Witnesses to 20th-Century Medicine

The National Association of Medical Specialists: A Failed Horatius?

Nils Korner

THE NATIONAL ASSOCIATION OF MEDICAL SPECIALISTS (NAMS) WAS formed in Sydney in 1972 in response to the hospital specialists' perception that they were under political attack. It was disbanded in December 1995 and now only a handful of people (doctors included) remember its existence. At its peak it played an important role in the still unresolved ideological conflict over the changes imposed on Australian hospitals and health services in the 1970s and 1980s.

Horatius on the other hand, being a legendary character, is better known. With his friends he defended the bridge over the Tiber against the invading Etruscan forces until the Romans had time to pull it down. When the bridge was demolished Horatius jumped into the river and swam back to the Rome he had helped to save.

So what on earth has NAMS got to do with Horatius? The link is, of course, allegorical; something to do with determination or whatever qualities are needed to resist a powerful 'enemy'—the politicians, governments and bureaucracy who 'attacked' the organisation of Australian hospital practice and the independence of medical specialists—Rome in this fable. NAMS was only one of many protagonists but its story is a guide to the pattern of events.

In the beginning

From the early 1950s to 1975, Australia's health system, devised by Sir Earle Page, consisted of voluntary private health insurance subsidised by Commonwealth payment of part of the cost of medical and hospital expenses. Membership of a health fund was required to receive the government subsidy. The honoraries were the backbone of the

Public Hospital Service. They cared for public in-patients and out-patients, taught students and nurses, trained junior staff, were involved in grand rounds, hospital administration and sometimes research—without pay for any of their 'public' work. A means test and health insurance status classified patients into public, intermediate and private categories. The honoraries' hospital income was provided by fees charged to private and intermediate in-patients.

The winds of change

Pressure for change in the health service came from various directions. Scotton and McDonald believe that the accession of Gough Whitlam to the leadership of the Labor Party in February 1967, and the research of John Deeble and Dick Scotton at the University of Melbourne's Institute of Applied Economic Research published later that year were the key events.[1]

More visibly, in 1968 the Liberal–Country Party Gorton Government set up the Commonwealth Committee of Inquiry into Health Insurance under Justice Nimmo. Gough Whitlam claims that this was merely a reaction to Labor's initiative in establishing (with the support of the Democratic Labor Party) a Senate Select Committee into Medical and Hospital Costs in Australia.[2] The following year, the Nimmo Committee[3] recommended, among other things, that standard ward accommodation be available to everybody regardless of means; that the most common fees for medical services be established; that doctors who wished their fees to be eligible for medical benefits should agree to participate in the scheme; that the fees of doctors who elected not to participate should not be eligible for medical benefits; and that the honorary and concessional services rendered by the medical profession be gradually eliminated. In March 1970, the Coalition Government accepted the recommendations of the Nimmo Committee. However, the very next year this decision was reversed by William McMahon, who had taken over from Gorton as prime minister,[4] and the government took no action to implement the Nimmo Committee's recommendations regarding hospitals.

The Labor Party's health policy, laid down by its federal conference in Launceston in 1971, proposed a national hospital service that included hospitalisation without charge and without means testing in the public wards of public hospitals; salaried in-patient and out-patient specialist staff; and patients in all wards of public hospitals to have the option of using, without charge, the services of specialists remunerated by salaries or sessional fees.[5] But the doctors were also ready

to abandon the honorary system. The NSW Branch of the Australian Medical Association (AMA) made a policy decision in 1969 'that the present system of honorary medical service in public hospitals should be terminated' and replaced by fee-for-service.[6]

The origin of NAMS

With a perceived threat of nationalisation, or at least of a radical transformation of hospital services, specialists felt an increasing need to make their voice heard. There was also concern that the AMA did not represent the honoraries sufficiently. In April 1972, a meeting 'representative of all the specialist disciplines' was held under the auspices of the three-year-old Provincial Specialists' Association. It formed a steering committee of the National Association of Medical Specialists, which published a newsletter alerting doctors to the 'attack launched by political parties and the mass media supporting them' and warned that

> If the Labor Party is elected this year ... it seems apparent from the Whitlam / Hayden proposals on Health Care Systems and Health Care Financing in Australia, that the first changes will be directed towards alterations in the hospitals' staffing status. This ... will affect EVERY SPECIALIST throughout Australia. ... [The] meeting was remarkable for its unanimity and all ... agreed that a National Association of Medical Specialists should be formed as a matter of some urgency.[7]

The inaugural meeting of NAMS was held at BMA House, Sydney on Saturday, 29 April 1972. One of its first resolutions was to undertake a study of health policies in Australia and abroad so that the medical profession could formulate its own recommendations for a health system instead of merely criticising other proposals. At its first general meeting on 14 October 1972, Dr Boyd Leigh was elected unopposed as president of NAMS.

Labor won government on 2 December 1972 and in November the following year declared its health policy intentions in the *White Paper* entitled *The Australian Health Insurance Program*:

> the right of free accommodation and treatment as hospital patients in standard wards irrespective of incomes; ... the [insurance] contribution of individuals ... will ... [be] ... a levy of 1.35 per cent on taxable incomes; Medical benefits ... based on a schedule of fees; Pathology and radiology services [in] public hospitals [will] not attract medical benefits ... and ... [the

Government] is convinced that the proper staffing of public hospitals ... [is] best achieved through a system of salaried, sessional or contract service, rather than through fees-for-service for hospital patients.[8]

The Federal Council of NAMS established State committees, the most active of which was in New South Wales. Late in 1973, the NSW committee set itself the task of developing an alternative to Labor's plans by defining the principles of a health system that the public, the government and doctors could all commend. It examined critically every facet of the services provided by specialists in public hospitals and produced a document called *Propositions Regarding a Workable Health Scheme with Particular Reference to Specialist Practice*. NAMS' President, Boyd Leigh, outlined its recommendations in a press release on 21 April 1974:[9]

1. Universal health insurance with government assistance to those unable to meet the cost.
2. The co-existence of government and private health insurance funds.
3. A flexible balance between different types of hospital practice with fee-for-service and sessional visiting doctors and full-time salaried doctors working together according to community needs.
4. A basic insurance premium covering family medical care, referred specialist care, diagnostic services.
5. A higher premium covering preferred (private) accommodation in public or private hospitals.
6. A negotiated schedule of fees.
7. Full inclusion of psychiatric care in the health scheme.

The 'propositions' received 'most favourable' endorsement from a broad spectrum of medical organisations at a meeting held at the NSW Branch of the AMA on 30 June 1974.[10] In contrast to this support it is interesting to record that Dr George Repin, Federal Secretary General of the AMA, formally requested Dr Ronald Winton, editor of the *Medical Journal of Australia* (*MJA*), not to publish the NAMS' 'propositions' 'on the grounds that its appearance in the *MJA* may be misinterpreted having regard to the current medico-political situation'.[11]

The press, including the Australian Broadcasting Corporation, only gave the 'propositions' a little ephemeral attention. In February 1973, NAMS also tried to deal directly with the government, namely, the Minister for Social Security, Bill Hayden, and on 29 March approached key members of the Health Insurance Planning Committee, Messrs Deeble and Scotton and L. J. Daniels from the Department of Social Security. The message they got was that the government was determined

> to introduce a sessional method of payment for "visiting specialists" … [This] was not due to any expected lack of funds to allow fee-for-service payment [but] simply … to give the Community the very best possible Hospital Service …[12]

By early 1974, the 'two Medibank Bills were twice rejected by the Senate and became two of the six Bills upon which a double dissolution was secured in April 1974'.[13] The NAMS' Executive, innocently eager to leave no political stone unturned, hurried to ensure that each of the political parties had a copy of the final version of the 'propositions' before the election. Labor reclaimed office, but still did not control the Senate. Thus, although a joint sitting of Parliament passed the Medibank bills in August 1974, the Senate rejected the 1.35 per cent levy bills and only after a decision to finance Medibank from general revenue was a starting date set for 1 July 1975.

Hospital Medibank required an agreement between the Commonwealth and State governments. In NSW this became effective from 1 October 1975, and specified that 'remuneration for medical services provided to hospital patients in recognised hospitals shall be: by salaries, sessional payments or in special circumstances by contractual arrangements not involving fee for service paid by the patients …'.[14]

The battlefield of ideologies: sessional payment vs fee for service; employment vs independence

Now the ideological conflict between the specialists and the politicians began in earnest, with the options perceived as 'control' or 'independence'. The most bitter struggle occurred over the government's insistence that all those who were at that time honoraries should change to sessional payment, salaries or a third option for doctors in rural hospitals, 'modified fee for service' that was paid by the hospital not the patient. The specialists were determined to stay self-employed on a fee-for-service system.

Why were the two sides so vehement? Prime Minister Gough Whitlam was Labor's driving force. He declared that:

> The ALP would have liked to reproduce the national health service which the Attlee Government had created as the most substantial and enduring of British Labour's reforms. … While the constitutional position precludes the socialisation of doctors, it permits the socialisation of hospitals. … It is more important to nationalise hospitals than to nationalise the medical

> profession. ... Australia needs a hospital system staffed by salaried and sessional doctors.[15]

Drs Scotton and Deeble, the economic masterminds of Medibank, identified money as the determinant for sessional payment 'It was generally accepted that salaried and sessional payment would cost very much less than fee for service at current fee levels.'[16] Bill Hayden, Minister for Social Security, attacked fee-for-service as 'a payments system which encourages providers of the services to over-provide those services'.[17] Dr Dick Klugman, ALP Member for Prospect, likewise claimed that 'the introduction of Medibank ... has reduced the incentive to doctors to perform unnecessary operations because of the fee-for-service factor'.[18]

On the other side, the specialists regarded the prospect of becoming government 'employees' as odious. Instead of having many masters—their patients—salaried or sessional service would make them dependent on one powerful paymaster, the government. They saw the arbitrary controls of their work conditions and income by legislation, ministerial regulation and bureaucratic edict as unendurable and the option of remaining 'honorary' made impossible by the reduction in private patient numbers due to 'free' hospital care and the abolition of the means test.

Not only hospital doctors felt threatened by the start of Medibank. On 1 June 1975, there was a mass meeting of doctors at the Wallace Theatre, University of Sydney, at which it was resolved that:

> this meeting of medical practitioners affirms its conviction that the Labor Government Health Scheme must lead to deterioration of Health Care and further damage the national economy, [and] that this meeting of medical practitioners, realising that bulk billing would create an employer / employee relationship between government and doctors, declares its total opposition to this method of billing.

Into the trenches: the NSW Medibank hospital seminars

The situation was not helped by the fact that the government presented its formula as 'not negotiable'. The NAMS countered this by preparing model resolutions endorsing the 'fee-for-service' system and rejecting sessional payment, which were then sent to the medical staff of every public hospital in New South Wales. By February 1975, they

had received overwhelming support and in an effort to achieve maximum unity the NAMS also prompted the NSW AMA to call together all the State's medico-political organisations to form a widely representative conjoint committee to develop policies. Its members included the NSW AMA, the NAMS, the Australian Association of Surgeons (AAS), Australian Society of Anaesthetists (ASA), and representatives of the various royal colleges.

In New South Wales, Hospital Medibank commenced on 1 October 1975 without any negotiated agreement on the doctors' working conditions. If they were to be paid for looking after 'hospital' patients only sessional service or, for rural doctors, 'modified fee-for-service' (both at a rate determined by the Government) were allowed under the Commonwealth / State agreement. This was regarded as 'industrial conscription' and the doctors attempted to make the government negotiate. The Medibank seminars became the most significant instrument for achieving this objective. Initiated by the NSW AMA under the presidency of Dr Ted Morgan, even before the commencement of Medibank, the seminars were assemblies of doctors, honorary and salaried, from the public hospitals, metropolitan and rural, large and small. Often between 100 and 200 in number, the doctors voted the collective will into resolutions, which provided their negotiators with direction and strength. The first seminar in February 1975 gave overwhelming support to a fee-for-service system and rejected the changes that were to be imposed, sessional payment, free out-patient and inpatient treatment for all without means testing, and so on.

Whatever the NSW Coalition Government may have wished to do it was bound by the Commonwealth / State agreement. The result was an impasse and a seemingly unending succession of seminars—two in June 1975, followed by others in August, September, October, and November. At the seminar on 29 June 1975 there had been a shudder of recognition of the government's power. The seminar still regarded 'fee-for-service' to the patient as the primary basis for further negotiations, but contemplated the possibility that:

> If this was unattainable the executive officers ... were to urgently explore with the NSW Government all methods of applying in parallel 'time based' and 'Fee-for-Service' (other than to the patient) contracts for the treatment of hospital patients.

In October 1975, the start of Hospital Medibank revitalised a determination to resist the imposition of 'sessions' and the seminar decided to suspend routine hospital out-patients, though 'certain specialized outpatient departments' were allowed to continue. It also decided that

if the government succeeded in dictating a sessional system it should at least be fair. By 23 November 1975, the seminar resolved that

> recognising that some doctors are willing to accept 'sessional service' [the seminar] recommends acceptance of an Independent Statutory Arbitral Body (of one judge and two others from each side) to determine conditions of service and levels of remuneration for 'sessional' and 'fee-for-service to the hospital' contracts.

Routine public hospital out-patients would stay closed.

The situation with regard to the Commonwealth law was also discouraging. Section 17 of the Health Insurance Act 1973 denied 'hospital' patients in 'recognised' hospitals a Medibank rebate for medical services. Section 18 denied a rebate for diagnostic services to all patients in a recognised hospital regardless of whether they were 'hospital' or 'private'. By November 1975, a challenge in the High Court against the validity of Sections 17 and 18 of the Act had been initiated by the NSW AMA and Dr Roger Dunlop for general practitioners, Professor Tait-Smith for pathologists, Dr P. Grattan-Smith for radiologists, Dr Boyd Leigh for surgeons, Dr P. Butler for physicians, and Dr F. L. Broderick for nuclear physicians. This faltered after the Whitlam Government fell, partly because of the possibility of devastating legal costs but also in the hope—the vain hope as it turned out—that the Fraser Government would repeal the offensive sections of the Act.

The accelerating crisis in Australian politics came to a head in November 1975 with the dismissal of the Whitlam Government. The election that followed in December swept to power Malcolm Fraser at the head of a Liberal–Country Party Coalition.

Medibank Mark II

Mr Fraser had promised to retain Medibank during the election campaign, but after coming to power he was quick to set up the Medibank Review Committee to which NAMS restated its major policies. The Fraser Government soon showed that it was as good at failing to consult as its predecessor. It took nine months before NAMS' representatives got an interview with the new Health Minister, Ralph Hunt.

The Coalition's modifications of Medibank were very convoluted. At first the levy on taxable income was raised to 2.5 per cent but it became possible to opt out into private health insurance or, for those on lower incomes, hospital-only insurance. Charges to private patients

in public hospitals would increase, and doubt was cast on the validity of the Commonwealth State Medibank hospital agreements.[19] The Labor Opposition and the ACTU, led by its President Bob Hawke, objected sufficiently to mount Australia's first national strike on 12 July 1976. 'Shipping, international and domestic flights, public transport and most industry would stop', the *Sydney Morning Herald* (*SMH*) reported on the day, 'and schools, deliveries of milk and bread, postal services and funerals [would] be disrupted'. The next day the *Herald* editorial reflected that Australia had come through 'unparalysed'. Many workers and some unions had ignored the strike, the government would not give way and the episode could 'give little rational satisfaction to either side'. The Fraser Government was not getting a good press. A *SMH* editorial on 29 September 1976, lamented that

> Medibank Mark II ... must be considered the most notable political and administrative ineptitude of the present Federal Government's first year in office ... It has caused massive confusion ... The report of the Medibank Review Committee, which presumably offered a solid basis of justification for the drastic changes, was not published ...

A new teaching aid—the law

By 1978, the Federal budget had abolished the 2.5 per cent Medibank levy and it was no longer compulsory to pay for health insurance. The *Canberra Times* reported that as a result 'about four million people [would] drop out of Health insurance altogether and rely ... on the universal 40% Commonwealth refund for medical services and on the universal free hospital accommodation and treatment provided in the scheme ...'[20] The Opposition and some elements of the press tried to create the impression that there was now no need for private health insurance, but the government was anxious to increase the numbers of the privately insured. On 20 October 1978, Health Minister Ralph Hunt had written to the *Sydney Morning Herald*:

> Sir, ... I reject as totally irresponsible the advice that has been given by some people that private health insurance will be no longer necessary after November 1 ... people in Australia have shown a predisposition to be treated by the doctor of their choice in hospital. ... if they desire to maintain this right to doctor of choice, they will need to retain their private medical insurance ...

The NAMS' federal council also decided that a notice in the newspapers setting out the differences between insured and uninsured patients in public hospitals would be appropriate. The advertisement, perhaps simplistically, summed up the uninsured patients' rights in one word: NONE. The insured had rights to the doctor of their choice, a second opinion, and access to, or dismissal of, their doctor. 'PRESERVE YOUR RIGHTS BY MAINTAINING BOTH HOSPITAL AND MEDICAL INSURANCE', it proclaimed.

On the day this appeared in the *Australian*, 20 October 1978, NAMS' Executive Director John Gibson in replying to a letter from Ralph Hunt guilelessly informed him of the NAMS' advertisement. But on 23 October the *Australian* reported that the Health Minister was upset, as it was 'not true that people who accepted treatment [as uninsured hospital patients] would have no rights'. He had referred the advertisement to Mr Fife, Minister for Business and Consumer Affairs, for possible action under the Trade Practices Act. Presently, John Gibson and the printers, publishers and proprietors of the *Australian* were served with an order from the Trade Practices Commission, to 'show cause' in the Federal Court as to why they

> should not be restrained from ... [p]ublishing or from causing or permitting to be published any other advertisement or statement which represents that persons uninsured for hospital treatment ... have no rights (or less rights than they in fact will have) in contrast to persons who are so insured [or] in any way aiding, abetting, counselling ... any person to publish such a statement or to be party to the said conduct.[21]

Heavy crimes indeed! Efforts to call off the vengeful pack of legal hounds failed, though it was not difficult on behalf of John Gibson to quote Ralph Hunt and other government authorities in vindication of the truth of the advertisement. To be (insured) or not to be (insured) was clearly not quite the same, but with the majestic machinery of the law set in motion it was too late for reason or restraint.

The Federal Court hearing was adjourned to 13 December 1978 provided that the offending advertisement was not republished. Counsel for the newspaper said that they would argue that their contravention was a reasonable mistake, or due to reasonable reliance on information supplied by another person or the default of another person, etc., etc. The NAMS could end up liable for all their costs. If the NAMS didn't argue that the advertisement was true it could be found to have aided and abetted in the publishing of misleading or false information and pay heaven knows what costs all round. If the advertisement was proved to be true or believed to be true, the NAMS could still be liable

for its own costs. Even if the court held that the advertisement was true the Trade Practices Commission could still appeal.

Faced with a bottomless whirlpool of legal costs, the NAMS' only choice was to raise the white flag and surrender. John Gibson had to promise not to republish the offending notice or to aid or abet in its republication. As a further condition of settlement the Crown insisted on the NAMS paying its legal costs as well. And the court so ordered.

NAMS Bulletin No. 21, January 1979, reported that 'the Legal costs to date are $5,753, and we can anticipate further charges after Court taxation has been added'. Whether the NAMS' advertisement was true or not seemed to have become irrelevant. But it was clearly wise to remember that the authorities knew how to teach a sharp lesson—legal costs—to anyone who thinks that telling the truth gives them a right to get cheeky.

Back and forth in time and place: from Canberra to NSW and back

In NSW, although the statutory arbitral body that was meant to make sessions more acceptable had not eventuated, the Willis Coalition Government appointed Andrew Rogers, QC, as a private arbitrator. He began hearing a log of claims for 'sessional' visiting medical officers on 28 April 1976. Fee-for-service contracts were 'not available'. Disappointment with arbitration was swift after Rogers suggested that a senior specialist should get an hourly rate of $16.82, brought up 20 per cent with leave provisions to $20.18, when the hourly pay for junior legal counsel was $40 to $55 (add 50 per cent for a QC). The NSW AMA *Monthly Bulletin* reported the 'Arbitration findings by Mr A. Rogers, QC ... were unanimously rejected by the Medibank Hospital Seminar ... on September 19 [1976] as being both professionally and industrially unacceptable'.[22]

The Wran Labor Government replaced the Coalition on 1 May 1976 and, although back in February the NSW Health Commission had accepted the closure of routine out-patient clinics, the new government soon announced its intention to reestablish outpatients and to provide general practitioner services in public hospitals. Neville Wran's Government devised a succession of control mechanisms to enforce obedience. First, it required the specialists to apply for appointment to an entirely new invention called a Visiting Practitioner.[23] The doctors' current Visiting Medical Officer (VMO) appointments were not good enough; a fresh application as for a new post was required. The terms of appointment were left unclear but the NSW Health Commission

gave itself virtually unlimited powers to introduce regulations governing the doctors' work—(clinical) privileges, their revocation, the powers of credentials committees, and so on. Visiting Practitioners would have rights of appeal against hospital board decisions but the Health Commission itself could determine the appeal or appoint a committee of review whose decision would be final. Without appointment as a Visiting Practitioner, the Visiting Medical Officer had no right of appeal.

On 1 July 1978, the Fraser Government reduced the benefit for patients other than 'eligible' pensioners treated in public hospitals from 85 per cent to 75 per cent of the schedule, with a maximum gap of $10 instead of $5. The NSW Health Commission promptly, and without consultation, announced that rural doctors who were on 'modified fee-for-service' contracts would now get these reduced rates regardless of any existing agreements. In March 1979, NSW Health Minister Kevin Stewart threatened to control doctors' private fees and on 3 August, the Minister for Consumer Affairs, Sid Einfeld, 'declared' doctors' services, and set up the Prices Commission Inquiry into Private Medical Fees, the necessary steps towards regulating them. Such treatment of a professional group was without precedent in the State's history, but eventually the assault by Wran's ministers failed.

In case there was still any doubt about the government's mindset, the NSW Parliamentary Public Accounts Committee tabled a report in the Legislative Assembly on 6 April 1982, which recommended:

> That, as a condition of appointment, all visiting medical practitioners be required to charge no more than the medical benefit schedule fee ... to private patients in public hospitals; Sessional payments for ... services provided to 'hospital' patients be extended to all public hospitals; Visiting medical practitioners be remunerated for medical services to all patients in New South Wales public hospitals on a sessional rather than fee for service basis. The Public Hospitals Act be amended to prohibit charges being raised by any medical practitioner for services provided to a patient in a public hospital.

In short, private practice in public hospitals would be eliminated.

The camel's back

On 5 March 1983, the Fraser Government was defeated and Labor under Bob Hawke took power with a majority in both the House of Representatives and the Senate. The new Labor health scheme, Medicare, a resurrected variant of Medibank, was ushered in by Health

Minister Dr Neal Blewett on 1 February 1984 (except in Queensland where it started on 5 March). A great deal was familiar: bulk-billing, 'free' treatment in hospital, a compulsory levy, and at first 1 per cent of gross income. For the doctor of their choice, patients had to buy additional insurance; 'gap' insurance was prohibited and the government's Medibank Private had a monopoly on the administration of basic medical benefits.

This time, hidden in the legal verbiage of the new amendments to Section 17 of the Health Insurance Act was the ultimate control mechanism, one that evoked a storm of real outrage among hospital specialists. Clause 18 of Section 17 required 'that contracts between Visiting Medical Officers and Hospitals for the care [of] both public and private [patients] shall be acceptable to the [Federal] Minister'. This meant that he could change the guidelines without the agreement of the contracting parties and without appeal, and that the contracts became invalid if they did not conform. Medicare benefits would not be payable to private patients at public hospitals unless the practitioner had entered into an approved agreement with the hospital.[24] The Federal Health Minister had given himself unfettered power to dictate the contracts that the visiting specialists had in the past negotiated with their State health departments; the guidelines could control not only fees but also conditions of service.

In NSW, the *Public Hospitals Amendment Act 1983* also gave the State Health Minister draconian powers. He could make regulations

> with respect to the appointment, management and government of visiting practitioners, including the conditions subject to which visiting practitioners may perform work at the hospitals ; the conduct of a visiting practitioner ... (whether at a hospital or elsewhere) in relation to the performance of work which is capable of being performed at the hospital ...; any conduct of a visiting practitioner ... (whether at a hospital or elsewhere) which may prevent or inhibit the admission of persons (whether or not those persons are members of or subscribers to any organisation) to that hospital.[25]

This meant that the minister could punish doctors for persuading patients to take out private health insurance before admission to a public hospital. The minister also determined to proclaim the 1976 amendment to the Public Hospitals Act [regarding] the formation of credentials committees in public hospitals.[26] To the doctors this looked like yet another shackle of bureaucratic control.

It was a recipe for confrontation, the straw that finally broke the camel's back. The specialists clamoured for repeal of the obnoxious laws. A seminar on 18 December 1983 unanimously advised hospital

doctors 'to have nothing to do with contracts that contain Clause 18 provisions of the Health Legislation Amendment Act', and 'declared it had no confidence in the NSW Minister for Health (Mr Brereton) and called for the resignation of the Federal Health Minister (Dr Blewett PhD)'. Dr Blewett poured petrol on the flames. On 28 February 1984, the *SMH* reported that 'NSW diagnostic specialists ... will receive a letter this week warning that medical benefits will not be available to their patients if they continue the dispute'. Negotiation and reason had failed. There seemed to be only one recourse: the withdrawal of non-urgent procedural and diagnostic medical services commenced in early March 1984.

The *SMH* professed to see 'Dr Blewett's power under Section 17' as innocuous—'certainly no more and probably a great deal less than that of any other employer'—and went on to state that while 'in theory he can do almost anything he likes, [i]n practice, he is limited by both the doctors' industrial power and public opinion'.[27] However, the *SMH* did show a flash of insight into what the conflict was about, with its reference to 'the first skirmish in a long struggle over who—the doctors or the Government—would effectively control the medical industry ...'

In March, with threats of industrial action spreading, Blewett rushed through Parliament a provision subjecting his guidelines to parliamentary scrutiny and disallowance.[28] Jim Carlton, Opposition spokesperson on health, again raised the issue of the High Court deciding the constitutional validity of Section 17, but for the specialists anything short of a repeal of Section 17 was not enough. The NSW Government staged a further ambush by suddenly gazetting Regulation 54A of its own amendments to the Public Hospitals Act. The *SMH* reported this as meaning 'that unless a visiting Practitioner at a public hospital charges [private patients] the schedule fee or less, that doctor can lose his or her appointment at a public hospital'.[29] Mr Mulock, the NSW Minister, was empowered to dismiss doctors.

Thus, the NSW doctors voted for a withdrawal of all but emergency services for a week beginning 9 April 1984. The *SMH* gave them some editorial advice on their 'strike':

> 'NOW IS THE TIME TO QUIT': The doctors ... are heading towards industrial defeat. Their obvious hope was that the threat of a national strike would panic the electorate and the Government. That has not happened. The Government clearly believes that the doctors are incapable of sustained, widespread industrial action.[30]

With seeming satisfaction the editor explained why the doctors were weak:

> The main reason for expecting next week's strike to collapse is the natural reluctance of individual doctors to turn all but the most non-urgent of cases away. That has been the experience ... so far, and there is no reason to believe that doctors have suddenly become more ruthless.

An uneasy truce shortened the withdrawal of services from a week to only two days. But the NSW Government refused to withdraw its regulations and by June 1984 a growing number of surgeons, orthopaedic surgeons, anaesthetists and many other Visiting Medical Officers had resigned from the State's public hospitals. Mr Wran responded by legislating to ban

> for seven years any visiting practitioner who left the public hospital system. He would publish these doctors' names, effectively preventing their re-engagement by New South Wales hospitals. ... By June 15 the Government had forced through both Houses the Public Hospitals (Visiting Practitioners) Amendment Act.[31]

Those who published the resigned doctors' names would be protected from defamation suits. Resignations submitted on or after 26 May 1984 would be rendered null and void by the Act. 'But if they were determined to resign replacements for them would be found.'[32] Mr Wran had succeeded in uniting the profession where others had failed.

Once more, on 17 June 1984, the NSW AMA recommended that only emergency services be provided and more resignations started three days later. The *SMH* reported that Dr Victor Chang, head of Cardiac Surgery at St Vincent's Hospital and personal friend of Mr Wran's, had tendered his resignation on Monday 18 June.

On Tuesday Mr Wran requested another meeting with Dr Chang. That evening Dr Chang said on television he had not wanted to resign, but he did not want to see nationalised medicine as he saw it in England. 'When I came home, I thought, the Australian people are the luckiest in the world. They have the best public health service in the world.'[33]

The implication was that the government of Neville Wran was about to wreck it.

> Dr Chang said: 'All of us in training say, "let's go to England to operate on the British public". We know we are going to be able to do a lot of cutting. It's a very crude word. I don't like to use it. We are often not supervised. The reason is that senior doctors in England in the National Health system have no incentive, either money or the pursuit of excellence, to spend time to look after these people. And we come back with great experience, which we pass on to the Australian public. We could end up like England.'[34]

A six-member medical 'negotiating body' and a legal representative listed the conditions for resumption of talks with the NSW Government but a meeting on 23 June between the convenor, Dr John Dixon Hughes, and the premier achieved nothing.

Eventually Mr Wran was forced to announce what the *Sydney Morning Herald* described as 'a major retreat'—his intention to repeal the seven-year ban. In fact, he then decided to 'defer the repeal until an unspecified time in the August Parliamentary sittings and in the meantime to proclaim that section of the Act which purported to nullify all resignations already submitted'.[35] The resignations, which had started again in June, were not lifted until the NSW Parliament repealed the seven-year ban legislation during its September 1984 sittings.[36]

But the Federal and State legislation giving the respective ministers power over the specialists' working conditions was still in place and the NSW Government refused to move from its derisory sessional offer or the rejection of fee-for-service. The mood was one of bitter frustration and, in late October, the NSW AMA Branch Council and the chairs of hospital medical staff councils felt themselves forced to recommend an indefinite withdrawal of services from all public hospitals. The following month, the chaos got worse. The rift between the AMA on one side and the Australian Society of Orthopaedic Surgeons (ASOS) and the Australian Association of Surgeons on the other, caused by the latter's doubts (correct or otherwise) as to the AMA's capacity and will to carry the struggle to a successful conclusion, became public when the press reported that Drs Shepherd and Aroney of the ASOS and AAS respectively had withdrawn from the doctors' negotiating committee. Mr Justice Macken was nominated by the NSW Government as arbitrator, but the AMA rejected this as inappropriate because the arbitrator had no power to resolve the principles in dispute. The royal colleges met the State minister to urge direct negotiations. However, the NSW Government still refused to negotiate and the AMA called for escalation of industrial action. The Specialist reported that 'The N.S.W. Hospital system is still functioning but ... is approaching a state of breakdown'.[37] The offer by Dr Blewett and Mr Mulock of yet another inquiry was rejected by the AMA.

On 2 January 1985 the Doctors Coordinating Committee wrote to Prime Minister Hawke pointing out that the dispute in NSW involved Federal Government policies and that he should intervene. On 17 January, Mr Hawke and Senator Grimes, the Acting Health Minister, with Mr Wran and Mr Mulock met Drs H. L. Thompson and Buhagiar, Presidents of the Federal and NSW AMA. Also present were Drs Bruce Shepherd and Michael Aroney of the ASOS and AAS respectively, Dr Judith Williams of the NSW ASA, and Professor John Hickie, President

of the Royal Australasian College of Physicians. Another meeting, on 23 January 1985, was held without Drs Shepherd and Aroney. Prime Minister Hawke and Premier Wran produced a four-point 'package' on a take-it or leave-it basis. They promised, among other things, to

> give an unequivocal public undertaking that it is not their intention, or that of the ALP, now or in the future, either directly or indirectly to abolish private practice within or without public hospitals, or to nationalise medicine [and that] both Governments are prepared to enter into direct negotiations with the medical profession on the methods of remuneration for medical services provided to public patients in public hospitals.[38]

However, they demanded that the doctors be advised to withdraw their resignations and return to normal duties in public hospitals before the dispute could be settled. This precondition was an unacceptable sticking-point, and both the NSW AMA and the Council of Procedural Specialists (CPS) rejected it. The division between the CPS, ASOS and AAS, led by Drs Shepherd and Aroney, and the AMA got worse, fed by the fear that the AMA would allow the government to manoeuvre it into recommending a premature return to work which would nullify everything that had been gained. A visit to the Prime Minister by the CPS without the AMA on 20 February 1985 aggravated the discord—but these talks failed. The next day, Mr Hawke rang AMA President Lindsay Thompson and invited him to a meeting, at which Mr Mulock was also present, without any precondition. Lindsay Thompson felt that an agreement for negotiations had been worked out but did NOT agree to advise withdrawal of resignations.[39]

> [The] government agreed to drop its ... insistence on withdrawal of resignations as a prerequisite to talks. The AMA, however, had to agree to an extensive publicity programme calling on doctors to resume normal duties.[40]

But there was no real progress regarding the obnoxious legislation. On 31 March 1985 an extraordinary general meeting of more than 700 members of the NSW AMA recommended that all visiting medical officers should resign forthwith. This was endorsed by the NSW Branch Council two days later.[41]

At last, with their backs to the wall, the doctors had expressed themselves in a language the politicians could understand. On 2 April 1985, the Commonwealth and NSW Government in a joint press release produced another 'package' for settling the dispute, which at last took the doctors' demands into account: Section 17 would be repealed; modified fee-for-service (i.e. paid by the hospital) would be offered for

peripheral hospitals at three levels related to resident staff support; on admission to hospital patients with private health insurance would be classified as private; and the Commonwealth would hand regulation of private hospitals back to the States. The government acted tough by presenting the package as 'the bottom line', which would be withdrawn if not accepted within a month.[42]

The *Sydney Morning Herald* trumpeted a 'cave in ... to the demands of militant NSW doctors' by the Federal Government, and the editor pronounced that the offer had gone 'too far'.

> The Government has offered fee-for-service for the treatment of public patients in all but the teaching hospitals. At the same time, with its offer to repeal the original amendments to Section 17 of the Health Insurance Act, it has walked away from its responsibility to control costs in the hospital system. The taxpayer ... is to provide open ended funding for fee-for-service medicine ...[43]

Mr Wran fired one more salvo at the hated enemy. 'If this very reasonable proposal was rejected by a substantial number of doctors,' he warned, 'he would recruit replacements from interstate and overseas.'

The mass resignations had at last forced the Federal and State governments to listen. By May 1985 the work of the public hospitals had more or less resumed. The division between the AMA and the AAS and ASOP, which had been such a dangerous threat to success, was patched up but had not healed. Any feeling of victory was quickly dissipated. The long war of attrition resumed and has continued. By July 1985, the NSW AMA Branch Council was again sharply criticising the three months' delay by the government in carrying out specific undertakings and Dr C. S. H. Reed described a 'seething cauldron of discontent among doctors'.

Roll call

The National Association of Medical Specialists was, of course, not an abstraction, but consisted of numerous diversely talented individuals, all of them actively involved in patient care, who at the same time were willing to give their time, experience and energy to defend the medical profession's independence and try to develop sound health care policies. Boyd Leigh's successors as president were Rob Kelsall, pathologist, Colin Selby Brown, orthopaedic surgeon, Frank Croll, physician, Tom Orban, pathologist, and Richard Prytula, psychiatrist. Less visible were the many secretaries, vice-presidents, treasurers and council-

lors, who spent long hours in thought, discussion, debate, writing, and travelling in pursuit of the aims that the NAMS had set itself; namely, to achieve the highest standards of specialist practice in the best possible system of health care. There were honoraries and salaried staff specialists, academics and pragmatic rural doctors, eminent persons and foot soldiers from all over Australia. Space makes it impossible to list them all, but it would be wrong not to mention some (apart from the presidents) who made remarkable contributions: Alan Hewson, obstetrician and gynaecologist, Lee Evered, radiologist, Stuart Taylor, urologist, Peter Dawes, pathologist, and David Wallace and Ian Collins, physicians. There were, of course, many others to whom I apologise for not recording their names.

Another key contributor to the NAMS' fortunes was John Gibson, the executive director appointed in July 1977 when, with the sounds of battle all around, it became obvious that the amateur councillors, who were all in specialist practice, needed professional help to cope with the Association's affairs. John Gibson was not a doctor, but quickly understood the hospital specialists' problems and espoused their cause with enthusiasm and devotion. A wiry man of military bearing—unfailingly courteous, diplomatic, and efficient—he worked for the NAMS full-time until he retired in November 1983, and again on a part-time basis when he returned to the Sydney area from Melbourne in 1985.[44]

'What good came of it at last?'

The NAMS made a crucial contribution to the creation and activities of the various committees and the NSW hospital seminars that inspired the resistance to the conditions imposed on hospital doctors from the start of hospital Medibank in 1975. These efforts helped to achieve strong solidarity at the beginning, but when the conflict dragged on for many years the simultaneous pull of opposing forces made it much more difficult to maintain unity. On the one hand was the necessity to oppose the governments' control of policies and to maintain the profession's independence. Against this was the need to earn a living, to survive, and to look after sick patients, even if it could only be done on the governments' terms. The quarrel within the medical profession, between the major medical associations and the AMA, was about defining the difference between the middle path and the path of least resistance, between compromise and surrender. Neither were the State branches and the Federal AMA always in step. In NSW, the NAMS put fire in the belly of the State AMA in the most direct way possible. In 1979, six of the seven seats for specialists on the AMA's Branch

Council were held by members of the NAMS.[45] But when in 1978, encouraged by the success of the NSW Conjoint Committee the NAMS invited the major medical associations and the royal colleges to form a national body that could advise the Commonwealth Government on the provision of specialist services, the proposal was rejected on the grounds that their annual joint conference with the AMA fulfilled that objective and, in the case of the AMA, because they already adequately performed the intended function.[46] Yet by 1979, the AAS had disaffiliated from the AMA[47] and their relationship remained hostile.

When the conflict over the dictatorial Federal and NSW health legislation became a crisis in 1984 and 1985 only the withdrawal of services and mass resignation from the public hospitals, notably by the surgeons and orthopaedic surgeons, was sufficiently compelling to make the Commonwealth and NSW governments repeal the most odious sections of the relevant statutes. The NAMS was by then not in the front line. But even before Medibank started the NAMS, with some justification, claimed the intellectual vanguard—most significantly because it grasped and acted on the conviction that doctors' first-hand experience of hospitals and patients gave them a capacity beyond that of politicians and economists to formulate a practical and fair health scheme. The result was the *Propositions Regarding a Workable Health Scheme* and the subsequent updated 1987 publication *Proposals for a National Health Scheme.*

While the NSW Branch of the AMA and other major associations endorsed the Propositions, the Federal AMA lacked even the modest courage needed to allow its publication in the *Medical Journal of Australia.* One can only speculate on what might have happened if the AMA and other medical organisations had united to press the government to accept their own coherent health plan. Incredibly, it took until 1987 before a resolution put to the AMA Federal Assembly by the then president of the NAMS, Dr Tom Orban, made the Federal AMA formulate a health policy. Orban described how the discussion had rolled on for hours before

> the most important item was finally debated ... motion, '10.3' as amended: 'That Federal Assembly instructs Federal Council to draft the principles of a National Health Care Plan which will be in the best interests of the Australian people.' Before I tell you the outcome I also have to tell you that it became quite clear ... that the matter would not be dealt with until well into the late afternoon. I sent a note to the Chairman that I would be grateful if I could circulate some 20 copies of NAMS' 'Proposals' during the lunch intermission. ... The vote was not unanimous but the motion was [approved by] a large majority. [T]he ... Assembly was visi-

> bly and audibly jubilant that after some fifteen years of trying we have now irrevocably directed the Council to get on with what NAMS has advocated for almost that number of years.[48]

When some two years later the Federal AMA mountain finally went into labour it brought forth a document entitled *Medicover—Reform of Australia's Health Insurance System (Green Paper)* prepared by Access Economics (May 1989). It is fair to say that the government of the day treated it like any other outside advice on the health insurance system—with even-handed disregard.

At the height of the NAMS' activity, around 1974–75, there were some 1500 members (probably between 20–25 per cent of the total number of approximately 7000 specialists in Australia at that time).[49] In 1994, the last president of NAMS, Victorian psychiatrist Dr Richard Prytula, reported that 'the membership of NAMS has declined progressively since its highest peak ... NAMS is in a good financial position but I believe the inevitable outcome is its dissolution.'[50] The following year, the federal council decided to disband the National Association of Medical Specialists. The articles of association required that any residual funds were to be distributed to an organisation with like-minded aims. On 17 December 1995, Dr Prytula informed the members that:

> The Association has been merged with the Australian Doctors Fund Limited. Your President and Secretary are involved on the Committee of Management of the ADF. This allows us to continue to try to effect beneficial change in issues concerning all specialists in the Australian Health Care scene.

The flame of resolve had burned down and after twenty-three years the NAMS had run its course. The brave band on the bridge had warded off the effective nationalisation of medicine and the hospitals, preserved private practice, and kept doctors from becoming government employees. But successive governments remained addicted to using a 'free' health and hospital system and 'bulk-billing', the costly currency of economists and bureaucrats, to help them buy power. Instead of cooperation between doctors and government there is discontent, a haemorrhage of funds from where they are needed—hospitals, mental health, medical research—into the pockets of entrepreneurs, and a relentless decline of health and hospital services. It is not yet clear whether Horatius held the bridge or was eventually overwhelmed.

Sydney

1. R. B. Scotton & C. R. Macdonald, *The Making of Medibank,* School of Health Services Management, University of NSW, Sydney, 1993 p. 19.
2. Gough Whitlam, *Abiding Interests*, University of Queensland Press, Brisbane, 1997, p. 223.
3. Commonwealth Committee of Enquiry into Health Insurance, *Report*, 1969.
4. Whitlam, *Abiding Interests*, p. 223.
5. ALP Federal Conference, Launceston, 1971.
6. NSW Branch, Australian Medical Association (AMA), *Monthly Bulletin*, March 1969, p. 3.
7. NAMS Steering Committee, *Newsletter*, April 1972.
8. *The Australian Health Insurance Program, White Paper*, AGPS, 1973.
9. NAMS, *Propositions Regarding a Workable Health Scheme with Particular Reference to Specialist Practice*, Sydney, 1974.
10. NAMS New South Wales, *Newsletter No. 1,* August 1974.
11. Dr Ronald Winton, Editor of *Medical Journal of Australia*, letter to the author, 18 March 1975.
12. NAMS, *Bulletin No. 1*, May 1973.
13. Gough Whitlam, *The Whitlam Government 1972–1975,* Viking Penguin Books Australia, Ringwood, Vic., 1985, p. 347.
14. *Health Insurance Act 1973,* (No. 42 of 1974) Section 30 Commonwealth / State Agreement.
15. Whitlam, *The Whitlam Government*, pp. 332–8.
16. Scotton & Macdonald, *The Making of Medibank*, p. 159.
17. Bill Hayden, *Hayden An Autobiography*, Angus & Robertson, Sydney, 1996, p. 198.
18. House of Representatives, 18 May 1976 (Hansard).
19. Scotton & Macdonald, *The Making of Medibank*, pp. 242–9.
20. *Canberra Times*, 25 October 1978.
21. Federal Court of Australia (NSW District Registry), No. G105 of 1978.
22. NSW Branch, AMA, *Monthly Bulletin*, 27 December 1976.
23. *NSW Government Gazette*, 150, 9 December 1977.
24. *Health Insurance Amendment Act 1984,* (No.15 of 1984) Section 17.
25. *NSW Public Hospitals Amendment Act 1983,* Clause 42(1)(h1), Clause 42(1A)(a)(b).
26. NSW Branch, AMA, *Monthly Bulletin*, 30 January 1984, p. 10.
27. *Sydney Morning Herald*, 17 March 1984.
28. H. Lindsay Thompson, 'The Doctors, Medicare and Private Hospitals', *Medical Journal of Australia*, vol. 15, September 1984, p. 376.
29. *Sydney Morning Herald*, 2 April 1984.
30. ibid., 3 April 1984, p. 10.
31. NSW Branch, AMA, *Monthly Bulletin*, 25 June 1984, p. 8.
32. *Sydney Morning Herald*, 19 June 1984, p. 1.
33. Yvonne Preston, 'The public relations battle for the heart of Dr Chang', *Sydney Morning Herald*, 21 June 1984, p. 1.
34. ibid.
35. *Sydney Morning Herald*, 28 June 1984.
36. NSW Branch, AMA, *Monthly Bulletin*, 30 July 1984, p. 7.
37. NAMS, *The Specialist*, no. 52, December 1984.
38. NSW Branch, AMA, *Monthly Bulletin*, 25 February 1985, p. 12.
39. ibid., 25 March 1985, p. 11.
40. ibid., 29 April 1985, p. 12.
41. ibid., p. 4.

42. Australian Association of Surgeons, *Circular Letter*, 10 April 1985.
43. *Sydney Morning Herald*, 3 April 1985.
44. NAMS, *The Specialist*, no. 56, November 1985.
45. NAMS, *Bulletin*, no. 24, July 1979.
46. ibid., nos 19, 20, July, September 1978.
47. ibid., no. 22, March 1979.
48. NAMS, *The Specialist*, no. 65, June 1987.
49. L. J. Opit & R. McK. F. Southby, *Medical Specialist Practitioners in Australia: Present Indicatives, Future Trends and Consequences*, Department of Social and Preventive Medicine, Monash Medical School, Melbourne, 1978.
50. NAMS, *President's Report*, October 1994.