

WESTERN AUSTRALIA.

HOSPITALS.

No. 33 of 1972.

AN ACT to amend the Hospitals Act, 1927-1969.

[Assented to 16th June, 1972.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Hospitals Act Amendment Act, 1972*.

(2) In this Act the Hospitals Act, 1927-1969, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Hospitals Act, 1927-1972.

Short title
and citation.

Reprinted
Acts Vol. 15.
Approved for
reprint 14th
August, 1961,
as amended
by Act
No. 89 of
1969.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Long title
amended.

3. The principal Act is amended by substituting for the long title the passage "AN ACT to provide for the Establishment, Maintenance, and Management of Public Hospitals, and for incidental and other purposes." .

Section 1
amended.

4. Section 1 of the principal Act is amended by deleting the passage " , and shall come into operation on the first day of January, One thousand nine hundred and twenty-eight".

Section 2
repealed and
re-enacted.

5. Section 2 of the principal Act is repealed and re-enacted with amendments as follows—

Interpre-
tation.

2. In this Act, subject to the context—

"Advisory Council" means the Teaching Hospitals Advisory Council established under section six A of this Act;

"board" means a hospital board constituted under section fifteen of this Act, and includes the Minister in relation to any public hospital controlled by him under section seven of this Act;

"Department" means the Medical Department;

"hospital" means an institution for the reception and treatment of persons suffering from illness or injury, or in need of medical, surgical or dental treatment or assistance, and includes a maternity hospital, nursing home or nursing post;

“hospital service” includes accommodation, maintenance, care, and all other services rendered, goods supplied or work done at, by or on behalf of a public hospital, other than the professional services of medical practitioners;

“infectious disease” has the meaning given to that expression in the Health Act, 1911;

“local authority” means the council of a municipality;

“nursing home” means premises in which persons who do not require constant medical attention are received as patients and lodged for the purpose of medical supervision and nursing care but does not include any premises declared by the Minister under section three of this Act not to be a nursing home for the purposes of this Act;

“nursing post” means a place at which a nurse is stationed and at which facilities exist for medical attention but which is not normally used for the accommodation of in-patients;

“practitioner” includes any person who is a medical practitioner within the meaning given to that expression in the Medical Act, 1894, and any other person practising in the field of health or medicine who is declared by the Minister under section three of this Act to be a practitioner for the purposes of this Act;

“private non-profit hospital” means a hospital which is maintained by a religious or charitable organisation and is not carried on for the purpose of private gain;

“public hospital” means—

- (a) a hospital declared by the Minister to be a public hospital under section three of this Act; and
- (b) any other hospital not maintained by a religious or charitable organisation and which is not carried on for the purpose of private gain;

“teaching hospital” means an institution declared by the Minister under section three of this Act to be a teaching hospital for the purposes of this Act.

Section 3
repealed and
re-enacted.

6. Section 3 of the principal Act is repealed and re-enacted with amendments as follows—

Application
of Act.

3. (1) This Act applies to any public hospital howsoever founded or maintained (whether wholly or partly by or under governmental authority or otherwise), but does not apply to any institution which is an approved hospital within the meaning of, and subject to the Mental Health Act, 1962, or to any hospital used exclusively in connection with a prison.

(2) The Minister, acting on the written recommendation of the Principal Medical Officer and with the consent of the governing body of the institution, may by notice published in the *Gazette* declare any institution to be a public hospital subject to and for the purposes of this Act.

(3) The Minister may by notice published in the *Gazette* declare that any institution is not a public hospital, or is not a nursing home, as the case may be, for the purposes of this Act.

(4) The Minister may by notice published in the *Gazette* declare that any institution is a teaching hospital for the purposes of this Act.

(5) The Minister may by notice published in the *Gazette* declare any person practising in the field of health or medicine to be a practitioner for the purposes of this Act.

7. Section 4 of the principal Act is repealed.

Section 4
repealed

8. The principal Act is amended by adding after section 5 a new section as follows—

Section 5A
added.

5A. (1) It shall be the duty of the Minister to provide throughout the State, to such extent as he considers necessary to meet all reasonable requirements,—

Duties of
the Minister.

(a) hospital accommodation; and

(b) hospital service, whether at a public hospital or, if necessary on medical grounds, elsewhere.

(2) Subject to the provisions of the University Medical School, Teaching Hospitals, Act, 1955, it shall be the duty of the Minister to ensure that such facilities as the Minister determines to be required for clinical teaching and research are provided at teaching hospitals, and that those facilities and the medical and teaching resources, and the services available, are co-ordinated and utilised effectively.

(3) The duty of the Minister under this section may be discharged by making arrangements, on such terms, which may include the payment of charges, as the Minister thinks fit for securing the performance of any service on behalf of the Minister by a voluntary organisation or private non-profit hospital.

(4) The duty of the Minister does not extend to any matter within the exclusive administrative competence of any institution other than a public hospital, unless by and with the consent of the governing body of that institution.

Section 6
amended.

9. Section 6 of the principal Act is amended—

- (a) in subsection (2) by substituting for the words “a Secretary”, in line two, the words “a Director of Administration”;
- (b) by adding after subsection (2) a subsection as follows—

(3) The Minister may from time to time appoint and remove such persons as he thinks requisite to assist in the management of the Department or otherwise in the execution of this Act.

Section 6A
added.

10. The principal Act is amended by adding after section 6 a new section as follows—

Teaching
Hospitals
Advisory
Council.

6A. (1) To assist the Minister in the performance of his duty in relation to teaching hospitals there is hereby established a body by the name of the Teaching Hospitals Advisory Council.

(2) The Advisory Council shall consist of

- (a) two persons nominated by the Minister to represent the interests of the Department;
- (b) two persons not being employed in the Department, nominated by the Minister;
- (c) two persons nominated by the Senate of the University of Western Australia;
- (d) one person nominated to represent the interests of that hospital by the managing body of each teaching hospital; and
- (e) one person nominated by the Western Australian branch of the Australian Medical Association,

all of whom shall be appointed by the Governor.

(3) The Governor may, in respect of each member of the Advisory Council, appoint a person representative of the same interests as that member to be the deputy of the member.

(4) The Governor shall appoint the Chairman of the Advisory Council from amongst the members of that Council.

(5) It shall be the duty of the Advisory Council to advise the Minister upon such matters relating to the provision, co-ordination and utilisation of the clinical and teaching facilities, services and resources that are or ought to be available in the teaching hospitals for clinical teaching and research as the Minister determines, and upon such other matters as are referred to the Advisory Council by the Minister, but the Advisory Council may, if they think fit, recommend to the Minister that a matter should be referred to them for consideration.

(6) Before tendering any advice to the Minister it shall be the duty of the Advisory Council to consult with, and ascertain the opinions of, any hospital board or other institution likely to be materially affected by that advice; and to give consideration to the information so obtained.

(7) The constitutional provisions contained in the Schedule to this Act shall have effect in relation to the Advisory Council. .

11. The principal Act is amended by repealing subsection (1) of section 7 and re-enacting it with amendments as follows—

Section 7
amended.

7. (1) Where in relation to any public hospital the Governor does not appoint any person to constitute a hospital board in accordance

Minister
acting in
place of
board.

with the provisions of section fifteen of this Act, or where a board is abolished in accordance with the provisions of section eight of this Act the management and control of the hospital is vested in the Minister. .

Section 7A
added.

12. The principal Act is amended by repealing subsection (3) of section 7 and re-enacting it with amendments as a new section to be added after section 7 as follows—

General
powers of
the Minister.

7A. The Minister shall have general power—

- (a) to establish depots and make contracts for the supply of equipment, stores, drugs and other hospital requisites to hospitals;
- (b) to maintain an exchange through which hospitals may secure the services of staff;
- (c) with the approval of the Treasurer of the State, to make payments to or on behalf of any religious or charitable organisation for the purpose of defraying the interest on moneys borrowed by that organisation and expended or intended to be expended by that organisation on a project approved by the Minister in connection with a private non-profit hospital or nursing home maintained by that organisation;
- (d) to make payments by way of subsidy in respect of the accommodation of any frail aged person;
- (e) to make payments by way of subsidy in respect of patients who are unable to afford the payment of reasonable fees. .

13. Subsection (2) of section 9 of the principal Act is amended by substituting for the passage "the Royal Commissioners' Powers Act, 1902, and the Royal Commissioners' Powers Act Amendment Act, 1914," in lines seven to nine, the passage "the Royal Commissions Act, 1968,".

Section 9
amended.

14. Section 11 of the principal Act is amended by substituting for the words "One hundred pounds", in line nine, the words "Two hundred dollars".

Section 11
amended.

15. The principal Act is amended by adding after section 12 a new section as follows—

Section 12A
added.

12A. (1) The Minister, with the approval of the Treasurer of the State, may establish and maintain a scheme to make financial provision in respect of the retirement, invalidity or death of practitioners in the employment of the Department or on the staff of any hospital, not being persons who are contributors for the purposes of the Superannuation and Family Benefits Act, 1938.

Superan-
nation and
other
retirement
benefits.

(2) A scheme established under this section shall be administered by trustees appointed in writing by the Minister and in accordance with rules to be approved by the Treasurer of the State.

(3) The Minister, with the approval of the Treasurer of the State, may make agreements with other persons or institutions for the establishment of joint machinery to facilitate the transfer of members of a superannuation scheme, or of persons who hold other entitlements to benefit in the event of retirement, invalidity or death, from the provisions of that scheme or entitlement to the scheme established under this section or otherwise, and generally in relation to such matters.

(4) The Minister, with the approval of the Treasurer of the State, may amend the scheme established under this section, or any agreement made under subsection (2) of this section.

(5) Any act, matter or thing done or executed before the coming into operation of the Hospitals Act Amendment Act, 1972, which would have been lawful had this section been in force at the time such act, matter or thing was made, done or executed is hereby validated.

Section 13
amended.

16. Section 13 of the principal Act is amended by substituting for the passage beginning with the word "Act" in line four and ending with the word "respectively" in line seven, the word "Act".

Section 14
repealed.

17. Section 14 of the principal Act is repealed.

Sections 15
and 16
repealed and
re-enacted
as section 15.

18. The principal Act is amended by repealing section 15 and section 16 and re-enacting them with amendments as follows—

Hospital
boards.

15. (1) The Governor may appoint such persons as he thinks fit to constitute a hospital board in relation to any public hospital.

(2) The management and control of a public hospital is vested in the hospital board constituted in relation to it.

(3) Every board shall be a body corporate with perpetual succession and a common seal and the corporate name of the board shall be the name assigned to it by the Governor.

(4) Every board shall be capable of suing and being sued in its corporate name.

(5) The Governor may appoint a deputy for any member of a hospital board.

(6) The members of a hospital board shall appoint one of their number to be the Chairman.

(7) The constitutional provisions contained in the Schedule to this Act shall have effect in relation to a hospital board. .

19. The principal Act is amended by adding after the new section 15 a section as follows— New section 16 added.

16. No action, claim or demand lies, or shall be commenced or allowed, by or in favour of any person against any member of a hospital board or in respect of any act, matter or thing done by any such member in good faith in the exercise or purported exercise of any powers or functions under this Act or for the purpose of giving effect to the provisions or objects of this Act. . Indemnity.

20. Section 18 of the principal Act is amended— Section 18 amended.

- (a) by adding after the section number "18." the subsection designation "(1)"; and
 (b) by adding two new subsections as follows—

(2) The Minister may, after consultation with a hospital board, give to it directions as to the exercise of its functions.

(3) A hospital board shall give effect to any directions given to it under this section. .

21. Section 21 of the principal Act is amended by adding the following new paragraph— Section 21 amended.

- (g) The on-lending to the Minister or any person or organisation of moneys borrowed in accordance with the provisions of section seventeen of this Act where those moneys are required to finance a service which, in the opinion of the Minister, can more effectively or economically be provided to the hospital by the Minister or that person or organisation rather than by the board.

Section 22
amended.

22. (1) Subsection (1) of section 22 of the principal Act is amended—

(a) in paragraph (f), by substituting for the words “grant of nursing care”, in line one, the words “provision of hospital service”;

(b) by substituting for paragraph (g) a new paragraph as follows—

(g) Prescribing in what circumstances fees, other than fees specified in accordance with the provisions of section thirty-seven of this Act, shall be chargeable for the provision of hospital service in, by or on behalf of any public hospital under the control of the board. ;

(c) by adding after the new paragraph (g) a paragraph as follows—

(ga) Prescribing that fees prescribed under paragraph (g) of this subsection shall be chargeable in accordance with a scale to be determined from time to time by the board. ; and

(d) in paragraph (i), by substituting for the words “five pounds”, in line two, the words “fifty dollars”.

(2) Section 22 of the principal Act is further amended by adding after subsection (4) two new subsections as follows—

(5) A board may, of its own motion, by resolution adopt the whole or any portion of any model by-law published for the guidance of boards under the provisions of section thirty-seven of this Act.

(6) A resolution made pursuant to subsection (5) of this section shall be published in the *Gazette* and thereupon shall operate with the same legal effect for all purposes as if the

by-laws or portion so adopted had been passed by the board and duly brought into effect as provided in this Act. .

23. Subsection (4) of section 26 of the principal Act is amended by substituting for the words "appointed by the Minister", in line two, the words "approved by the Auditor General".

Section 26
amended.

24. Section 27 of the principal Act is amended—

Section 27
amended.

(a) in subsection (1)—

(i) by deleting the passage " , and the powers of its local government Act shall be deemed to be extended accordingly" in lines eleven to thirteen;

(ii) by deleting the passage " , but so that no such sum shall exceed in any year the sum of five hundred pounds" in lines twenty-two and twenty-three;

(b) in subsection (2)—

(i) by substituting for the passage "Part XXIV. of the Municipal Corporations Act, 1906, and Part VII. of the Road Districts Act, 1919," in lines seven to nine, the passage "Part XXVI. of the Local Government Act, 1960,";

(ii) by substituting for the words "the said respective Acts", in line eleven, the words "that Act"; and

(c) by substituting for subsection (4) a new subsection as follows—

(4) The provisions of this section are without prejudice to any power vested in a local authority by or under any other Act and the powers of a local authority

vested in it by or under the Local Government Act, 1960, are deemed to be extended in so far as is necessary to give effect to those provisions. .

Section 28
repealed.

25. Section 28 of the principal Act is repealed.

Section 30
repealed.

26. Section 30 of the principal Act is repealed.

Section 33
amended.

27. Section 33 of the principal Act is amended by substituting for subsection (6) a new subsection as follows—

(6) Notwithstanding any other provision of this Act, where a board thinks it reasonable to do so, having regard to the means of the person indebted and the circumstances of the case, the board may reduce or waive payment of any fees for hospital service that would otherwise be payable to the board.

Section 34
repealed.

28. Section 34 of the principal Act is repealed.

Section 36
amended.

29. Section 36 of the principal Act is amended by substituting for the words “ten pounds”, in line eight, the words “one hundred dollars”.

Section 37
repealed and
re-enacted.

30. The principal Act is amended by repealing section 37 and re-enacting it with amendments as follows—

Regulations
and by-laws.

37. (1) The Governor may make regulations for or with respect to any matter, whether general or to meet a particular case, that is requisite or expedient to give effect to the purposes of this Act.

(2) Without prejudice to the generality of subsection (1) of this section the Governor may by regulation—

(a) publish model by-laws for the guidance of boards in respect of all or any of the matters regarding which boards may make by-laws;

- (b) enable the Principal Medical Officer to transfer patients, or inmates of homes for aged or infirm people, from any hospital or home to any other hospital or home having special facilities, skill or equipment;
- (c) prescribe the fees that shall be chargeable for the provision of hospital service in, by or on behalf of any public hospital; and
- (d) prescribe the fees that shall be chargeable in relation to any other matter under this Act but this power shall not extend to any fees charged in respect of the professional services of a medical practitioner.

(3) Regulations may be made under this section—

- (a) so as to apply—
 - (i) at all times or at a specified time or at specified times; and
 - (ii) throughout the State or in a specified part or specified parts of the State;
- (b) so as to require a matter affected by them to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;
- (c) so as to confer on a specified person or body or a specified class of person or body a discretionary authority;

- (d) so as to provide that, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified; and
- (e) so as to impose a penalty not exceeding fifty dollars for any breach of the regulations.

(4) In subsection (3) of this section "specified" means specified in the regulations. .

Schedule substituted.

31. The principal Act is amended by repealing the Schedule thereto and substituting a new Schedule as follows—

Ss. 6A and 15.

SCHEDULE.

Constitutional provisions common to the Advisory Council and Hospital Boards.

Tenure of office.

1. (1) A member shall hold and vacate office in accordance with the terms of the instrument under which he is appointed, or until his term of tenure is terminated by the Governor.

(2) A member may resign his office by a written notice given under his hand to, and accepted by, the Minister.

(3) A member who ceases to hold office shall, unless otherwise disqualified, be eligible for reappointment.

Disqualification.

2. If a member—

- (a) is an incapable person within the meaning of section five of the Mental Health Act, 1962;
- (b) is an undischarged bankrupt or has his affairs under liquidation by arrangement with his creditors;
- (c) is convicted of an indictable offence; or
- (d) has his appointment terminated by the Governor for inability, inefficiency or misbehaviour,

his office becomes vacant and he is not eligible for re-appointment.

3. (1) While taking the place of a member a deputy Deputies.
has all the powers and entitlements of, and all the
protection given to, the member under this Act.

(2) Any reference in this Act to a member shall be
construed as including a reference to a deputy taking
the place of that member.

4. (1) A vacancy among the membership shall not Validity of
proceedings.
invalidate the proceedings of any meeting.

(2) All acts done at any meeting shall, notwithstand-
ing it is afterwards discovered that there was some
defect in the appointment or qualification of a person
purporting to be a member, be as valid as if that defect
had not existed.

5. To constitute a meeting there must be not less Quorum.
than one half of the members present.

6. (1) The Chairman shall when present, preside at Chairman.
all meetings.

(2) Where the Chairman is expected to be absent
from two or more consecutive meetings or if he is ill or
otherwise incapacitated, the members present at any
meeting may elect one of their number acting Chair-
man during such absence, illness or incapacity.

(3) In the absence of the Chairman, and where no
acting Chairman has been elected, the Deputy Chairman
or Vice Chairman, if any, shall preside and in default
the members who are present at the meeting may elect
one of their number to preside at that meeting.

7. (1) A member who has a direct or indirect Interest.
pecuniary interest in any matter that is before the
meeting for consideration shall, as soon as possible
after the relevant facts have come to his knowledge,
disclose the nature of his interest to the members
present at the meeting and such disclosure shall be
recorded in the record of the meeting.

(2) A member who has disclosed his interest in any
matter may take part in the consideration or discussion,
but shall not vote.

8. (1) Where a member in the opinion of the Chair- Undisclosed
interests.
man has a material pecuniary interest in any matter,
the Chairman may call upon the member to disclose
the nature of his interest and, in default of any such
disclosure, may thereupon determine that such an
interest exists.

(2) Every determination that a member is interested in any matter shall be recorded in the record of proceedings of the meeting at which it is made.

(3) Where the Chairman determines that a member has an undisclosed interest in any matter before the meeting for consideration that member may take part in the consideration or discussion but shall not vote.

Voting.

9. (1) At any meeting all members present who have not declared an interest shall vote on any question submitted.

(2) All questions shall be decided by a majority.

(3) Each member, including the member presiding, shall have a deliberative vote only.

(4) In the case of an equality of votes the question shall be declared to be negatived.

Records.

10. A record of the proceedings of every meeting shall be kept in such manner as the Minister may direct or approve, and shall be certified as correct by the member presiding at that or the next succeeding meeting.

Meetings.

11. The Minister or the Chairman may at any time convene a meeting, and a meeting shall be convened by the Chairman within seven days of the receipt by him of a written request signed by two or more members specifying the business in respect of which the meeting is to be convened.

Committees
and
co-option.

12. (1) Committees, which may consist of persons who are not members, and any person having relevant experience, may be invited to act in an advisory capacity, but the delegation of any matter to such a committee or person does not relieve the members of responsibility.

(2) The provisions of this Schedule, except in so far as the resolution establishing the Committee may otherwise direct, shall have effect in relation to a committee.

Disputes.

13. In all cases of dispute, doubt or difficulty respecting or arising out of matters of procedure or order, or as to the determination of an interest, then the decision of the Chairman shall be final and conclusive.

Conduct of
proceedings.

14. Subject to this Act the proceedings may be regulated in such manner as the members think fit.