



HOSPITALS

No. 28 of 1977

ANALYSIS

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AN ACT to amend the Hospitals Act 1918.

[19 May 1977]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Hospitals Act 1977*.

Short title, citation, and commencement.

(2) The *Hospitals Act 1918**, as subsequently amended, is in this Act referred to as the Principal Act.

*9 Geo. V No. 70. For this Act as amended to 1965, see Appendix B of the Annual Volume of Statutes for 1966. Subsequently amended by Nos. 24 and 58 of 1967, No. 24 of 1973, and Nos. 28 and 77 of 1976.

(3) This Act shall commence on a day to be fixed by proclamation.

Interpretation.

2 Section 4 of the Principal Act is amended—

(a) by inserting in subsection (1), after the definition of “municipality”, the following definition:—

“ ‘officer of the hospital service’ has the meaning assigned to that expression by subsection (3); ”;
and

(b) by adding at the end thereof the following subsection:—

“(3) In this Act an ‘officer of the hospital service’ means any person in the employment of a board or appointed by a board to any post, being a person who, by virtue of that employment or appointment, is paid, or entitled to be paid, any remuneration by the board, other than the repayment or reimbursement of any expenses incurred by him, and references in this Act to an officer in the service of a board shall be construed as a reference to an officer of the hospital service employed or appointed by the board.”.

Constitution of boards (other than Hobart).

3 Section 11 of the Principal Act is amended by omitting from subsection (2) the words “seven members, of whom” and substituting therefor the words “the persons who are members of the board under section 11B and seven other members, of which seven members”.

Constitution of Hobart board.

4 Section 11A of the Principal Act is amended—

(a) by omitting from subsection (1) the words “nine persons, of whom” and substituting therefor the words “the persons who are members of the board under section 11B and eight other members, of which eight members”;

(b) by omitting subsection (1) (b);

(c) by omitting subsection (3); and

(d) by omitting subsections (5) and (6).

5 After section 11A of the Principal Act the following sections are inserted:—

“ 11B—(1) In addition to the persons who by virtue of section 11 or section 11A are members of a board that is responsible for a general hospital the following persons are also members of such a board, namely:— Staff representation on boards.

- (a) The chairman of the medical advisory committee of the board established under section 11C; and
- (b) The chairman of the staff advisory committee of the board established under section 11D.

“(2) For the purposes of this section the following boards shall be regarded as boards responsible for general hospitals, namely:—

- (a) The board for the Hobart Public Hospitals District;
- (b) The board for the Launceston Public Hospitals District; and
- (c) Any other board charged with the management of a hospital that is declared under section 32 (2) to be a general public hospital.

“(3) In addition to the persons who, by virtue of section 11, are members of a board that is not a board responsible for a general public hospital a representative of the staff of the board shall also be a member of the board, that representative being elected by the officers in the service of the board as prescribed and holding office as a member of the board as prescribed.

“ 11C—(1) For each board to which section 11B (1) applies there shall be established a medical advisory committee which shall Medical advisory committees. consist of—

- (a) the medical practitioners (other than those holding limited registration) who are officers in the service of the board, having rank and status above that of registrar; and
- (b) the certified dentists within the meaning of the *Dentists Act* 1919 who are officers in the service of the board.

“(2) In the case of the medical advisory committee for the Hobart Public Hospitals District the following persons shall be members of that committee in addition to those specified in subsection (1):—

- (a) The Dean of the Faculty of Medicine at the University of Tasmania; and

(b) The clinical professors and heads of clinical departments in that Faculty.

“(3) The chairman of a medical advisory committee of a board shall be such member of the committee, being an officer in the service of the board, as may be elected, as prescribed, by the members of the committee, and he shall hold office as chairman as prescribed.

Staff advisory committees.

“11D—(1) For each board to which section 11B (1) applies there shall be a staff advisory committee consisting of one representative of each of the following classes of officers in the service of the board, namely:—

- (a) The medical staff (not being members of the medical advisory committee of the board) and the paramedical and scientific staff;
- (b) The nursing staff;
- (c) The administrative and clerical staff;
- (d) Staff not coming within any of the classes mentioned in the foregoing paragraphs.

“(2) The chairman of a staff advisory committee shall be such member thereof as the committee may appoint.

“(3) A representative of any of the classes of officers referred to in subsection (1) shall be an officer of that class elected as prescribed by the officers of that class.

“(4) Regulations under this Act may prescribe, by reference to their qualifications or duties, or by reference to the offices held by them, the officers of a board who are to be regarded as comprising the paramedical and scientific staff of the board for the purposes of this section.

“(5) On the application of a board or an officer of the board, the Director-General shall determine whether or not an officer of the board should be treated as an officer of the administrative and clerical staff for the purposes of this section, but, subject to any such determination, the administrative and clerical staff of a board shall comprise such staff as the board determines to be engaged wholly or mainly on administrative or clerical duties.

“(6) Regulations under this Act may prescribe—

- (a) the manner of election of members of a staff advisory committee and their terms of office;

- (b) the manner of appointment of the chairman of a staff advisory committee and his term of office; and
- (c) any other matter relating to the proceedings of a staff advisory committee.”.

6 Part IIA of the Principal Act is repealed and the following Part is substituted therefor:—

“ PART IIA

“ PROVISIONS AS TO THE HOSPITAL SERVICE

“ *Division I—Hospital Service Appeal Board*

“ 53—(1) There shall be constituted a Hospital Service Appeal Board, which shall, for the hearing of an appeal, consist of a chairman and two other members. Hospital Service Appeal Board.

“(2) The chairman of the Appeal Board shall be a person appointed by the Governor.

“(3) Of the two members of the Appeal Board, other than the chairman, that constitute the Appeal Board for the purpose of the hearing of an appeal—

- (a) one shall be a person appointed by the Minister; and
- (b) one shall be an officer of the hospital service elected under this section.

“(4) For the purpose of the hearing and determination of appeals under this Division the offices in the hospital service shall be divided into such classes as may be prescribed.

“(5) For each class referred to in subsection (4) a member of the Appeal Board and a deputy of that member shall be elected by postal ballot in the prescribed manner by officers of the hospital service holding offices within that class.

“(6) The term of office of a member of the Appeal Board, or the deputy of such member, elected under subsection (5) is a period of 3 years from the date of his election; but he may resign his office by notice in writing to the Minister.

“(7) Where there is a failure to elect a member of the Appeal Board, or his deputy, as required by this section, the Governor may appoint an officer of the hospital service to be that member or deputy; and this Part applies in relation to an officer so appointed as if he had been elected in accordance with this section, except that in relation to him subsection (6) has effect as if the references therein to a period of 3 years were references to a period of one year.

“(8) The Minister shall pay to the members of the Appeal Board such remuneration as the Governor may determine.

“(9) The Minister may appoint a secretary of the Appeal Board, but an officer of the Public Service shall not be so appointed without the approval of the Public Service Board.

“(10) Subject to this Part, Division II of Part II of the *Evidence Act* 1910 has effect with respect to the hearing of an appeal under this Part, as if the Appeal Board were such a board of inquiry as is referred to in section 14 of that Act and the matter the subject of the appeal were the matter into which it was appointed to inquire by its instrument of appointment.

“ *Division II—Appointments to hospital service and appeals in relation thereto*

Appointment
of officers.

“ 54—(1) Where there is a vacancy in an office in the service of a board, the board shall not appoint to that office a person who is not an officer of the hospital service to fill that vacancy unless it has caused the vacancy to be advertised in the *Gazette* and called for applications for appointment thereto.

“(2) Before a board appoints a person to any vacancy in an office in the service of the board it shall—

- (a) if the vacancy has been advertised in accordance with subsection (1), notify each officer of the hospital service who applied for appointment to that office of the name of the person it intends to appoint; or
- (b) if the vacancy has not been so advertised cause to be published in the *Gazette* a notice—
 - (i) specifying the office that is vacant and the qualifications required for appointment thereto;
 - (ii) specifying the name of the person whom it is proposed to appoint to that office and the office (if any) in the hospital service held by him; and
 - (iii) stating that officers of the hospital service are entitled to appeal in respect of the proposal to appoint that person.

“(3) A notification under subsection (2) (a) shall be in writing in the prescribed form, and shall be served upon each officer of the hospital service required to be notified by delivering a copy to him in person or by forwarding a copy to him by post addressed to his usual or last known place of abode.

“(4) For the purposes of this section, a notification under subsection (2) (a), if forwarded to an officer by post, shall be deemed to have been served upon him on the day on which it would, in the ordinary course of post, have been delivered to the place to which it is addressed.

“(5) Where an officer of the hospital service has been notified under subsection (2) (a) of the proposal to appoint a person to an office that officer may, within 14 days of being so notified, appeal to the Appeal Board against the proposal.

“(6) Where a notice has been published under subsection (2) (b) of the proposal to appoint a person to an office, any officer of the hospital service may, within 21 days of the publication of the notice, appeal to the Appeal Board against the proposal.

“(7) An appeal under this section shall be instituted by lodging with the secretary of the Appeal Board a written notice setting forth the ground of the appeal together with 4 copies of a written statement setting forth fully all matters that the appellant desires the Appeal Board to consider on the hearing of the appeal.

“55 For the purposes of the hearing and determination of an appeal under this Division in respect of an appointment to an office of a class prescribed under section 53, the person who is to be the member of the Appeal Board under subsection (3) (b) of that section shall be the member of the Board elected by the officers holding the offices within that class, or, if it appears to the chairman of the Appeal Board that that member is unable or unwilling to act, the deputy of that member.

Constitution of Appeal Board on hearing of an appeal.

“56—(1) On the hearing of an appeal under this Division, the Appeal Board shall allow the appeal of an appellant if it is satisfied that the appellant is of superior efficiency to the person proposed to be appointed to the vacancy, and, if it is not so satisfied, shall dismiss the appeal.

Hearing and determination of appeals in respect of appointments.

“(2) Where there are two or more appellants against a proposal to fill a vacancy the Appeal Board shall dismiss the appeal of any of those appellants if it is satisfied that had the appeal been an appeal against a proposal for his appointment to the vacancy it would have allowed the appeal of any other of those appellants.

“(3) For the purposes of this section efficiency, in relation to an office the vacancy in which is to be filled, shall be construed to mean any special aptitude and qualification for the discharge of the duties of that office, together with merit and good and diligent work.

“(4) The Appeal Board may, in its absolute discretion, summarily disallow an appeal that, in its opinion, is frivolous or vexatious, or if, in its opinion, the appellant does not possess the qualifications required for appointment to the vacant office.

“(5) At the hearing of an appeal under section 54 against a proposal to appoint a person to an office in the service of a board—

- (a) a representative of that board;
- (b) the person proposed to be appointed; and
- (c) the appellant,

are entitled to appear before the Appeal Board, and any person so appearing may, either by himself or his advocate nominated under subsection (6), tender evidence, and examine any person giving evidence, in the proceedings.

“(6) For the purposes of the hearing of an appeal under this Division the person proposed to be appointed and any appellant may each nominate another officer of the hospital service to appear as his advocate.

“(7) Subject to this section, the Appeal Board may regulate its own procedure on the hearing of an appeal.

Procedure
after appeal or
if no appeal.

“57—(1) Where no appeal is brought under this Division against a proposal to appoint a person to an office in the service of a board, or the appeals so brought are disallowed, the board may appoint that person to the office.

“(2) Where the appeal of an officer of the hospital service under this Division is upheld the board shall appoint him to the office to which the appeal relates.

Exclusions from
Division II.

“57A—(1) This Division does not apply to—

- (a) appointments to which, under this Act, the approval of the Minister is required; or
- (b) appointments made to such offices as may be prescribed.

“(2) No person is entitled to bring an appeal under this Division if—

- (a) he is an officer of the hospital service who has been appointed on probation and his probationary appointment has not been confirmed; or
- (b) he has not attained the age of 18 years.

“(3) A person, not otherwise being an officer of the hospital service, who is employed temporarily to carry out the duties of an office in the hospital service shall not, for the purposes of this Division, be regarded as having been appointed to that office and shall not, by reason of his being so employed, be regarded as an officer of the hospital service.

“ *Division III—Appeals against dismissal, suspension, or demotion*

“ 57B—(1) Where an officer of the hospital service is aggrieved by a decision of a board— Appeals to Appeal Board.

(a) to suspend or dismiss him;

(b) to require him to resign in order to avoid dismissal; or

(c) to reduce him in rank, position, grade, or remuneration,

he may appeal to the Appeal Board in accordance with this Division.

“(2) On the hearing of an appeal under this section the Appeal Board (unless it dismisses the appeal) may vary or quash the decision of the board to which the appeal relates and for that purpose may direct the board—

(a) if the appellant has been dismissed or suspended, or required to resign, by the board, to reinstate him in such rank, position, or grade, or with such rate of remuneration as the Appeal Board specifies; or

(b) if the appellant has been reduced in rank, position, grade, or remuneration, to place him in such rank, position, or grade, or pay to him remuneration at such rate as the Appeal Board specifies,

and, if it gives any such direction, it may also direct the board to make to him such payments as the Board specifies wholly or partly to recompense him for any remuneration that, but for the decision of the board to which the appeal relates, would otherwise have been due to him in respect of any period before the decision of the Appeal Board on the appeal.

“(3) Nothing in subsection (2) entitles the Appeal Board to make any direction that would have the effect of placing the appellant in any more favourable position with respect to his employment with, or appointment under, the board than if the decision of the board to which the appeal relates had not been made or in any less favourable position, with respect to that employment or appointment, than if the appeal had not been made.

“(4) A direction of the Appeal Board under subsection (2) has effect subject to any enactment (other than a provision of this Act), and to any award or determination made under such an enactment, being an enactment, award, or determination regulating or fixing the terms and conditions of officers of the hospital service.

“(5) A board shall comply with the directions given by the Appeal Board under this section.

“(6) Where the Appeal Board considers that an appeal has been brought on grounds that are frivolous or vexatious it may order the appellant to pay to the board against whose decision the appeal is brought such sum, not exceeding \$100, as it may determine.

Supplementary
provisions as
to appeals.

“57C—(1) An appeal under this Division shall be instituted by by lodging with the secretary of the Appeal Board, within the prescribed time, a written notice setting forth the grounds of the appeal.

“(2) At the hearing of an appeal under this Division, the board and the appellant are each entitled to be represented by some other person (whether a legal practitioner or not), and any such representative may adduce evidence on behalf of the party he represents.

“(3) On the hearing of an appeal under this Division, the Appeal Board shall make a full and thorough investigation of the matters giving rise to the appeal or relevant to its determination, and shall direct itself by the best evidence that it can procure or is laid before it, whether or not that evidence would be admissible in court.

“(4) On the hearing of an appeal under this Division the Appeal Board shall regulate its proceedings in such manner as it considers most suitable in order that it may come to a just and proper determination, and it may hear the appeal in public or in private as it considers most suitable.

“(5) On determining an appeal the Appeal Board may fix the costs of the appeal and direct by whom and in what proportion they are to be paid.

“(6) Any costs or other sum ordered to be paid under this section by the appellant to a board may be deducted from any remuneration that may be due to him as an officer of that board or may be recovered from him as a debt.

“(7) Any costs ordered to be paid under this section by a board to an appellant may be recovered by him as a debt due to him by the board.

“ 57D Nothing in this Division prejudices or affects the exercise of any right— Saving for certain procedures.

- (a) to terminate the appointment of an officer in accordance with a contract of employment; or
- (b) to terminate the employment of an officer employed temporarily or on probation.”.

7—(1) Division II of Part IIA of the Principal Act (as amended by this Act) does not apply to an appointment to a vacancy that was subsisting at the commencement of this Act. Saving for pending proceedings.

(2) Division III of Part IIA of the Principal Act (as amended by this Act) does not apply to any such decision of a board as is referred to in section 57B in that Division that was made before the commencement of this Act, and the like proceedings may be taken in respect of such a decision so made, and with the like effect, as if this Act had not been enacted.

