
MENTAL HEALTH SERVICES ACT 1977

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MENTAL HEALTH SERVICES

No. 9 of 1977

AN ACT to amend the Mental Health Services Act 1967 and the Public Service Act 1973.

[28 April 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 *Mental Health Services Act* 1977. Short title, citation, and commencement.

(2) The *Mental Health Services Act* 1967*, as subsequently amended, is in this Act referred to as the Principal Act.

* No. 24 of 1967. Amended by No. 6 of 1972 and No. 52 of 1973.

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

Interpretation.

2 Section 2 of the Principal Act is amended—

(a) by inserting before the definition of “appointed day” the following definition:—

“‘Appeal Board’ means the Public Service Appeal Board continued under the *Public Service Act 1973*”; and

(b) by omitting from the definition of “Public Service” the numeral “1923” and substituting the numeral “1973”.

Appointment of Clinical Commissioner.

3 Section 4 of the Principal Act is amended—

(a) by omitting subsections (4) and (5) and substituting the following subsection:—

“(4) If at any time there is no professor of psychiatry at the University or that professor is unable or unwilling for the time being to act as a member of the Commission, the Minister may appoint to be the Clinical Commissioner some medical practitioner who, he is satisfied, has special experience in the diagnosis and treatment of mental disorder.”; and

(b) by omitting from subsection (7) the words “(other than the Administrative Commissioner)”.

Conditions of service, &c., of chief executive officers.

4 Section 6 of the Principal Act is amended—

(a) by omitting from subsection (1) the numeral “1923” and substituting the numeral “1973”;

(b) by omitting from subsection (4) the word “Tribunal” and substituting the word “Board”;

(c) by inserting in subsection (11), after the numeral “1938”, the words “, the *Retirement Benefits Act 1970*”; and

(d) by omitting from that subsection the word “latter” and substituting the word “last-mentioned”.

Removal of obligation to appoint Mental Health Services Advisory Committee.

5 Section 7 of the Principal Act is repealed.

6 Section 14 of the Principal Act is amended by omitting from subsection (2) the words “ the rate of ten dollars a day, as the board considers reasonable in the circumstances ” and substituting the words “ a daily rate determined from time to time by the Commission ”.

Payments, &c.,
to members
of boards.

7 Section 16 of the Principal Act is amended by adding at the end the following subsection:—

Committees of
boards.

“(5) An advisory committee referred to in section 25C is not a committee to which this section applies.”.

8 Section 21 of the Principal Act is amended—

(a) by omitting from subsection (1) the words “ the *Public Service Tribunal Act 1958* ” and substituting the words “ Part V of the *Public Service Act 1973* ”; and

(b) by inserting in subsection (2), after the numeral “ 1938 ”, the words “ and the *Retirement Benefits Act 1970*,”.

Conditions of
service, &c.,
of officers of
mental health
service.

9 After section 21 of the Principal Act the following section is inserted:—

“21A—(1) Before the Commission or a board of management makes a full-time permanent appointment to a vacancy, it shall—

Appeals in
respect of
certain
appointments.

(a) if the vacancy has been advertised as prescribed, notify each permanent full-time officer who applied for appointment in accordance with the advertisement of the name of the person it intends to appoint; or

(b) if the vacancy has not been so advertised, publish as prescribed a notice—

(i) specifying the office that is vacant and the qualifications required for appointment thereto;

(ii) specifying the name and classification of the person whom it is proposed to appoint to that office; and

(iii) stating that permanent full-time officers are entitled to appeal in respect of the proposal to appoint that person.

“(2) Where a permanent full-time officer has been notified under subsection (1) (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.

“(3) Where a notice has been published under subsection (1) (b) of the proposal to appoint a person to an office, any permanent full-time officer may, within 21 days of the publication of the notice, appeal to the Appeal Board against the proposal.

“(4) An appeal is instituted under this section by lodging with the Appeal Board a written notice of appeal setting forth the grounds of the appeal and, on receipt of such a notice of appeal, the Board shall cause a copy of the notice to be delivered forthwith to the appointing authority.

“(5) A notice of appeal under this section shall be accompanied by 4 copies of a written statement setting forth fully all matters that the appellant wishes the Appeal Board to consider on the hearing of the appeal.

“(6) On the hearing of an appeal under this section, 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.

“(7) 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.

“(8) 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.

“(9) On the hearing of an appeal under this section, the Appeal Board has and may exercise all the powers and authorities conferred on persons holding inquiries on commission under Division II of Part II of the *Evidence Act 1910*.

“(10) 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.

“(11) At the hearing of an appeal under this section against a proposal to appoint a person to an office in the mental health service—

(a) a representative of the appointing authority;

(b) the person proposed to be appointed; and
(c) the appellant,
are entitled to appear before the Appeal Board.

“(12) A person who is entitled to appear before the Appeal Board on the hearing of an appeal under this section is entitled to tender evidence, and to examine any person tendering evidence, to the Appeal Board.

“(13) The person proposed to be appointed and the appellant may nominate any officer of the mental health service to appear in either case as his advocate and the person so nominated may appear before the Appeal Board and, on behalf of the person for whom he is appearing as advocate, tender evidence, and examine any person tendering evidence, to the Appeal Board.

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

“(15) Where the appeal of an officer under this section is upheld, the appointing authority shall appoint him to the office to which the appeal relates.

“(16) No person is entitled to bring an appeal under this section if—

- (a) he is an officer of the mental health service who has been appointed on probation and his probationary appointment has not been confirmed; or
- (b) he has not attained the age of 21 years.

“(17) For the purposes of this section, a ‘ permanent full-time officer ’ means any officer of the mental health service other than one who is—

- (a) employed on probation, or temporarily, or in an honorary or part-time capacity; or
- (b) remunerated by fees, allowances, or commission only.

“(18) For the purposes of this section, a ‘ permanent full-time appointment ’ means the appointment of a person as a permanent full-time officer and, in relation to such an appointment and an appeal in respect of the appointment, references in this section to the appointing authority shall be construed as references to the Commission or the board of management making the appointment.”

Disposal of unclaimed property of patients.

10 Section 25C of the Principal Act is amended by adding at the end the following subsections:—

“(5) Where the advisory committee at an institution is satisfied that any personal effects referred to in subsection (1) are of such little value that they are unlikely to be capable of being sold at a public auction or, if they are so sold, are unlikely to realize any substantial amount, those personal effects may, notwithstanding anything in that subsection, be disposed of in such manner as the committee may approve.

“(6) For the purposes of this section the advisory committee at an institution shall consist of—

- (a) the authorized officer who shall be the chairman; and
- (b) two senior staff members of the institution appointed by—
 - (i) the managing authority of the institution, if that authority is the Commission; or
 - (ii) the Commission on the nomination of the managing authority, in any other case.

“(7) Two members of an advisory committee at an institution form a quorum at any meeting of the committee, but otherwise the committee may regulate its own proceedings.”.

Consequential amendments as to transferred officers.

11 The second Schedule to the Principal Act is amended—

- (a) by omitting from paragraph 1 (1) the definitions of “ Association ”, “ Board ”, and “ office ”;
- (b) by omitting from paragraph 3 (1) the words “ Part IV of the *Public Service Act* 1923 (in this paragraph referred to as ‘ the said Part ’) has ” and substituting the words “ sections 24 to 36 (inclusive) of the *Public Service Act* 1973 (in this paragraph referred to as ‘ the said provisions ’) have ”;
- (c) by omitting from paragraph 3 (2), (3), and (4) the word “ Part ” (whenever occurring) and substituting, in each case, the word “ provisions ”;
- (d) by omitting from paragraph 3 (5) the words “ sections thirty-three B and thirty-four of the *Public Service Act* 1923 ” and substituting the words “ sections 34 and 35 of the *Public Service Act* 1973 ”; and
- (e) by omitting paragraphs 4 and 5.

12—(1) Section 18 of the *Public Service Act 1973* is amended— Elections for Public Service Appeal Board.

- (a) by omitting from subsection (2) (c) the words “elected by the officers of the Public Service” and substituting the words “within the jurisdiction of the Board elected by officers within the jurisdiction of the Board”;
- (b) by omitting from subsection (3) the words “an officer of the Public Service” and substituting the words “another officer within the jurisdiction of the Board”;
- (c) by omitting from subsection (6) the words “of the Public Service” and substituting the words “within the jurisdiction of the Board”;
- (d) by inserting in that subsection, after the word “officer”, the words “within that jurisdiction”; and
- (e) by adding at the end the following subsection:—
 - “(9) For the purposes of this section, the following persons shall be regarded as the officers within the jurisdiction of the Board, namely:—
 - (a) The officers of the Public Service; and
 - (b) Permanent full-time officers within the meaning of section 21A of the *Mental Health Services Act 1967*.”.

(2) Nothing in this section shall be construed as affecting the election or term of office of any member of the Public Service Appeal Board elected or appointed before the commencement of this Act.

13 This Act does not apply to an appointment to a vacancy in the following circumstances:— Non-application to vacancies being filled at commencement of Act.

- (a) Where, before the commencement of this Act, the vacancy has been advertised as mentioned in paragraph 4 (2) of the second Schedule to the Principal Act, and the appointment is made of one of the persons applying for the appointment in accordance with the advertisement; or
- (b) Where, before the commencement of this Act, notice of intention to appoint a person to the vacancy has been published as mentioned in paragraph 4 (3) (b) of that Schedule and the appointment is made of that person or of a person whose appeal under that Schedule against the intention to make the appointment is upheld.

