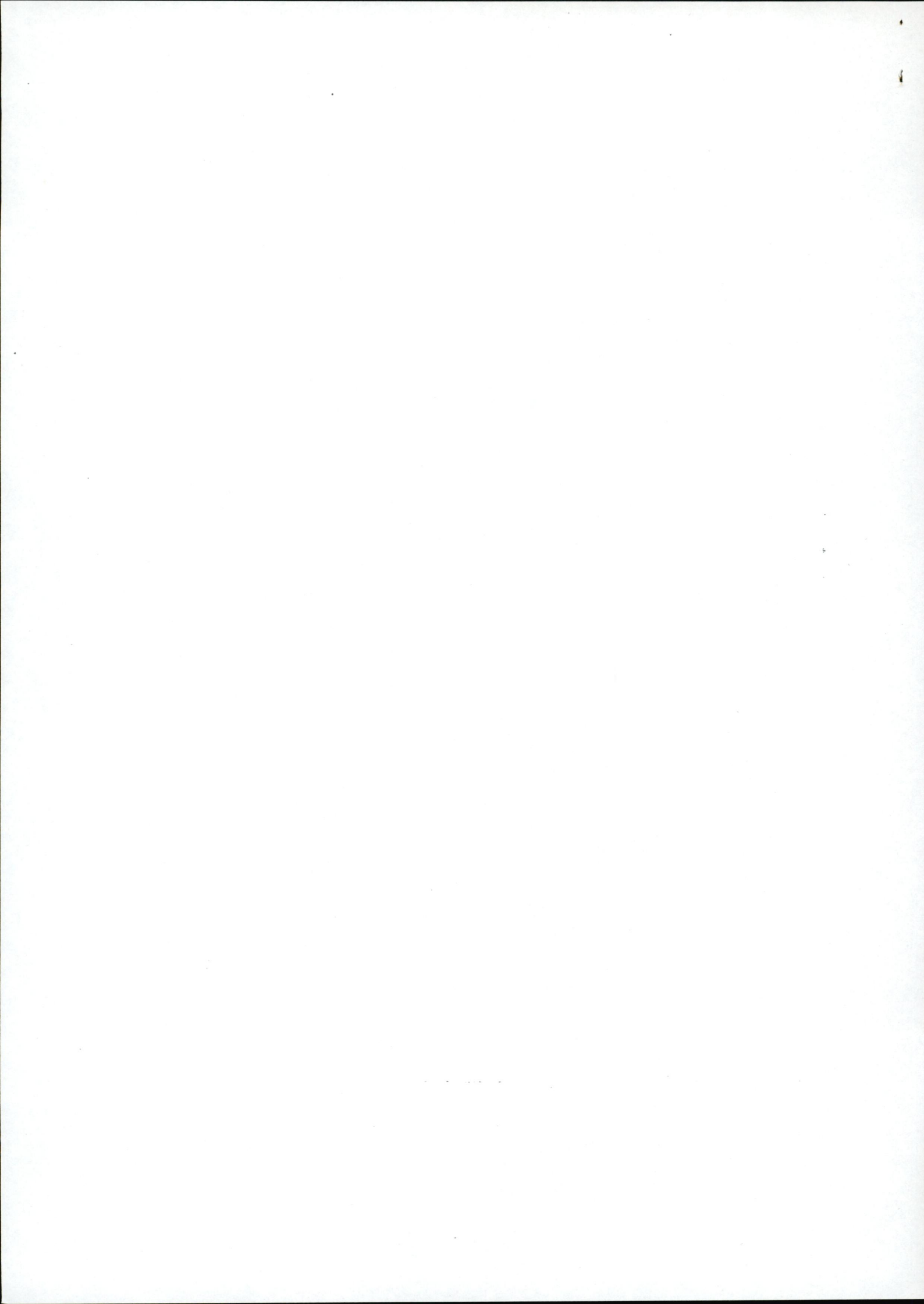
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**PUBLIC HOSPITAL SERVICES (CONTROL OF
PRIVATISATION) BILL 1992**

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to provide for Parliamentary control of arrangements for the management of public hospital services by the private sector.

Public Hospital Services (Control of Privatisation) 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Public Hospital Services (Control of Privatisation) Act 1992.

5 Commencement

2. This Act is taken to have commenced on the day on which the Bill for this Act was introduced into the Legislative Assembly.

Definitions

3. In this Act:

10 "agreement" includes any arrangement or understanding;

"Government" includes the State, the Crown and a Minister of the Crown;

"private person" means any person other than:

- (a) the Government; or
- 15 (b) a public hospital authority; or
- (c) a public or local authority; or
- (d) a public servant or other person or body acting in an official capacity on behalf of the Government, a public hospital authority or a public or local authority;

20 "public hospital authority" means an area health service constituted under the Area Health Services Act 1986 or an incorporated hospital or separate institution within the meaning of the Public Hospitals Act 1929 or (in relation to a hospital mentioned in the Fifth Schedule to that Act) the Minister for Health;

25 "public hospital management contract" means an agreement to which this Act applies;

30 "public hospital services" means any medical, nursing, diagnostic, dental or paramedical services, including any preventive health services, provided by a hospital to an in-patient who is a public patient within the meaning of the Health Insurance Act 1973 of the Commonwealth.

Contracts to which this Act applies

4. This Act applies to an agreement entered into or proposed to be entered into by or on behalf of the Government, a public hospital
35 authority or a public or local authority:

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- (a) by which any private person is or is to be charged with the management of the provision of any public hospital services to public patients; or
 - (b) which affects the rights or obligations, with respect to the provision of such services to public patients, of any private person charged with any such management, 5
- and which is not an agreement exempted by section 5.

Exemptions

- 5. (1) An agreement:
 - (a) by which persons responsible for the management of hospital services at an existing or proposed private hospital (including any existing or proposed private day hospital) are or are to be charged with the management of the provision at that hospital of any public hospital services to public patients; or 10
 - (b) which affects the rights or obligations of any such persons with respect to the provision of such services to public patients, 15

is exempt from the operation of this Act as long as not more than 25 per cent of the accommodation facilities at that hospital would be required, as a result of the agreement, to be allocated for use for the provision of public hospital services to public patients. 20
- (2) An agreement is exempt from the operation of this Act if:
 - (a) it is for a term that (including the term of any option for renewal) does not exceed 2 years; and
 - (b) it is entered into as a consequence of a state of emergency declared or notified under any Act. 25

Unapproved contracts void

6. A public hospital management contract is void from its making unless it is in writing and in terms approved by resolution of both Houses of Parliament.

Notice of contracts may be laid before Parliament 30

7. The Minister may cause written notice of any public hospital management contract proposed to be entered into after the commencement of this Act to be laid before each House of Parliament for the purpose of obtaining Parliamentary approval of the terms of the proposed contract. 35

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Public Hospital Services Committee

8. (1) If, for the purpose of inquiring into a draft public hospital management contract, the Legislative Assembly sees fit to propose the constitution of a committee (which may, with the consent of the
5 Legislative Council, be a joint committee comprising members of both Houses of Parliament), the Minister is to furnish the committee with a draft of the proposed contract for inquiry and report to Parliament.

(2) Any such committee (whether a select committee, a standing committee or a joint committee) is referred to in this Act as a Public
10 Hospital Services Committee.

Draft contracts to be treated confidentially

9. (1) A draft public hospital management contract is to be treated confidentially by members and officers of Parliament, except to the extent that:

- 15 (a) either House of Parliament otherwise decides; or
(b) the Minister has chosen to reveal the draft contract to either or both Houses of Parliament; or
(c) the contents of the draft are otherwise made public by consent of the parties to the proposed agreement.

20 (2) The report of any Public Hospital Services Committee is not to include a copy of the draft contract or any part of it, to the extent that it remains confidential in accordance with this section.

No contracting out

10. This Act applies regardless of the terms of any agreement,
25 whether entered into before or after the commencement of this Act.

Effect of this Act on contracts dealing with other matters

11. (1) A public hospital management contract is not rendered void by section 6 to the extent that it provides for matters other than the matters by virtue of which it is a public hospital management contract.

30 (2) This section has effect subject to the terms of any agreement.

Act to bind the Crown

12. This Act binds the Crown.

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Regulations

13. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Review of Act

14. (1) The Minister is to review this Act to determine whether the policy objectives of this Act remain valid and whether the terms of this Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

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(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

