

on the date on which the principal award referred to therein came into force and had effect in respect of that office or position; and

- (b) in the case of an application under paragraph (c) of that subsection, on the date of the refusal to make the award referred to therein,

and applies in respect of any person who held the office or position on that date or at any time thereafter notwithstanding that he does not hold the office or position at the time at which the order is made.

“(6) The making of, or the arising of a right to make, an application under this section for the review of a salary determination made in respect of any office or position, does not affect the right of a controlling authority to make any salary determination in respect of that office or position, but any salary determination so made has effect subject to any order of the Tribunal made under this section.”.

Transitory provisions.

5 Any proceedings on an application made under section twenty of the Principal Act before the commencement of this Act may be continued and an order or other determination made thereon as if this Act had not been passed, and any order or determination made under that section before that commencement or on any proceedings referred to in this section has effect as if this Act had not been passed.

MENTAL HEALTH SERVICES.

No. 24 of 1967.

AN ACT to make provision with respect to the
mental health services of the State.

[11 August 1967.]

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:—

PART I.
PRELIMINARY.

1—(1) This Act may be cited as the *Mental Health Services Act 1967*.

(2) This Act shall commence on a date to be fixed by proclamation.

Short title and commencement.

2 In this Act, unless the contrary intention appears— Interpre-
tation.

- “Administrative Commissioner” means the Administrative Commissioner of Mental Health Services appointed under this Act;
- “appointed day” means such day as the Governor may by proclamation declare to be the appointed day for the purposes of this Act;
- “board of management” means a board of management constituted under Part III;
- “chief executive officer” has the meaning assigned to that expression by section five;
- “Clinical Commissioner” means the Clinical Commissioner referred to in section four;
- “Commission” means the Mental Health Services Commission constituted under this Act;
- “financial year” means a period of twelve months ending on the thirtieth day of June in any year;
- “hospitals board” means a hospitals board constituted under the *Hospitals Act 1918*;
- “management order” means an order under section ten;
- “Medical Commissioner” means the Medical Commissioner of Mental Health Services appointed under this Act;
- “medical practitioner” means a legally-qualified medical practitioner;
- “Minister” means the Minister for Health within the meaning of the *Health Services Act 1960*;
- “officer of the mental health service” means a person in the employment of the Commission;
- “public hospital” means a public hospital within the meaning of the *Hospitals Act 1918*;
- “Public Service” has the same meaning as it has for the purposes of the *Public Service Act 1923*;
- “University” means the University of Tasmania.

PART II.

THE MENTAL HEALTH SERVICES COMMISSION.

3—(1) There shall be a Mental Health Services Commission that, on and after the appointed day, shall be charged with the duty of providing, or arranging for the provision of, mental health services for the State. Establish-
ment and
functions
of the
Commission

(2) The functions of the Commission shall be exercised on behalf of the Crown and the Commission shall, in the performance of those functions, comply with such directions as may be given it by the Minister.

(3) Subject to this Act, the mental health services that may be provided thereunder may be provided in any manner that the Commission considers suitable, whether at hospitals or other especially established institutions or otherwise.

(4) For the purposes of the exercise of its functions under this Act the Commission may enter into and carry out agreements or arrangements with any person or body of persons, and may employ such staff as is considered necessary.

(5) Without prejudice to the generality of the provisions of this section—

(a) the education, training, and instruction of persons for any work or activity required for or in connection with the provision of mental health services or for advancing their skill or knowledge in any such work or activity; and

(b) the conduct of research and other investigations related to the aetiology, prevention, or treatment of the disorders and disabilities with respect to which mental health services need to be provided or related to other matters connected with the provision of those services,

shall be regarded as mental health services.

(6) In the exercise of its functions under this Act the Commission shall have regard to the mental health services provided otherwise than in pursuance of this Act.

Constitution
of the
Commission.

4—(1) The Commission shall be a body corporate with perpetual succession and a common seal.

(2) The Commission shall consist of—

(a) the Medical Commissioner;

(b) the Administrative Commissioner; and

(c) the Clinical Commissioner.

(3) Except as otherwise provided in this section the Clinical Commissioner shall be the professor of psychiatry at the University.

(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, on the recommendation of the Council of the University, appoint some medical practitioner on the teaching staff of the University to be the Clinical Commissioner.

(5) Where the Minister desires to appoint a person as Clinical Commissioner under subsection (4) of this section and, within one month of being requested so to do by the Minister, the Council of the University fails to make a recommendation to him for the purposes of that appointment, he shall appoint some medical practitioner whom he considers suitable to be the Clinical Commissioner.

(6) A person appointed as the Clinical Commissioner under subsection (4) of this section holds and vacates his office under the terms of the instrument under which he is appointed; and while he so holds office the professor of psychiatry of the University shall not be the Clinical Commissioner.

(7) The chairman and vice-chairman of the Commission shall respectively be such members thereof (other than the Administrative Commissioner) as the Governor may appoint.

(8) The chairman of the Commission, or, if there is no chairman or the chairman is absent, the vice-chairman, shall preside at meetings of the Commission.

(9) Two members of the Commission constitute a quorum at any meeting of the Commission.

(10) The person presiding at a meeting of the Commission has a deliberative vote only and, in the event of an equality of votes on any matter before a meeting of the Commission, the matter stands adjourned to the next meeting of the Commission.

(11) Subject to this Act the Commission may regulate its own proceedings.

(12) The Commission shall—

(a) pay to the Clinical Commissioner, in respect of the expenses incurred by him in carrying out the duties of his office, such allowances as the Governor determines; and

(b) make such payments as the Governor determines to the University in reimbursement of any expenditure incurred by it by way of remuneration to a person holding office as Clinical Commissioner in respect of any office held by him in the University or otherwise incurred by it in respect of his holding such an office.

(13) The Commission shall pay to a Clinical Commissioner who does not hold an office in the University such remuneration and allowances as the Governor determines.

5—(1) The Governor may appoint—

(a) a Medical Commissioner of Mental Health Services; and

(b) an Administrative Commissioner of Mental Health Services,

Appoint-
ment and
functions of
chief
executive
officers.

and the persons so appointed are referred to in this Act as the chief executive officers.

(2) No person shall be appointed as the Medical Commissioner unless he is a medical practitioner who—

(a) has post-graduate qualifications in psychiatry approved by the Minister; and

(b) has experience in the practice of psychiatry and the administration of mental health services of a nature and degree approved by the Minister.

(3) The chief executive officers shall respectively exercise such functions in relation to the provision of mental health services for the State as the Commission, with the approval of the Minister, may determine.

(4) Subject to any determination made for the purposes of subsection (3) of this section, a chief executive officer shall comply with and give effect to such directions as may be given to him by the Commission.

(5) Without prejudice to the foregoing provisions of this section the Commission, subject to such restrictions as it thinks fit, may delegate to a chief executive officer the exercise of any of its functions.

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

6—(1) The *Public Service Act 1923* does not apply to the offices of the chief executive officers.

(2) A chief executive officer holds his office for such term, not exceeding five years, as may be specified in his instrument of appointment, but may resign his office by notice in writing to the Minister.

(3) Subject to subsection (4) of this section, a chief executive officer shall be paid by way of remuneration such amount as the Governor may determine and as may be specified on his appointment.

(4) The Governor may increase the rate of the remuneration payable to a chief executive officer if, having regard to any determination made by the Public Service Tribunal affecting the remuneration payable to the permanent head of any department of the Public Service, he considers it reasonable so to do, but, subject to this subsection, the rate of remuneration of a chief executive officer shall not be varied during the period for which he is appointed.

(5) Except upon an address praying for the removal of a chief executive officer from his office presented to the Governor by each House of Parliament in the same session, the Governor shall not remove a chief executive officer from his office unless—

- (a) without the consent of the Governor, that officer engages in any paid employment outside the duties of his office;
- (b) he applies to take, or takes, advantage of any law relating to bankruptcy, or compounds, or enters into an arrangement, with his creditors, or makes an assignment for their benefit of any remuneration payable to him under this Act;
- (c) he is convicted (whether in this State or elsewhere) of an offence of such a nature that, in the opinion of the Governor, renders it improper for him to continue to hold his office;
- (d) during any period of twelve months he is absent from duty for more than fifteen days without the consent of the Minister; or
- (e) he has become, in the opinion of the Governor, permanently incapable of carrying out the duties of his office.

(6) For the purpose of determining, for the purposes of paragraph (d) of subsection (5) of this section the number of days that a chief executive officer has absented himself from duty in any period any day that is a Sunday or is a bank holiday (within the meaning of the *Bank Holidays Act 1919*) for the whole of the State or for any part thereof that includes the city of Hobart shall be disregarded.

(7) The Governor shall not suspend a chief executive officer from his office unless he considers that he is incapable of properly performing the duties of his office or has been guilty of such conduct as renders it undesirable that he should retain his office.

(8) Where a chief executive officer has been suspended from his office by the Governor he shall be restored to his office unless—

(a) a statement of the grounds of the suspension is laid before each House of Parliament during the first seven sitting days of that House following the suspension; and

(b) each House of Parliament, during the session in which the statement is laid before it and within thirty sitting days after the statement is so laid, passes an address praying for his removal from his office.

(9) Except as expressly provided therein, nothing in this section affects the operation of section twenty-one of the *Acts Interpretation Act 1931* in its application to the office of either chief executive officer, but subsections (5), (6), (7) and (8) of this section do not apply to any person appointed under that section temporarily in the place of, or to perform the duties of, a chief executive officer.

(10) An officer of the mental health service may be appointed temporarily in the place of, or to perform the duties of, a chief executive officer, and he may hold that appointment in conjunction with his office as an officer of the mental health service.

(11) A chief executive officer shall be regarded as being employed by the State for the purposes of the *Superannuation Act 1938* and the *State Employees (Long-Service Leave) Act 1950*, and, for the purposes of the latter Act, the Governor is the prescribed authority in the case of a chief executive officer.

(12) Where a person ceases to be a chief executive officer and becomes an officer of the Public Service his service as a chief executive officer (whether or not he was formerly an officer of the Public Service) shall be regarded as service in a permanent capacity in the Public Service for the purposes of determining his rights as an officer of the Public Service.

Mental
Health
Services
Advisory
Committee.

7—(1) For the purposes of advising and assisting the Commission the Minister shall appoint a committee to be known as the Mental Health Services Advisory Committee, and may appoint any member of that committee to be the chairman or vice-chairman of the committee.

(2) Of the members of the committee appointed under this section—

- (a) one shall be a person nominated by the Treasurer;
- (b) one shall be a person experienced in business management; and
- (c) one shall be a woman with experience of work in the field of social and human relations.

(3) The members of the committee appointed under this section, and the chairman and vice-chairman thereof, hold and vacate their respective offices under the terms of the instruments under which they are respectively appointed.

(4) The committee appointed under this section may make recommendations to the Commission on matters relating to the mental health services of the State, and shall investigate and report to the Commission on such matters as may be referred to it by the Minister or the Commission.

(5) The secretary of the committee shall be such officer of the mental health service as the Commission may appoint for the purpose.

(6) The committee appointed under this section may, with the approval of the Commission, make use of the services of any officer of the mental health service, or, with the approval of the Public Service Commissioner, any officer of the Public Service.

(7) Subject to any directions given to it by the Minister, the committee appointed under this section may regulate its own proceedings.

(8) The Commission may pay to the members of the committee appointed under this section such remuneration and allowances as the Minister may approve.

Advisory
committees
of the
Commission.

8—(1) The Commission may appoint committees to assist or advise it in the discharge of its functions or to advise it on any matters related to mental health services.

(2) The number of members of a committee appointed under this section shall be fixed by the Commission, and those members hold and vacate office under the terms of the instruments under which they are respectively appointed.

(3) A committee appointed under this section may consist wholly or partly of persons who are not members of the Commission.

(4) The chairman and vice-chairman of any committee appointed under this section shall be appointed, and the terms under which they hold and vacate office shall be determined, by the Commission or in such manner as it may determine.

(5) Subject to any directions given by the Commission, a committee appointed under this section may regulate its own proceedings.

(6) The Commission may pay to members of a committee appointed under this section such remuneration and allowances as the Minister may approve.

9—(1) As soon as practicable after the end of each financial year the Commission shall submit to the Minister—

Annual reports and accounts of Commission.

(a) a report on the administration of this Act and the *Mental Health Act 1963* during that financial year; and

(b) a copy of the accounts of the Commission and of each board of management for that financial year.

(2) The Minister, as soon as practicable after receiving, under this section, a report or a copy of any accounts, shall lay a copy thereof before each House of Parliament.

PART III.

BOARDS OF MANAGEMENT.

10—(1) In accordance with orders made by the Governor under this section, institutions (other than public hospitals) that the Governor is satisfied are, or will be, used solely or mainly for the purpose of the provision of mental health services under this Act, may be placed in the charge of a board of management.

Establishment of boards of management for certain institutions.

(2) A management order may—

(a) provide for the establishment and constitution of a board of management;

(b) place in the charge of such a board an institution referred to in subsection (1) of this section;

(c) remove any institution from the charge of such a board; and

(d) abolish a board of management.

(3) A board of management shall be a body corporate, under the name specified in that behalf in a management order, with perpetual succession and a common seal.

(4) It is the duty of a board of management, subject to and in accordance with any directions that may be given to it by the Commission, to manage and control the institution placed in its charge under this section and, in particular—

(a) to appoint to employment with the Commission the staff required for the purposes of those institutions;

(b) to maintain the premises used for the purposes of the institutions and to erect, construct, or alter any buildings or other works required for those purposes;

- (c) to provide on behalf of the Commission, and to maintain, equipment, furniture, and other property required for the purposes of the institutions; and
- (d) to carry out such other functions in relation to those institutions as the Commission may direct.

(5) On the abolition of a board of management all its property, rights, liabilities, and obligations are transferred to and vest in the Commission.

Constitution
of boards
of manage-
ment.

11—(1) Subject to this section, a board of management shall consist of the Medical Commissioner and five other persons appointed by the Governor in accordance with a management order.

(2) A management order may prescribe the manner in which any member of a board of management appointed by the Governor is to be nominated or selected for appointment and, in relation to each board of management, provision shall be made in a management order for the appointment of—

- (a) one member as representative of the officers of the mental health service (other than medical practitioners) employed at the institutions in the charge of the board; and
- (b) one member, being a woman, as representative of the voluntary organizations associated with those institutions.

(3) Each member of a board of management appointed by the Governor shall hold office for a term of two years, but where a member of such a board dies or ceases to hold office, otherwise than by effluxion of time, the person appointed to fill the vacancy holds office only for the unexpired portion of the term of office of the member in whose place he was appointed.

(4) In respect of any board of management the Commission may appoint one of its members or an officer of the mental health service to act as a deputy of the Medical Commissioner in the exercise of his functions as a member of that board, and, subject to any directions given by the Medical Commissioner, the person so appointed may act in his stead as a member of that board.

(5) Subject to subsection (6) of this section, the chairman and vice-chairman of a board of management shall respectively be such of the members thereof as the Governor may appoint.

(6) The Medical Commissioner, or a person appointed as his deputy under subsection (4) of this section, shall not be the chairman or vice-chairman of a board of management.

12—(1) Subject to this section a person is disqualified from being a member of a board of management if—

Disqualification from membership of boards.

- (a) he is an officer of the mental health service or holds any office or place of profit under or in the gift of the Commission or the board;
- (b) he is concerned or interested in any contract made by the Commission or the board of management;
- (c) he has been adjudged bankrupt or has made a composition or arrangement with his creditors; or
- (d) he has (whether in this State or elsewhere) been convicted of any crime, or sentenced for any offence to imprisonment without the option of a fine.

(2) A medical practitioner is not disqualified under paragraph (a) or paragraph (b) of subsection (1) of this section from being a member of a board of management by reason only of his holding any employment or office if he engages in that employment or holds that office—

- (a) in a part-time capacity only (whether or not he receives, or is entitled to receive, any remuneration therefrom); or
- (b) in an honorary capacity.

(3) For the purposes of this section, but without prejudice otherwise to the generality of the provisions thereof, a person shall be treated as being concerned or interested in a contract if he, or any nominee of his, is a member of the company or body with which the contract is made or is a partner, or is in the employment, of the person with whom the contract is made.

(4) Subsection (3) of this section does not apply in respect of—

- (a) the membership of any person of a company or body that has more than twenty members unless he holds office as a director or general manager of that company or body; or
- (b) the membership of any person, or his employment under, any body established under any enactment and charged with the exercise of functions specified in that or some other enactment, being functions that are exercisable by it as a public body and not for the profit of its members.

(5) In the case of married persons living together the concern or interest of one spouse shall, if known to the other, be deemed for the purposes of this section to be also a concern or interest of that other spouse.

(6) A person is not disqualified from being a member of a board of management by reason only that he is concerned or interested in a contract made by the Commission or a board

if the payments made or to be made under that contract do not exceed ten dollars, unless, during the financial year in which the contract was made, he is or has been concerned or interested in other contracts so made and the total of the payments made or to be made under all of such contracts so made during that year exceeds twenty dollars.

(7) The disqualification attaching to a person by virtue of paragraph (c) of subsection (1) of this section by reason of his having been adjudged bankrupt ceases on the annulment of the bankruptcy or his discharge and the disqualification so attaching by reason of his having made a composition or arrangement with his creditors ceases on the date on which the terms of the composition or arrangement are fulfilled.

(8) A person who is disqualified from being a member of a board of management shall not be appointed a member thereof, and a member of a board of management who becomes so disqualified ceases to hold office as a member thereof.

(9) This section does not apply to the Medical Commissioner or a person appointed to act in his stead under subsection (4) of section eleven.

Removal from
office, and
resignation,
of members
of boards.

13—(1) The Governor may remove from office any member of a board of management appointed by him.

(2) A member of a board of management appointed by the Governor ceases to hold his office as a member thereof if he fails, for a period of two months or more, to attend meetings of the board without leave granted by the board.

(3) A member of a board of management appointed by the Governor may resign his office by notice in writing delivered to the chairman of the board.

Payments,
&c., to
members
of boards.

14—(1) A board of management may make payments to a member of the board, in accordance with prescribed scales, in or towards the reimbursement of any expenses incurred by him in attending any meeting of the board or carrying out, at the direction of the board, any duty in connection with the exercise of the functions of the board.

(2) Where a member of a board of management suffers any loss of salary or wages or other monetary loss (not being an expense referred to in subsection (1) of this section) by reason of his absence from his place of employment or business for the purpose of attending any meeting or conference (other than a meeting of the board) which he is required or directed by the board to attend, the board may pay to him such amount by way of reimbursement, not exceeding an amount calculated at the rate of ten dollars a day, as the board considers reasonable in the circumstances.

Proceedings
of boards.

15—(1) The chairman of a board of management or, if there is no chairman or the chairman is absent, the vice-chairman, shall preside at meetings of the board.

(2) Where at a meeting of a board of management there is not present any person who is required to preside by virtue of subsection (1) of this section, such one of the other members of the board present at the meeting, as they may choose, shall preside at the meeting.

(3) Three members of a board of management (exclusive of the Medical Commissioner) constitute a quorum at a meeting of the board.

(4) The Medical Commissioner is not entitled to vote on any matter before a meeting of a board of management.

(5) Subject to subsection (4) of this section, the person presiding at a meeting of a board of management has a deliberative vote only and, in the case of an equality of votes on any matter before a meeting of the board, the matter stands adjourned to the next meeting of the board.

(6) The Commission may make rules regulating the proceedings of a board of management, but subject thereto and to the other provisions of this Act, a board may regulate its own proceedings.

(7) References in this section to the Medical Commissioner shall be construed as including references to a person appointed to act in his stead under subsection (4) of section eleven.

16—(1) A board of management may appoint such committees as it considers necessary to advise and assist it in the exercise of its functions. Committees of boards.

(2) Any committee appointed by a board of management under this section shall consist of persons who are members of the board.

(3) Subject to this section, the term of office of a person appointed as a member of a committee under this section shall be fixed by the board of management.

(4) Subject to any directions given by a board of management, a committee appointed by it under this section shall regulate its own proceedings.

PART IV.

SUPPLEMENTAL ADMINISTRATIVE PROVISIONS.

17—(1) The Commission and a hospitals board may make and carry out arrangements for the provision of mental health services at any hospital under the management of that board. Mental health services at public hospitals.

(2) Where, on a report made by the Commission, the Minister is satisfied that it is necessary or desirable so to do, he may give directions to a hospitals board with regard to any matters relating to the provision of mental health services at any hospital under the management of that board, and the board shall carry out those directions.

(3) Where in pursuance of any arrangements or directions made or given under this section any mental health service is provided at a public hospital under the management of a hospitals board, then, for the purposes of the *Hospitals Act* 1918—

- (a) that service shall be deemed to be provided by that board in the exercise of the powers conferred upon it by that Act; and
- (b) the persons for whom that service is provided shall be regarded as persons suffering from a disease for the relief of which the hospital is established.

By-laws for
control of
institutions.

18—(1) By-laws may be made under this section in respect of an institution for—

- (a) regulating the management of the institution, and the conduct of persons employed thereat, accommodated therein, or resorting thereto;
- (b) preventing or regulating the entry of persons into the premises of the institution and their remaining therein;
- (c) preventing or regulating the bringing of specified articles and things into the institution and the possession by any person of specified articles or things in that institution; and
- (d) conferring powers and duties on persons employed in or about the institution.

(2) The by-laws under this section with respect to an institution may be made by the Commission, or, if the institution is in the charge of a board of management, by that board with the approval of the Commission.

(3) By-laws made under this section may make provision for the imposition of penalties, not exceeding one hundred dollars, in respect of any contravention thereof.

(4) By-laws made under this section have effect subject to any enactment (including an enactment in this Act) and any regulations made thereunder.

(5) No by-law made under this section is of any effect unless it has been approved by the Minister.

(6) In this section “institution” means any institution or other place (other than a public hospital) in or at which any mental health service is provided under this Act.

Charges for
mental health
services.

19—(1) Regulations under this Act may authorize the Commission or a board of management to charge fees in respect of the provision for any person of any treatment, care, accommodation, or other facility as part of the mental

health services provided under this Act, and where those regulations authorize the charging of a fee in any case they shall specify—

- (a) the maximum fee that may be charged in that case or the manner in which that maximum fee is to be determined; and
- (b) the person from whom the fee may be recovered.

(2) In any case where the Commission or a board of management is authorized to charge a fee under this section it shall determine, having regard to the means of the person from whom that fee is recoverable and all the other circumstances of the case, the amount of the fee that should be recovered in that case (being an amount not exceeding the maximum fee that may be charged in the case), and the amount so determined may be recovered as a debt due to it from that person.

(3) This section does not apply to any treatment, care, accommodation, or other facility provided in or at a public hospital or by a hospitals board.

20—(1) In accordance with this section private medical establishments may be placed under the jurisdiction of the Commission and, subject to this section, where such an establishment is so placed under the jurisdiction of the Commission, the functions of the Minister in relation to that establishment under Part III of the *Hospitals Act 1918* shall be deemed to be delegated to the Commission and shall accordingly be exercised by the Commission on behalf of the Minister.

Private
medical
establish-
ments under
jurisdiction
of Commis-
sion.

(2) If the Minister, on the recommendation of the Director-General of Health Services, considers that a private medical establishment is, or will be, used wholly or mainly for the provision of services of a nature similar to those which the Commission is authorized to provide under this Act, he may place that establishment under the jurisdiction of the Commission—

- (a) by notifying the Commission in writing that that establishment is placed under its jurisdiction; or
- (b) by referring any application for the grant or renewal of a licence in respect of that establishment to the Commission.

(3) The Minister, on the recommendation of the Director-General of Health Services may, by notice in writing served on the Commission, remove any private medical establishment from the jurisdiction of the Commission.

(4) Where under this section a private medical establishment is placed under, or removed from, the jurisdiction of the Commission the Minister shall forthwith notify that fact in writing to the licensee or, if there is no licensee, the person applying for a licence in respect of the establishment.

(5) Any application, notice, or document required by Part III of the *Hospitals Act 1918* to be made or given to, or served on, the Minister, shall, if it relates to a private medical establishment under the jurisdiction of the Commission, be made or given to, or served on, the Commission.

(6) In its application to a private medical establishment under the jurisdiction of the Commission section sixty-four of the *Hospitals Act 1918* has effect as if—

(a) the reference in subsection (1) thereof to the Minister were a reference to the Commission; and

(b) the references in subsection (2) thereof to the Minister were references to a chief executive officer.

(7) This section does not apply to the provisions of sections sixty-seven and sixty-eight of the *Hospitals Act 1918*.

(8) A person authorized in that behalf by the Commission may enter and inspect any private medical establishment placed under the jurisdiction of the Commission.

(9) The Commission, or any person authorized by it in that behalf, may require the holder of a licence in respect of a private medical establishment placed under the jurisdiction of the Commission, or any person employed in or about that establishment, to supply to the Commission or to the person making the requirement such information with respect to that establishment as may be specified in the requirement, and any person who, without reasonable excuse, fails to comply with that requirement or, in response thereto, supplies information that is false or misleading, is guilty of an offence and liable to a penalty of one hundred dollars.

(10) In this section words and expressions to which meanings are assigned for the purposes of Part III of the *Hospitals Act 1918* have, for the purposes of this section, the same respective meanings.

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

21—(1) The Commission shall be deemed to be a State authority within the meaning of the *Public Service Tribunal Act 1958*, and for the purposes of that Act the controlling authority, in the case of an officer of the mental health service, is the Commission.

(2) For the purposes of the *Superannuation Act 1938* officers of the mental health service shall be deemed to be persons employed in an undertaking carried on on behalf of the State.

(3) The Commission shall be deemed to be a State authority within the meaning of the *State Employees (Long-Service Leave) Act 1950*, and, for the purposes of that Act, the Commission is the prescribed authority in the case of officers of the mental health service.

(4) Except in such cases or circumstances, and in such manner as may be determined by the Commission, no officer of the mental health service shall engage in or undertake the practice of any profession, vocation, or calling, or any trade or business, or any paid employment, otherwise than as, or in the course of his duties as, an officer of the mental health service.

(5) Nothing in this section or in any regulations made for the purposes thereof shall have the effect of rendering an officer of the mental health service liable to disciplinary action by reason only—

- (a) of his holding any office or employment in or under any association or organization representative of the interests of officers of the mental health service, or any class thereof, or of persons engaged in any profession, vocation, or calling practised by officers of the mental health service; or
- (b) of his being a member or shareholder of an incorporated company, or of any company, society, association, or other body registered or incorporated under any Act.

(6) Regulations under this Act may—

- (a) prescribe the qualifications for appointment, transfer, or promotion to any office in the mental health service, and the manner of making any such appointment, transfer, or promotion;
- (b) prescribe the terms and conditions of service of officers of the mental health service;
- (c) authorize the making or issuing of rules, orders, or instructions with respect to the duties and conduct of officers of the mental health service;
- (d) require officers of the mental health service to comply with any rules, orders, or instructions so made or issued and otherwise regulate the conduct of those officers; and
- (e) prescribe the procedure for ascertaining whether grounds exist on which disciplinary action may be taken against an officer and the authority or person by which or by whom any such action may be taken.

(7) Subject to this section, disciplinary action may be taken against an officer of the mental health service if—

- (a) he fails to comply with, or contravenes, any of the provisions of this section or of the regulations made thereunder;
- (b) he commits an offence in relation to the duties he is required to carry out as an officer of the mental health service, whether or not he has been convicted by any court of that offence;
- (c) he disregards, or wilfully disobeys, an order lawfully given by a person having authority to give that order;

- (d) he uses intoxicating liquor or drugs to excess;
- (e) he conducts himself in a disgraceful or improper manner, either in his official capacity or otherwise;
- (f) he is negligent or careless in the discharge of the duties of his office;
- (g) he is not conducting or discharging the duties of his office in an efficient and satisfactory manner;
- (h) he is unfit to discharge, or incapable of discharging, the duties of his office efficiently; or
- (i) he is not qualified, either temperamentally or otherwise, for the efficient and satisfactory performance of the duties of his office.

(8) Where disciplinary action is taken against an officer of the mental health service he may appeal to the Minister and the provisions of the first schedule have effect in relation to such an appeal.

(9) Nothing in subsection (8) of this section prejudices or affects the exercise of any right—

- (a) to terminate the appointment of an officer appointed temporarily or on probation; or
- (b) to abolish any office and to take such action consequent on that abolition as may be prescribed.

(10) For the purposes of this section—

“classification” means any appointment, grade, rank, or classification the holder of which is entitled to remuneration at a specified rate or in accordance with a specified scale;

“disciplinary action”, in relation to an officer of the mental health service, means a reduction in his classification, or the suspension, dismissal, or the requirement to resign, from his employment.

Acceptance of gifts, &c., by the Commission or boards of management.

22—(1) The Commission, and, with the consent of the Commission, a board of management, may accept a devise, bequest, or gift of any property, and, subject to any trust to which that property is subject, hold, dispose of, or otherwise deal with that property for the purpose of the exercise of its functions.

(2) Nothing in this section authorizes the Commission or a board of management to hold any property on trust for a purpose other than that which may be effected by the exercise of its functions under this Act.

Estimates of Commission and boards.

23—(1) The Commission shall before the commencement of each financial year submit to the Minister—

- (a) an estimate of its revenue and expenditure for that financial year; and
- (b) an estimate of the revenue and expenditure of each board of management for that financial year as approved by the Commission under subsection (3) of this section.

(2) Each board of management shall, on or before the first day of May in each year, submit to the Commission an estimate of the expenditure proposed to be incurred by the board during the financial year commencing on the first day of July next following and of the revenue likely to accrue to the board during that financial year.

(3) The Commission may approve any estimate submitted to it under subsection (1) of this section, either as submitted or with such variations as it considers should be made.

24—(1) The accounts of the Commission and each board of management are subject to the *Audit Act* 1918. Audit and accounts.

(2) The Commission shall cause to be opened in the Reserve Bank of Australia such accounts as it considers necessary, and each board of management shall cause to be opened such bank accounts as the Commission may approve.

(3) All moneys received by the Commission or a board of management shall be paid into, and its expenditure shall be drawn from, an account opened by it in accordance with subsection (2) of this section.

(4) A board of management shall submit to the Commission such accounts, and such information with respect thereto, as the Commission may require, and any person authorized by the Commission in that behalf may inspect any of the accounts of the board.

25 Subject to this Act and to any trusts affecting property, the Commission and each board of management may apply the moneys received by it for the purposes of the exercise of its functions, but, subject to the foregoing provisions of this section, the expenses of the Commission and of each board of management shall be defrayed out of moneys provided by Parliament for the purpose. Expenses of Act.

PART V.

TRANSITORY AND CONSEQUENTIAL PROVISIONS.

26—(1) The person who, immediately before the commencement of this Act, was the Director of Psychiatric Services shall be deemed to have been appointed Medical Commissioner on that commencement. Transitory provisions as to chief executive officers.

(2) The Medical Commissioner shall, until the appointed day, exercise the functions of the Director of Psychiatric Services and anything done by him in the exercise of those functions has the like effect as if it were done by the Director of Psychiatric Services.

(3) Notwithstanding anything in subsection (2) of section six a person appointed as a chief executive officer before the appointed day may be appointed to hold his office for a term expiring not later than the expiration of a period of five years from that day, and, in the case of a person deemed

to be appointed as Medical Commissioner under subsection (1) of this section, shall be deemed to have been appointed to hold his office until the expiration of that period.

Transference
of officers
from Public
Service.

27—(1) The Governor may, before the appointed day, by notice in the *Gazette*, designate the offices in the Public Service the holders of which will on that day become officers of the mental health service, and, on that day, those offices are abolished and the holders thereof are transferred to the employment of the Commission.

(2) The Governor shall not designate any office for the purposes of subsection (1) of this section unless he is satisfied that the duties, or substantially all of the duties, of that office will not, on and after the appointed day, be required to be performed by an officer of the Public Service but will be required to be performed by some person as an officer of the mental health service.

(3) For the purposes of this section, a person shall be regarded as holding an office in the Public Service notwithstanding that he is temporarily employed in that office.

(4) The provisions of the second schedule have effect in relation to persons who become officers of the mental health service under this section and to officers of the Public Service who are appointed as officers of the mental health service before the appointed day.

Continuance
of certain
public service
awards.

28—(1) Any principal award made under the *Public Service Tribunal Act 1958* before the appointed day, except as may otherwise be provided in an award made under that Act after the commencement of this Act, applies to officers of the mental health service as if—

- (a) employment as an officer of the mental health service were employment under the *Public Service Act 1923* in the Public Service of the State; and
- (b) the controlling authority in respect of officers of the mental health service were the Commission.

(2) Any such award as is referred to in subsection (1) of this section that applies to officers of the mental health service is binding on the Commission.

(3) References in this section to a principal award shall be construed as references to a principal award as from time to time amended whether before or after the commencement of this Act.

Special
provisions
as to
Millbrook
Home.

29—(1) For the purposes of any agreement relating to the institute referred to in the agreements confirmed by the *Psychopathic Hospital Act 1932* any service provided, or any act or thing done, under this Act in relation to that institute shall be deemed to have been provided or done by the Government of Tasmania.

(2) On the appointed day the *Psychopathic Hospital (Management) Act 1933* is repealed.

(3) Except as expressly provided in this section nothing in this Act prejudices or affects the operation of any agreement referred to in subsection (1) of this section.

30 The Governor may make regulations for the purposes of this Act. Regulations.

31 On and from the appointed day the Acts specified in the third schedule are amended as respectively specified in that schedule. Consequential amendments.

THE FIRST SCHEDULE.

(Section 21 (8).)

Appeals against disciplinary action in the Mental Health Service.

1. In this schedule—

- “appeal” means an appeal under subsection (8) of section twenty-one;
- “appellant”, in relation to an appeal, means the person making the appeal;
- “tribunal”, in relation to an appeal, means the tribunal appointed to hear and determine the appeal under this schedule,

and other words and expressions used in this schedule have the same meaning as they have for the purposes of section twenty-one.

2. Where an appeal is made to the Minister he shall appoint one or more fit and proper persons as a tribunal to hear and determine the appeal.

3.—(1) On the hearing of an appeal the tribunal (unless it dismisses the appeal) may vary or quash the decision to which the appeal relates and for that purpose may direct the Commission—

- (a) if the appeal relates to a dismissal or suspension, or a requirement to resign, to reinstate the appellant in the mental health service in such classification as the tribunal determines; or
- (b) if the appeal relates to a reduction in classification, to place him in such classification as the tribunal determines,

and to make to the appellant such payments as the tribunal determines in order to make good to him, in whole or in part, any remuneration that, but for the decision to which the appeal relates, would otherwise have fallen due to be paid to him.

(2) Nothing in this paragraph entitles a tribunal to give any direction that would have the effect of placing the appellant in a more favourable position than if the decision to which the appeal relates had not been made or in any less favourable position than if the appeal had not been made.

4. Where the tribunal considers that an appeal has been brought on grounds that are frivolous or vexatious it may order the appellant to pay to the Commission such sum, not exceeding one hundred dollars, as it determines.

5.—(1) A person bringing an appeal shall lodge notice thereof in writing with the Minister within fourteen days after the decision to which the appeal relates has been notified by the Commission or a board of management to the person bringing the appeal.

(2) A notice lodged under this paragraph shall be signed by the appellant and shall—

- (a) specify the decision to which the appeal relates; and
- (b) state the grounds on which the appeal is brought.

(3) A tribunal appointed to hear and determine an appeal shall cause notice to be given in writing to the Commission and the appellant stating the time and place at which the appeal will be heard.

(4) No appeal shall be heard under this Part earlier than fourteen days after the giving of the notices under sub-paragraph (3) of this paragraph.

(5) At the hearing of an appeal, the Commission and the appellant are each entitled to be represented by a legal practitioner or by some person who is not a legal practitioner and any such representative may adduce evidence on behalf of the party he represents.

(6) A tribunal hearing an appeal 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.

(7) In the hearing of an appeal a tribunal 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.

(8) Subject to this schedule, Division II of Part II of the *Evidence Act 1910* has effect with respect to a tribunal as if it were such a board of inquiry as is referred to in section fourteen of that Act.

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

6. The Minister may pay to a person who is, or is a member of, a tribunal such remuneration or allowance as he considers reasonable, and may make such payments to him in, or towards, the reimbursement of any expenses reasonably incurred by him in the performances of his functions as the Minister considers just.

7.—(1) Any costs or other sum ordered to be paid by the appellant to the Commission may be deducted from any remuneration that may be due to him as an officer of the mental health service or may be recovered from him as a civil debt.

(2) Any costs ordered to be paid by the Commission to an appellant may be recovered by him as a civil debt due to him by the Commission.

THE SECOND SCHEDULE.

(Section 27 (4).)

Special provisions with respect to certain officers transferring from the Public Service to the Mental Health Service.

1.—(1) In this schedule, unless the contrary intention appears—

“ Association ” has the same meaning as it has for the purposes of the *Public Service Act 1923*;

“ Board ” means the Public Service Appeal Board constituted under the *Public Service Act 1923*;

“ office ” means any office in the mental health service.

(2) In this schedule, a transferred officer means any person referred to in subsection (4) of section twenty-seven who—

(a) was not, immediately before he became an officer of the mental health service, employed temporarily in the Public Service; and

(b) has not since becoming an officer of the mental health service at any time ceased to be such an officer.

(3) References in this schedule to the appointment of a person to an office shall be construed as including references to his transfer to that office from some other office.

2.—(1) Subject to sub-paragraph (2) of this paragraph, any person who, under subsection (1) of section twenty-seven, becomes an officer of the mental health service, retains, as an officer of the mental health service, the same rank, grade, and classification as, immediately before the appointed day, he had in his employment in the Public Service.

(2) Nothing in this paragraph prejudices or affects the exercise, in relation to an officer of the mental health service, of any power or authority that, under this Act or otherwise, would be exercisable in relation to him if he had become an officer of the mental health service otherwise than under subsection (1) of section twenty-seven.

3.—(1) Subject to this paragraph, Part IV of the *Public Service Act 1923* (in this paragraph referred to as “ the said Part ”) has effect as if transferred officers were officers of the Public Service and their service as officers of the mental health service were service in the Public Service.

(2) References in the said Part to the transfer or promotion of an officer shall, in relation to a transferred officer, be construed as references to his appointment to an office in the Public Service.

(3) Where a transferred officer is appointed to an office in the Public Service that appointment shall for the purposes of the said Part be deemed not to be an appointment of an officer to the Public Service in the first instance.

(4) Where immediately before he became a transferred officer, a transferred officer held office in the Public Service on probation he shall be deemed, for the purposes of the said Part, to continue to hold office in the mental health service on probation until his appointment as an officer in the mental health service is confirmed in accordance with regulations made for the purposes of section twenty-one.

(5) Nothing in this paragraph authorizes the appointment of any transferred officer to any office in the Public Service except on his application and with his consent, and sections thirty-three B and thirty-four of the *Public Service Act 1923* do not apply to transferred officers.

(6) This paragraph does not apply to the transfer or promotion of an officer of the mental health service to any office in that service.

4.—(1) Subject to this paragraph a transferred officer has a right of appeal in respect of an appointment to any office, and that right of appeal may be exercised in accordance with this paragraph.

(2) Where a vacancy in an office has been advertised in the prescribed manner no transferred officer has a right of appeal in respect of an appointment to that vacancy unless he has applied for appointment thereto in accordance with the advertisement.

(3) Before the appointment of any person to a vacancy in an office the Commission—

(a) if the vacancy has been advertised in the manner referred to in sub-paragraph (2) of this paragraph, shall cause every transferred officer who has applied for appointment to that vacancy in accordance with that advertisement, to be notified of the intention to appoint that person to that vacancy; or

(b) if the vacancy is not so advertised, shall cause to be published in the prescribed manner a notice of the intention to appoint that person to that vacancy.

(4) The notice referred to in clause (b) of sub-paragraph (3) of this paragraph shall specify—

(a) the particulars of the office;

(b) the qualifications required for appointment to the office; and

(c) the name of the person it is intended to appoint to that office, and, if he is an officer in the Public Service or an officer of the mental health service, his classification as such,

and shall state that transferred officers have a right of appeal in respect of an appointment to the office.

(5) A right of appeal of a transferred officer under this paragraph may be exercised by lodging with the Public Service Commissioner, within fourteen days of the relevant date, a notice of appeal accompanied with four copies of a written statement setting forth fully the matters that the transferred officer desires the Board to consider on the hearing of the appeal.

(6) For the purposes of sub-paragraph (5) of this paragraph the relevant date is—

(a) the date on which the appellant was notified under sub-paragraph (3) of this paragraph; or

(b) the date on which the notice was published under that sub-paragraph,

of the intention to make that appointment.

(7) The Public Service Commissioner shall forward to the Board each notice of appeal lodged with him under sub-paragraph (5) of this paragraph, and, on the receipt of the notice, the Board shall proceed to hear and determine the appeal.

(8) At the hearing of an appeal in respect of an appointment there is entitled to appear before the Board—

(a) a representative of the Commission;

(b) the appellant; and

(c) the person proposed to be appointed,

and also, if either the appellant or the person proposed to be appointed so desires, a nominee of the Association who is an officer of the Public Service or an officer of the mental health service.

(9) A person entitled to appear before the Board at the hearing of an appeal is entitled to tender to the Board such evidence as he thinks necessary and to examine any person tendering evidence to the Board.

(10) The Board may summon any person to give evidence on the hearing of an appeal under this paragraph.

(11) The Board may, in its absolute discretion, summarily disallow any appeal under this paragraph that, in the opinion of the Board, is frivolous or vexatious or if in its opinion the appellant does not possess the necessary qualifications for appointment to the vacancy.

(12) On the determination of an appeal under this paragraph the Board shall notify the Commission and the appellant of the result of the appeal.

(13) If an appeal under this paragraph is upheld the Commission shall appoint the appellant to the vacant office.

(14) This paragraph does not apply to the transference of an officer to another office not higher in grade or classification than that previously held by him.

(15) No person is entitled to make an appeal under this paragraph if he—

- (a) holds his office in the mental health service on probation pursuant to sub-paragraph (4) of paragraph 3 of this schedule;
- (b) has not attained the age of twenty-one years; or
- (c) is of the opposite sex to that specified in the advertisement or notice referred to in sub-paragraph (2) or sub-paragraph (3) of this paragraph as the sex of the person by whom the vacancy is to be filled.

5. For the purposes of the election of any member to the Board a transferred officer shall be deemed to be an officer of the Public Service.

THE THIRD SCHEDULE.

(Section 31.)

CONSEQUENTIAL AMENDMENTS.

Hospitals Act 1918.

(9 Geo. V No. 70.)

1. After section fifty-eight the following section is inserted:—

“58A In its application to a private medical establishment placed under the jurisdiction of the Mental Health Services Commission pursuant to section twenty of the *Mental Health Services Act 1967*, this Part has effect subject to that section.”

Application to establishments under Mental Health Services Commission.

2. After section seventy-three the following section is inserted in Part IV:—

“74 This Part does not apply to a private medical establishment placed under the jurisdiction of the Mental Health Services Commission pursuant to section twenty of the *Mental Health Services Act 1967*.”

Exclusion of establishments under Mental Health Services Commission.

Indeterminate Sentences Act 1921.

(12 Geo. V No. 44.)

1. Section three is amended by omitting the definition of “Director”.
2. Section twenty-one is amended by omitting from subsection (2) the word “Director” and substituting therefor the words “Medical Commissioner of Mental Health Services”.

Medical Act 1959.

(No. 80 of 1959.)

Section twenty-five A is amended by omitting the words “Director of Psychiatric Services” (wherever occurring) and substituting therefor, in each case, the words “Medical Commissioner of Mental Health Services”.

Mental Health Act 1963.

(No. 63 of 1963.)

1. Section three is amended—

- (a) by inserting in subsection (1), after the definition of “Board”, the following definition:—
- “‘board of management’ means a board of management constituted under the *Mental Health Services Act 1967*;”;
- (b) by inserting in that subsection, after the definition of “child”, the following definition:—
- “‘Commission’ means the Mental Health Services Commission;”;
- (c) by omitting from that subsection the definition of “Director”;
- (d) by omitting from sub-paragraph (i) of paragraph (a) of the definition of “hospital authority” in that subsection the word “person” and substituting therefor the words “authority or person”;
- (e) by omitting from sub-paragraph (ii) of that paragraph the words “such person” and substituting therefor the words “such authority or person”;
- (f) by inserting in that subsection, after the definition of “licensee”, the following definition:—
- “‘Medical Commissioner’ means the Medical Commissioner of Mental Health Services;” and
- (g) by inserting in that subsection, after the definition of “nominated medical attendant”, the following definition:—
- “‘officer of the mental health service’ has the same meaning as it has for the purposes of the *Mental Health Services Act 1967*;”.

2. Section six is amended by omitting subsections (1) and (2) and substituting therefor the following subsections:—

“(1) The Minister may, by order, declare any institution (not being a public hospital) that is maintained by the State or is provided or maintained under the *Mental Health Services Act 1967* to be a hospital for the purposes of this Act.

“(2) The Minister may by order declare that for any institution declared under subsection (1) of this section to be a hospital for the purposes of this Act the hospital authority shall be—

- (a) the Commission;
- (b) the board of management in charge of that institution; or
- (c) the person for the time being holding such office as may be specified in the order.”.

3. Section eight is amended by inserting in subsection (5), after the word “Service” (second occurring), the words “, or, with the consent of the Commission, an officer of the mental health service,”.

4. Section nine is amended by inserting in subsection (4), after the word “Service” (second occurring), the words “, or, with the consent of the Commission, an officer of the mental health service,”.

5. Section thirteen is repealed.

6. Section one hundred and nine is amended by omitting paragraph (e) of subsection (5) and substituting therefor the following paragraphs:—

“(e) To the Commission or any member thereof;

“(ea) To the hospital authority or, if that authority is a board of management, any member thereof;”.

7. Section one hundred and twelve is amended by inserting in subsection (4), after the words "made by" the words "; or may be made under,".

8. Section one hundred and thirteen is repealed.

9. The third schedule is amended—

(a) by omitting from sub-paragraph (a) of paragraph 1 the words "Director of Psychiatric Services" and substituting therefor the words "Medical Commissioner"; and

(b) by inserting in paragraph 5, after the word "Service" (wherever occurring), in each case, the words "or of the mental health service".

10. The fifth schedule is amended—

(a) by omitting from paragraph 2 of Part VI the words "Director of Psychiatric Services" and substituting therefor the words "Medical Commissioner"; and

(b) by omitting from paragraph 4 of that Part the words "Director of Psychiatric Services" and substituting therefor the words "Medical Commissioner".

SOFTWOOD FORESTRY.

No. 25 of 1967.

AN ACT to authorize the borrowing and repayment of money and payment of interest thereon under an agreement made under the *Softwood Forestry Agreements Act 1967* of the Commonwealth.

[11 August 1967.]

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 *Softwood Forestry Act* Short title. 1967.