

FIRST PRINT

**PUBLIC HOSPITALS (CONSCIENTIOUS OBJECTION)
BILL 1993 (No. 2)**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to allow a medical practitioner or nurse to decline to provide or take part in the provision of medical or nursing treatment or services at a public hospital if he or she has a conscientious objection on the grounds of moral or religious belief.

The Act will not apply to a treatment or service which is required urgently or when failure to provide the treatment or service would adversely affect patient care (such as when the need to find another medical practitioner to provide the treatment or service would cause an unreasonable delay).

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act 60 days after the date of assent, unless commenced sooner by proclamation.

Clause 3 defines "public hospital" and other terms used in the proposed Act.

Clause 4 provides that the proposed Act does not apply to a treatment or service required urgently or when failure to provide the treatment or service would adversely affect patient care.

Clause 5 provides that a medical practitioner or nurse who has a conscientious objection to the provision of a particular treatment or service has no duty to provide or take part in providing the service at a public hospital, but only if he or she has registered that conscientious objection with the hospital (see clause 6).

Clause 6 deals with how a conscientious objection is registered with a hospital and when that registration takes effect.

Public Hospitals (Conscientious Objection) 1993 (No. 2)

Clause 7 provides that registration of a conscientious objection creates a presumption that the person has the conscientious objection. The presumption can be rebutted by evidence sufficient to raise real doubt to the contrary. If the presumption is rebutted, the onus of establishing a conscientious objection is then on the person who claims to have it. A person need not establish that he or she has a conscientious objection in order to be able to register it under the proposed Act.

Clause 8 deals with how a person may withdraw a conscientious objection from registration.

Clause 9 provides that the chief executive officer of a public hospital must keep a record of conscientious objections registered with the hospital.

Clause 10 provides that the proposed Act applies despite the terms of any agreement made before or after the commencement of the proposed Act and prevents "contracting-out" of the proposed Act.

Clause 11 provides that the proposed Act binds the Crown.

FIRST PRINT

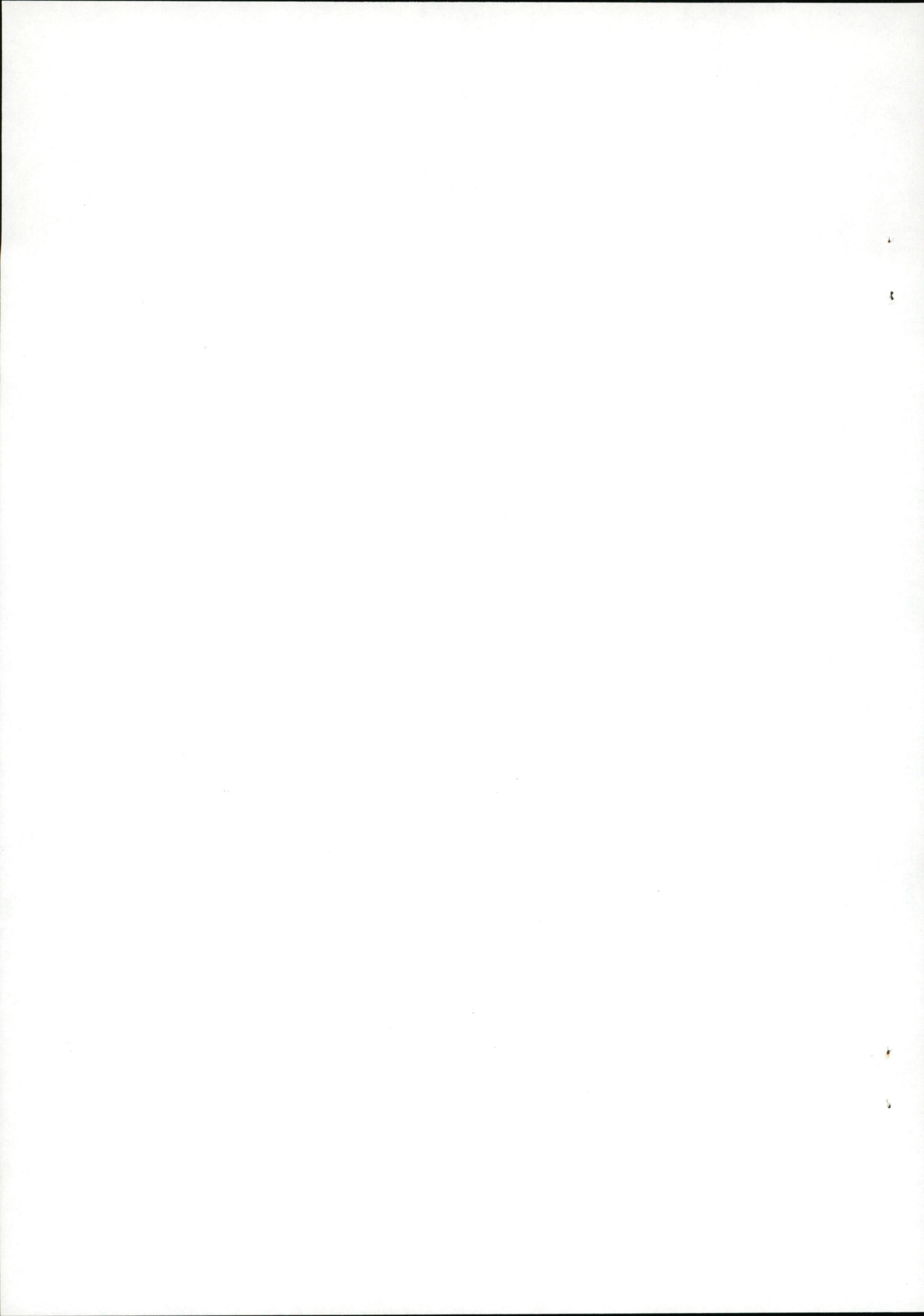
**PUBLIC HOSPITALS (CONSCIENTIOUS OBJECTION)
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NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Definitions
 4. Conscientious objection not to jeopardise patient care
 5. Right to conscientious objection at public hospitals
 6. How a conscientious objection is registered
 7. Onus of establishing conscientious objection
 8. Conscientious objection may be withdrawn
 9. Chief executive officer must keep record of conscientious objections
 10. Act applies despite any other laws and agreements
 11. Act binds Crown
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**PUBLIC HOSPITALS (CONSCIENTIOUS OBJECTION)
BILL 1993 (No. 2)**

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No. , 1993

A BILL FOR

An Act to provide for conscientious objection by medical practitioners
and nurses on the grounds of moral or religious belief.

Public Hospitals (Conscientious Objection) 1993 (No. 2)

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Public Hospitals (Conscientious Objection) Act 1993.

5 Commencement

2. This Act commences on the sixtieth day after the date of assent, unless commenced sooner by proclamation.

Definitions

3. In this Act:

10 **“conscientious objection”** means a conscientious objection on the grounds of moral or religious belief;

“medical practitioner” means a registered medical practitioner;

“nurse” means an accredited nurse as defined in the Nurses Act 1991;

15 **“public hospital”** means:

(a) a hospital under the control of an area health service constituted under the Area Health Services Act 1986; or

(b) a hospital or separate institution mentioned in the Second, Third or Fifth Schedule to the Public Hospitals Act 1929.

20 Conscientious objection not to jeopardise patient care

4. This Act does not apply to a duty to provide or take part in the provision of a treatment or service if:

(a) the treatment or service is required to be provided urgently (whether because of an emergency or otherwise); or

25 (b) a failure to provide or take part in the provision of the treatment or service could reasonably be thought likely to have an adverse effect on patient care because the timely and competent provision of the treatment or service would thereby be unreasonably hindered, delayed or prevented.

30 Right to conscientious objection at public hospitals

5. (1) A medical practitioner has no duty arising under contract or otherwise to provide or take part in the provision of any medical treatment or service in a public hospital if he or she has a conscientious objection to that treatment or service and the conscientious objection is
35 registered with the hospital.

Public Hospitals (Conscientious Objection) 1993 (No. 2)

(2) A nurse has no duty arising under contract or otherwise to provide or take part in the provision of any nursing treatment or service in a public hospital if he or she has a conscientious objection to that treatment or service and the conscientious objection is registered with the hospital.

(3) A conscientious objection is not considered to be registered until that registration has taken effect, as provided by section 6. 5

How a conscientious objection is registered

6. (1) A medical practitioner or nurse registers a conscientious objection with a public hospital by notifying the chief executive officer of the hospital in writing that he or she has the objection. 10

(2) Registration takes effect immediately if the notification is given before the medical practitioner or nurse is appointed to the position in which, or enters into the contract under which, he or she is called on to provide or take part in the provision of the treatment or service concerned. 15

(3) In all other cases, registration takes effect 14 days after the notification is given or at such earlier time as the chief executive officer of the public hospital may agree to.

(4) A notification may be given by post or by being left at the office of the chief executive officer. 20

Onus of establishing conscientious objection

7. (1) When a person has a conscientious objection registered with a public hospital under this Act, it is presumed that the person has that conscientious objection, but this presumption can be rebutted by evidence sufficient to raise real doubt to the contrary. 25

(2) If the presumption is rebutted, the person who claims to have the conscientious objection has the onus of establishing that he or she has it.

(3) A person is entitled to register a conscientious objection under this Act without having to establish that he or she has the conscientious objection. 30

Conscientious objection may be withdrawn

8. (1) A medical practitioner or nurse may withdraw a conscientious objection from registration with a public hospital by notifying the chief executive officer of the hospital in writing that he or she withdraws the objection. 35

Public Hospitals (Conscientious Objection) 1993 (No. 2)

(2) A notification may be given by post or by being left at the office of the chief executive officer.

(3) A notification of withdrawal of a conscientious objection operates to cancel the registration of that conscientious objection with that hospital
5 with effect from the date the notice is given.

Chief executive officer must keep record of conscientious objections

9. (1) The chief executive officer of a public hospital is to keep a record of all conscientious objections registered or withdrawn from registration at the hospital.

10 (2) The chief executive officer is to acknowledge receipt of a notification of conscientious objection.

Act applies despite any other laws and agreements

10. (1) This Act applies despite any provision made by or under any other Act or other law and despite the terms of any agreement (whether
15 entered into before or after the commencement of this Act).

(2) A term of an agreement is void to the extent that it would operate to exclude, modify or restrict the operation of this Act.

Act binds Crown

11. This Act binds the Crown.
