



## HOSPITALS AMENDMENT ACT 1980

No. 56 of 1980

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**AN ACT** to amend the Hospitals Act 1918 for the purpose of making further provision for the granting of licences in respect of private medical establishments and for the approval of the alteration or addition to those establishments.

[Royal Assent 16 September 1980]

**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**—This Act may be cited as the *Hospitals Amendment Act 1980*. Short title.

Commencement. **2**—(1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence in such date as may be fixed by proclamation.

Principal Act. **3**—In this Act, the *Hospitals Act* 1918\* is referred to as the Principal Act.

Amendment of section 61 of Principal Act (Grant, renewal, and transfer of licences). **4**—Section 61 of the Principal Act is amended by inserting the following subsection after subsection (5):—

(5A) In respect of an application for the grant of a licence authorizing the carrying on of a private medical establishment at any premises for any purpose, the Minister may refuse to grant that licence on the ground that adequate health care facilities already exist, in the locality in which that establishment is proposed to be established, to meet the present and future health care needs of persons who reside in that locality.

Amendment of section 65 of Principal Act (Alterations, &c., to private medical establishments). **5**—Section 65 of the Principal Act is amended by inserting the following subsection after subsection (2):—

(2A) The Minister may refuse to approve any plans, specifications, or descriptions for the structural alteration of, or addition to, any premises for the purposes of increasing bed accommodation on the ground that adequate health care facilities already exist, in the locality in which the premises are situated, to meet the present and future health care needs of persons who reside in that locality.

Insertion in Principal Act of new sections 70G, 70H, 70I, and 70J. **6**—The Principal Act is amended by inserting after section 70F the following sections:—

### PART IIIA

#### PRIVATE MEDICAL ESTABLISHMENT APPEALS TRIBUNAL

Interpretation. **70G**—In this Division, “Tribunal” means the Private Medical Establishment Appeals Tribunal constituted under section 70H.

\* 9 Geo. V No. 70. For this Act, as amended to 1966, see Appendix B to the 1966 Annual Volume of Statutes. Subsequently amended by Nos. 24 and 58 of 1967, No. 24 of 1973, Nos. 28 and 77 of 1976, No. 28 of 1977, and Nos. 6 and 64 of 1979.

70H—(1) There is constituted by this Act a Tribunal to be known as the Private Medical Establishment Appeals Tribunal.

Private  
Medical  
Establishment  
Appeals  
Tribunal.

(2) The Tribunal shall consist of—

- (a) a legal practitioner appointed by the Governor who shall be the chairman of the Tribunal;
- (b) four other persons, of whom—
  - (i) one shall be the Director-General of Health Services;
  - (ii) one shall be a person appointed by the Governor on the nomination of the Private Hospitals Association of Tasmania;
  - (iii) one shall be a person appointed by the Governor on the nomination of the Voluntary Care Association; and
  - (iv) one shall be a person appointed by the Governor on the nomination of the Nursing Homes Association of Tasmania.

(3) On the hearing of any proceedings before the Tribunal it shall be constituted as follows:—

- (a) if the proceedings relate to a private hospital, the Tribunal shall consist of the chairman, the Director-General of Health Services, and the member referred to in subsection (2) (b) (ii);
- (b) if the proceedings relate to a voluntary or charitable private medical establishment, the Tribunal shall consist of the chairman, the Director-General of Health Services, and the member referred to in subsection (2) (b) (iii);
- (c) if the proceedings relate to a private medical establishment other than a private hospital or an establishment referred to in paragraph (b), the Tribunal shall consist of the chairman, the Director-General of Health Services, and the member referred to in subsection (2) (b) (iv).

(4) For the purposes of subsection (3), the question whether or not an appeal relates to a private hospital, a voluntary or charitable private medical establishment, or a private medical establishment referred to in subsection (3) (c) shall be determined by the chairman, whose determination shall be final.

(5) The Governor may appoint a deputy of the chairman or any member of the Tribunal and where the chairman or a member is unable or unwilling to act in respect of any appeal, his deputy may act in his place.

(6) Any act or thing done by a deputy while acting as a deputy pursuant to this section has the same effect as if the act or thing had been done by the chairman or member whose deputy he is.

(7) If an organization named in subparagraph (ii), (iii), or (iv) of subsection (2) (b) ceases to exist or ceases to exist under the name mentioned in the relevant paragraph, the Governor may, by order, amend that subparagraph by substituting for the name of that organization the name of some organization that he is satisfied represents substantially the same interests as those represented by the organization firstmentioned.

(8) If a nomination required by subparagraph (ii), (iii), or (iv) of subsection (2) (b) is not made within 30 days after the relevant body is required to make the nomination, the Governor may, on the recommendation of the Minister, appoint a person as a member of the Tribunal to represent that body.

(9) The fourth Schedule has effect with respect to the constitution and membership of the Tribunal.

Appeals to  
Tribunal.

70I—(1) A person who is aggrieved by a decision of the Minister—

- (a) in respect of an application for the grant, renewal, or transfer of a licence;
- (b) in respect of the refusal to approve any plans, specifications, or descriptions for the alteration of, or addition to, any premises; or

(c) in respect of an inquiry under section 68 (2), may appeal to the Tribunal.

(2) On the hearing of an appeal against the decision of the Minister—

(a) in respect of the application for the grant, renewal, or transfer of a licence, the Tribunal may dismiss the appeal or order the Minister—

(i) to grant a licence in such form as may be specified in the order;

(ii) to renew or transfer a licence; or

(iii) to make such alterations in the conditions prescribed in the licence as may be specified in the order;

(b) in respect of the refusal to approve any plans, specifications, or descriptions for the alteration of, or addition to, any premises, the Tribunal may dismiss the appeal or order the Minister to approve the plans, specifications, or descriptions subject to such conditions (if any) as may be specified in the order; or

(c) in respect of an inquiry under section 68 (2), the Tribunal may dismiss the appeal or quash or vary the Minister's decision.

(3) The decision of the majority of the Tribunal shall be the decision of the Tribunal and that decision is final.

(4) For the purposes of this section, a decision made by a person in the exercise of a power or discretion delegated to him by the Minister shall be deemed to be the decision of the Minister.

70J—(1) An appeal under section 70I shall be instituted by lodging with the secretary of the Tribunal, within 21 days after the date on which the Minister made his decision, notice in writing specifying the grounds of the appeal. <sup>Institution of appeals.</sup>

(2) Where a notice specifying the grounds of appeal is lodged with the secretary of the Tribunal, he shall—

(a) serve copies of that notice on each member of the Tribunal; and

(b) serve on the appellant a notice stating the date, time, and place for the hearing of the appeal.

(3) The Tribunal may adjourn the hearing of the appeal at any time by notice in writing served on the appellant.

(4) On the hearing of an appeal, the Tribunal may—

(a) summon witnesses and examine them on oath;

(b) call for the production of papers and documents;

(c) hear the appellant in person or by counsel, attorney, or agent;

(d) direct itself by the best evidence available, whether that evidence would be admissible in court or not;

(e) proceed without regard to legal forms and solemnities; and

(f) receive or reject any evidence that may be tendered.

(5) The Tribunal shall cause each party to the appeal to be notified in writing of its decision.

(6) Subject to this section, the Tribunal may regulate its own procedure.

Insertion in  
Principal Act  
of new  
fourth  
Schedule.

**7**—After the third Schedule to the Principal Act, the following Schedule is inserted:—

## THE FOURTH SCHEDULE

Section 70H

PROVISIONS WITH RESPECT TO THE CONSTITUTION AND  
MEMBERSHIP OF THE PRIVATE MEDICAL ESTABLISHMENT  
APPEALS TRIBUNAL

1—In this Schedule—

Interpretation.

“appointed member” means the chairman or a member of the Tribunal referred to in subparagraphs (ii), (iii), or (iv) of subsection (2) (b) and includes a person appointed as a deputy of the chairman or member referred to in those subparagraphs;

“Tribunal” means the Private Medical Establishment Appeals Tribunal constituted under section 70H.

2—(1) An appointed member holds office as a member of the Tribunal for a term of 3 years unless he sooner vacates office as prescribed in this Schedule. <sup>Term of office.</sup>

(2) An appointed member of the Tribunal shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if he becomes bankrupt, applies to take benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;
- (c) if he becomes liable to be detained under the *Mental Health Act 1963* in a hospital, being a hospital within the meaning of section 3 (1) of that Act;
- (d) if he is convicted in the State of a crime or an offence which is punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in the State of an offence which, if committed in the State, would be a crime or an offence so punishable;
- (e) if he is convicted of an offence against this Act;
- (f) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation;
- (g) if he is removed from office by the Governor under sub-clause (3); or
- (h) on his attaining the age of 65 years.

(3) The Governor may remove an appointed member from office for misbehaviour or incompetence.

(4) The Governor may remove an appointed member from office if he is satisfied, having regard to the information supplied by the organization that nominated the member, that the member is no longer qualified to represent the organization on the Tribunal and the Governor may appoint a person nominated by the relevant nominating organization to fill the office for the remainder of the term for which the member removed from office was appointed.

(5) On the occurrence of a vacancy in the office of an appointed member, the Governor may appoint a person to the vacant office for the balance of his predecessor's term of office.

Remuneration  
of members.

3—The chairman of the Tribunal or his deputy and the members of the Tribunal or their deputies shall be paid such remuneration and allowances as the Governor may determine but no such determination shall apply in respect of a member of the Tribunal or his deputy who holds office in the Public Service without the approval of the Public Service Board.

Secretary to  
the Tribunal.

4—(1) The Minister may appoint a person to be secretary of the Tribunal.

(2) With the consent of the Public Service Board, an officer of the Public Service may, in conjunction with his office as an officer of the Public Service, hold office as secretary of the Tribunal.