

Health Services (Metropolitan Hospitals) Bill

No.

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SCHEDULE 3

Metropolitan Hospitals

LEGISLATIVE ASSEMBLY

Read 1° 3 May 1995

(Brought in by Mrs Tehan and Mr Gude)

A BILL

to make certain amendments to the **Health Services Act 1988**, to adopt the Medicare Principles and Commitments and for other purposes.

Health Services (Metropolitan Hospitals) Act 1995

The Parliament of Victoria enacts as follows:

1. *Purpose*

The purpose of this Act is—

- (a) to provide for the aggregation of certain hospitals; and
- (b) to adopt the Medicare Principles and Commitments set out in the Health Insurance Act 1973 of the Commonwealth.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Principal Act

In this Act, the **Health Services Act 1988** is called the Principal Act. 5

4. Definitions

In section 3 of the Principal Act—

(a) for the definition of **“Chief General Manager”** substitute— 10

“Chief General Manager” means the Secretary to the Department of Health and Community Services;’;

(b) after the definition of **“interim funding statement”** insert— 15

“metropolitan hospital” means—

(a) a hospital listed in Schedule 3; or

(b) premises occupied by such a hospital—

as the case requires;’; 20

(c) for the definition of **“public hospital”** substitute—

“public hospital” means—

(a) a hospital listed in Schedule 1; or

(b) except in Division 4 of Part 3, a metropolitan hospital; or 25

(c) premises occupied by a hospital listed in Schedule 1 or by a metropolitan hospital—

as the case requires;’. 30

5. Amendment of Schedules

In section 8 (1) of the Principal Act, for “Schedule 1 or 2” **substitute** “Schedule 1, 2 or 3”.

6. New Part 2A inserted

5 After Part 2 of the Principal Act **insert**—

**‘PART 2A—MEDICARE PRINCIPLES AND
COMMITMENTS**

17A. Medicare Principles and Commitments

- 10 (1) The Medicare Principles and
Commitments are established as
guidelines for the delivery of public
hospital services to eligible persons in
Victoria.
- 15 (2) The Medicare Principles and
Commitments are as follows—

MEDICARE PRINCIPLES

The Commonwealth and the States are
committed to the following principles in
the provision of public hospital services:

- 20 Explanatory Note: The Principles focus on
the provision of public
hospital services to
eligible persons, but
25 operate in an environment
where eligible persons
have the right to choose
private health care in
public and private
hospitals supported by
30 private health insurance.

Choices of services

Principle 1: Eligible persons must be given the choice to receive public hospital services free of charge as public patients.	5
Explanatory Note 1: Hospital services include in-patient, out-patient, emergency services (including primary care where appropriate) and day patient services consistent with currently acceptable medical and health service standard.	10
Explanatory Note 2: At the time of admission to a hospital, or as soon as practicable after that, an eligible person will be required to elect or confirm whether he or she wishes to be treated as a public or private patient.	15
	20

Universality of services

Principle 2: Access to public hospital services is to be on the basis of clinical need.	25
Explanatory Note 1: None of the following factors are to be a determinant of an eligible person's priority for receiving hospital services:	30
• whether or not an eligible person has health insurance;	
• an eligible person's financial status or place of residence;	35
• whether or not an eligible person intends to elect, or elects, to be treated as a public or private patient.	40

Explanatory Note 2: This principle applies equally to waiting times for elective surgery.

Equity in service provision

Principle 3: To the maximum practicable extent, a State will ensure the provision of public hospital services equitably to all eligible persons, regardless of their geographical location

Explanatory Note 1: This principle does not require a local hospital to be equipped to provide eligible persons with every hospital service they may need.

Explanatory Note 2: In rural and remote areas, a State should ensure provision of reasonable public access to a basic range of hospital services which are in accord with clinical practices.

COMMITMENTS

In order to achieve Principles 1 to 3, the Commonwealth and States make the following Commitments regarding public hospital services for eligible persons:

Information about service provision

Commitment 1: The Commonwealth and a State must make available information on the public hospital services eligible persons can expect to receive as public patients

Explanatory Note 1: The State development of a Public Patients' Hospital

Charter in consultation with the Commonwealth will be a vehicle for the public dissemination of this information.	5
Explanatory Note 2: The Charter will set out the public hospital services available to public patients.	
<i>Efficiency and quality in service provision</i>	10
Commitment 2: The Commonwealth and the States are committed to making improvements in the efficiency, effectiveness and quality of hospital service delivery	15
Explanatory Note: This includes a commitment to quality improvement, outcome measurement, management efficiency and effort to integrate the delivery of hospital and other health and health-related community services.	20
(3) Nothing in this Part gives rise to, or can be taken into account in, any civil cause of action, and, without limiting the generality of the foregoing, nothing in this Part operates to create in any person legal rights not in existence before the commencement of section 6 of the Health Services (Metropolitan Hospitals) Act 1995 .	25
(4) In this Part, “eligible person” and “public patient” have the same meanings as they have in the Health Insurance Act 1973 of the Commonwealth.’.	30
	35
	40

7. Amendment of section 36

In section 36 (3) of the Principal Act, for paragraph (a) **substitute—**

“(a) must submit the report of operations and financial statements prepared in accordance with Part 7 of the **Financial Management Act 1994;**”.

8. New Division 4A inserted in Part 3

After section 40 of the Principal Act **insert—**

“Division 4A—Metropolitan Hospitals

40A. Incorporation

(1) Each metropolitan hospital, by operation of this Act—

(a) is a body corporate with perpetual succession; and

(b) shall have an official seal; and

(c) may sue and be sued in its corporate name; and

(d) is capable of purchasing, taking, holding, selling, leasing, taking on lease, exchanging and disposing of real and personal property; and

(e) is capable of doing and suffering all acts and things which bodies corporate may by law do or suffer.

(2) A metropolitan hospital listed in Schedule 3 at the commencement of section 8 of the **Health Services (Metropolitan Hospitals) Act 1995** continues to be the same body after that commencement as it was before that commencement.

40B. Metropolitan hospitals do not represent Crown

A metropolitan hospital does not represent, and shall not be taken to be part of, the Crown. 5

40c. Objects of metropolitan hospitals

The objects of a metropolitan hospital are—

- (a) in the case of a metropolitan hospital listed in Schedule 3 at the commencement of section 8 of the **Health Services (Metropolitan Hospitals) Act 1995**, the objects of the hospital as existing immediately before that commencement as altered or added to from time to time by the hospital with the approval of the Chief General Manager; and 10 15
- (b) in any other case, as approved for the time being by the board of the hospital and the Chief General Manager. 20

40D. Board of directors

- (1) There shall be a board of directors of each metropolitan hospital. 25
- (2) The functions of the board of a metropolitan hospital are—
 - (a) to establish the objects of the hospital; 30
 - (b) to establish the organisational structure of the hospital;
 - (c) to appoint a person to fill a vacancy in the position of chief executive officer; 35

(d) to appoint senior management staff in consultation with the chief executive officer;

(e) to oversee the management of the hospital by the chief executive officer;

(f) to develop a business plan for the operation of the hospital; and

(g) to develop plans, strategies and budgets to ensure the provision of health services by the hospital and the long term financial viability of the hospital;

(h) to monitor the performance of the hospital;

(i) to monitor the performance of the chief executive officer of the hospital.

(3) The board of a metropolitan hospital has such powers as are necessary to enable it to carry out its functions, including the power to make, amend or revoke by-laws.

40E. Directors

(1) The board of a metropolitan hospital shall consist of not less than 6 and not more than 9 persons appointed by the Governor in Council on the recommendation of the Minister.

(2) The **Public Sector Management Act 1992** (including Part 9) does not apply to a director of a board of a metropolitan hospital in respect of the office of director.

(3) The board of a hospital that, on the commencement of section 8 of the **Health Services (Metropolitan**

Hospitals) Act 1995 , becomes a metropolitan hospital continues as the board of the metropolitan hospital until the appointment of a board under sub-section (1) of this section.	5
(4) Sections 34, 35, 38, 39 and 40 continue to apply to a board that continues in existence under sub-section (3) and to the members of such a board.	
40F. Terms and conditions	10
(1) A director of a board of a metropolitan hospital holds office for the term, not exceeding 3 years, specified in the instrument of appointment and is eligible for re-appointment.	15
(2) A director of a board is entitled to be paid—	
(a) expenses incurred in holding office as a director of the board; and	
(b) such remuneration as is specified in the instrument of appointment.	20
40G. Removal and resignation	
(1) A director of a board of a metropolitan hospital may resign by writing signed by that person and delivered to the Governor in Council.	25
(2) The Governor in Council, on the recommendation of the Minister, may remove a director of a board from office.	
(3) The Minister may not recommend the removal of a director of a board from office unless the Minister is satisfied that—	30
(a) the director is physically or mentally unable to fulfil the role of a director of a board; or	35

- (b) the director has been convicted or found guilty of an offence, the commission of which, in the opinion of the Minister, makes the director unsuitable to be a director of a board; or
- (c) the director has been absent, without leave of the board, from all meetings of the board held during a period of 6 months; or
- (d) the director is an insolvent under administration within the meaning of the Corporations Law.

40H. *Annual meetings*

- (1) The board of a metropolitan hospital must ensure that the chief executive officer convenes an annual meeting of the hospital to be held on or after 1 July and on or before 31 October (or, if the Chief General Manager in writing approves a later date, on or before that later date) in each year.
- (2) Nothing in sub-section (1) requires an annual meeting of a metropolitan hospital to be held before the hospital has been a metropolitan hospital for 12 months.
- (3) The chief executive officer of the hospital must cause notice of the annual meeting to be published in a newspaper circulating generally in the area where the metropolitan hospital is situated giving notice—
 - (a) of the date, time and place of the meeting; and
 - (b) that the meeting is open to the public.

- (4) At each annual meeting of a metropolitan hospital, the board—
- (a) must submit the report of operations and financial statements prepared in accordance with Part 7 of the **Financial Management Act 1994**; and

5
- (b) must report on the health services provided to the community in the preceding year and on health services proposed to be provided in the following year; and

10
- (c) must report on such other matters as are prescribed.

40I. *Procedure of board*

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Subject to this Part, the procedure of a board of a metropolitan hospital is in the discretion of the board.

40J. *Immunity*

A director of a board of a metropolitan hospital is not liable to an action or other proceedings for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function or the exercise or purported exercise of any power conferred on the board.

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40K. *Validity of acts or decisions*

An act or decision of a board of a metropolitan hospital is not invalid by reason only of —

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(a) a defect or irregularity in or in connection with the appointment or election of a director of the board;

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or

- (b) a vacancy in the directorship of the board.

40L. *Advisory committees*

The board of a metropolitan hospital—

- (a) must appoint an advisory committee consisting of such number of representatives of the community nominated by the board as the board determines; and
- (b) must appoint an advisory committee consisting of such number of persons nominated by the board as the board determines, being persons qualified in the provision of health services; and
- (c) may appoint such other advisory committees as it determines.”.

9. *Restriction of power to propose amalgamations under section 64*

After section 64 (7) of the Principal Act **insert**—

“(8) During the year beginning on the day on which section 9 of the **Health Services (Metropolitan Hospitals) Act 1995** comes into operation, the Chief General Manager must not cause to be prepared a report under sub-section (1), or give advice to the Minister under sub-section (6), in relation to a proposal for the amalgamation of a metropolitan hospital with another registered funded agency.”.

10. *New Division 9A inserted in Part 3*

After section 65 of the Principal Act **insert**—

‘Division 9A—Aggregation of Metropolitan Hospitals

65A. Definitions

In this Division—

- “aggregated hospital”**, in relation to an Order under section 65C, means a metropolitan hospital the incorporation of which is cancelled under the Order; 5
- “effective date”**, in relation to an Order under section 65C, means the date on which the aggregation is effected, being a date specified in the Order; 10
- “instrument”** means a document and an oral agreement; 15
- “liabilities”** means all liabilities, duties and obligations, whether actual, contingent or prospective;
- “new hospital”**, in relation to an Order under section 65C, means the metropolitan hospital that comes into existence under the Order; 20
- “old instrument”** means an instrument subsisting immediately before the effective date of an Order under section 65C— 25
 - (a) to which an aggregated hospital was a party; or
 - (b) that was given to or in favour of an aggregated hospital; or 30
 - (c) that refers to an aggregated hospital; or
 - (d) under which—

(i) money is, or may become, payable to or by an aggregated hospital; or

(ii) other property is to be, or may become liable to be, transferred to or by an aggregated hospital;

“property” means a legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

“rights” means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

“transferred aggregated hospital employe” means a person who, by reason of section 65L (1), is regarded as being employed by a new hospital with effect from the effective date of an Order under section 65C.

65B. *Extra-territorial operation*

It is the intention of the Parliament that the operation of this Division should, as far as possible, include operation in relation to the following—

(a) land situated outside Victoria, whether in or outside Australia;

(b) things situated outside Victoria, whether in or outside Australia;

(c) acts, transactions and matters done, entered into or occurring outside Victoria, whether in or outside Australia;

(d) things, acts, transactions and matters (wherever situated, done,

entered into or occurring) that would, apart from this Division, be governed or otherwise affected by the law of the Commonwealth, another State, a Territory or a foreign country. 5

65C. Aggregation

- (1) If the Minister considers that the provision of health services by 2 or more metropolitan hospitals may be more effective if the hospitals were aggregated, the Minister may recommend that an Order be made under sub-section (2). 10
- (2) The Governor in Council, by Order published in the Government Gazette, may, on the recommendation of the Minister, direct that 2 or more metropolitan hospitals be aggregated. 15
- (3) An Order under sub-section (2), may not be made on or after the first anniversary of the date on which section 10 of the **Health Services (Metropolitan Hospitals) Act 1995** comes into operation. 20 25
- (4) If an Order is made under sub-section (2), on a date specified in the Order—
 - (a) the incorporation of each metropolitan hospital to which the Order relates is cancelled; 30
 - (b) a new hospital with the name specified in the Order comes into existence;
 - (c) Schedule 3 is amended—
 - (i) by the omission of the name of each metropolitan hospital the 35

incorporation of which is
cancelled by the Order; and

- (ii) by the addition of the name of
the new hospital, in the
appropriate alphabetical position.

(5) The board of a metropolitan hospital that
comes into existence under an Order
under sub-section (2) consists of the
persons (being not less than 6 and not
more than 9) named in the Order and, for
the purposes of Division 4A, the Order
constitutes the instrument of
appointment and may include terms and
conditions of appointment.

(6) If an Order under sub-section (2)
specifies by-laws of the metropolitan
hospital that comes into existence under
the Order, the by-laws have effect as if
made by the board of the hospital.

(7) The Governor in Council, in an Order
under sub-section (2) or in another Order
published in the Government Gazette on
the recommendation of the Minister,
may appoint a person to act as the first
chief executive officer of a new
metropolitan hospital that comes into
existence in accordance with this
section.

(8) A person appointed to act as chief
executive officer of a metropolitan
hospital appointed in accordance with
sub-section (7) is deemed to have been
appointed by the board of the hospital.

(9) An Order under sub-section (2) may
include such other provisions not
inconsistent with this Division as are
necessary or expedient.

65D. *New metropolitan hospital to be successor in law*

On the coming into existence of a metropolitan hospital under an Order under section 65C— 5

- (a) all property and rights of the aggregated hospitals, wherever located, vest in the new hospital; and
- (b) all liabilities of the aggregated hospitals, wherever located, become liabilities of the new hospital; and 10
- (c) the new hospital becomes the successor in law of the aggregated hospitals. 15

65E. *Substitution of party to agreement*

Where, under section 65D, the rights and liabilities of an aggregated hospital under an agreement vest in, or become liabilities of, the new hospital— 20

- (a) the new hospital becomes, on the effective date of the Order, a party to the agreement in place of the aggregated hospital; and 25
- (b) on and after the effective date of the Order, the agreement has effect as if the new hospital had always been a party to the agreement.

65F. *Old instruments* 30

Each old instrument continues to have effect according to its tenor on and after the effective date of an Order under section 65C as if a reference in the instrument to an aggregated hospital were a reference to the new hospital. 35

65G. Proceedings

If, immediately before the effective date of an Order under section 65C, proceedings (including arbitration proceedings) to which an aggregated hospital was a party were pending or existing in any court or tribunal, then, on and after the publication of the Order, the new hospital is substituted for the aggregated hospital as a party to the proceedings and has the same rights in the proceedings as the aggregated hospital had.

65H. Interests in land

Without prejudice to the generality of this Division and despite anything to the contrary in any other Act or law, if, immediately before the effective date of an Order under section 65C, an aggregated hospital is the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, on and after that date—

- (a) the new hospital is to be taken to be the registered proprietor of that interest in land; and
- (b) the new hospital has the same rights and remedies in respect of that interest as the aggregated hospital had.

65I. Amendment of Register

- (1) The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Division.

- (2) The Registrar-General must make all entries on the records of enrolment of any Crown grant and on any memorial relating to land that are necessary because of the operation of this Division. 5
- (3) If any land vested under this Division is not Crown land and is not under the operation of the **Transfer of Land Act 1958**, the new hospital must, as soon as practicable after the land vests in it in accordance with this Division, cause a memorial of the certificate of the chief executive officer of the new hospital (that complies with Part 1 of the **Property Law Act 1958**) to be delivered to the office of the Registrar-General and, for the purposes of that Part, that certificate must be taken to be an instrument affecting land. 10 15

65J. Taxes 20

No stamp duty or other tax is chargeable under any Act in respect of anything effected by or done under this Division or in respect of any act or transaction connected with or necessary to be done by reason of this Division, including a transaction entered into or an instrument made, executed, lodged or given. 25

65K. Evidence

- (1) Documentary or other evidence that would have been admissible for or against the interests of an aggregated hospital if an Order had not been made under section 65C, is admissible for or against the interests of the new hospital. 30 35
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect

to the books of account of an aggregated hospital and to entries made in those books of account before the effective date of an Order under section 65C.

- 5 (3) In sub-section (2), “**books of account**” has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

65L. *Transfer of aggregated hospital staff to new hospital*

- 10 (1) A person who, immediately before the effective date of an Order under section 65C, was an employee of an aggregated hospital is to be regarded as—

15 (a) having been employed by the new hospital with effect from that date; and

20 (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before that date, as an employee of the aggregated hospital; and

25 (c) having accrued an entitlement to benefits, in connection with that employment by the new hospital, that is equivalent to the entitlement that the person had accrued, as an employee of the aggregated hospital immediately before that date.

- 30 (2) The service of a transferred aggregated hospital employee as an employee of the new hospital is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the effective date of the Order under section 65C, as an employee of the aggregated hospital.
- 35

- (3) A transferred aggregated hospital employee is not entitled to receive any payment or other benefit by reason only by having ceased to be an employee of the aggregated hospital because of this Division. 5
- (4) A certificate purporting to be signed by the chief executive office of the new hospital certifying that a person named in the certificate was, with effect from the effective date of the Order under section 65C, employed, by virtue of this section by the new hospital is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it. 10 15

65M. Future terms and conditions of transferred employees

Nothing in section 65L prevents—

- (a) any of the terms and conditions of employment of a transferred aggregated hospital employee from being altered by or under any law, award of agreement with effect from any time after the effective date of the Order under section 65C; 20 25
or
- (b) a transferred aggregated hospital employee from resigning, or the termination of a transferred aggregated hospital employee’s employment, at any time after the effective date of the Order in accordance with the then existing terms and conditions of the employee’s employment by the new hospital. 30 35

65N. Validity of things done under this Division

Nothing effected by this Division or
suffered under this Division—

(a) is to be regarded as placing any
person in breach of contract or
confidence or as otherwise making
any of them guilty of a civil wrong;
or

(b) is subject to compliance with or is
to be regarded as placing any
person in breach of or as
constituting a default under any Act
or other law or any provision in any
agreement, arrangement or
understanding including, without
limiting the generality of the
foregoing, any provision
prohibiting, restricting or regulating
the assignment or transfer of any
property or right or the disclosure
of any information; or

(c) is to be regarded as fulfilling any
condition which allows a person to
exercise a power, right or remedy in
respect of or to terminate any
agreement or obligation; or

(d) is to be regarded as giving rise to
any remedy for a party to a contract
or an instrument or as causing or
permitting the termination of any
contract or instrument because of a
change in the beneficial or legal
ownership of any property, right or
liability; or

(e) is to be regarded as causing any
contract or instrument to be void or
otherwise unenforceable; or

(f) is to be regarded as frustrating any
contract; or

(g) releases any surety or other obligee wholly or in part from any obligation.

65o. Operation of Division not subject to review

Nothing done under this Division gives rise to any cause or right of action or application before any court or tribunal.’. 5

11. New section 157A inserted

After section 157 of the Principal Act insert—

“157A. Supreme Court—limitation of jurisdiction 10

It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the Supreme Court entertaining an action, proceedings or an application referred to in section 17A, 40J or 65o.”. 15

12. Removal of hospitals from Schedule 1

In Schedule 1 to the Principal Act, omit the names of the following hospitals—

- The Alfred Healthcare Group 20
- Altona District Hospital
- The Angliss Hospital
- Austin and Repatriation Medical Centre
- Box Hill Hospital
- Bundoora Extended Care Centre 25
- Burwood and District Community Hospital
- Dandenong Hospital
- Fairfield Hospital
- Hampton Rehabilitation Hospital
- Healesville and District Hospital 30
- Kingston Centre
- Maroondah Hospital
- Monash Medical Centre
- Mordialloc-Cheltenham Community Hospital

Mornington Peninsula Hospital
The Mount Eliza Centre
North West Hospital
The Peter James Centre
5 Peter MacCallum Cancer Institute
Preston and Northcote Community Hospital
Royal Children's Hospital
The Royal Dental Hospital of Melbourne
The Royal Melbourne Hospital
10 The Royal Victorian Eye and Ear Hospital
The Royal Women's Hospital
Sandringham and District Memorial Hospital
St George's Hospital and Inner Eastern Geriatric
Service
15 Western Hospital
Westernport Memorial Hospital
The Williamstown Hospital

13. *New Schedule 3 inserted*

After Schedule 2 to the Principal Act **insert—**

20 **“SCHEDULE 3**

Sections 3 and 8

Metropolitan Hospitals

The Alfred Healthcare Group
Altona District Hospital
25 The Angliss Hospital
Austin and Repatriation Medical Centre
Box Hill Hospital
Bundoora Extended Care Centre
Burwood and District Community Hospital
30 Dandenong Hospital
Fairfield Hospital
Hampton Rehabilitation Hospital
Healesville and District Hospital
Kingston Centre
35 Maroondah Hospital
Monash Medical Centre
Mordialloc-Cheltenham Community Hospital

Mornington Peninsula Hospital	
The Mount Eliza Centre	
North West Hospital	
The Peter James Centre	
Peter MacCallum Cancer Institute	5
Preston and Northcote Community Hospital	
Royal Children’s Hospital	
The Royal Dental Hospital of Melbourne	
The Royal Melbourne Hospital	
The Royal Victorian Eye and Ear Hospital	10
The Royal Women’s Hospital	
Sandringham and District Memorial Hospital	
St George’s Hospital and Inner Eastern Geriatric Service	
Western Hospital	15
Westernport Memorial Hospital	
The Williamstown Hospital”.	