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1971, No. 49

An Act to make special provision in respect of the transfer of persons employed in psychiatric hospitals from the service of the Crown to the service of Hospital Boards and to prescribe certain conditions of employment for hospital employees generally
[12 November 1971]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Hospitals Amendment Act (No. 2) 1971, and shall be read together with and deemed part of the Hospitals Act 1957 (hereinafter referred to as the principal Act).

(2) Part I of this Act shall come into force on the passing of this Act.

(3) Part II of this Act shall come into force on a date to be fixed by the Governor-General by Order in Council.

PART I

TRANSFER OF PSYCHIATRIC HOSPITAL EMPLOYEES TO THE HOSPITAL SERVICE AND PSYCHIATRIC HOSPITALS TO HOSPITAL BOARDS

2. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Award” means any award or industrial agreement made under the Industrial Conciliation and Arbitration Act 1954 or, in relation to apprentices, an apprenticeship order made under the Apprentices Act 1948:

“Commission” means the State Services Commission constituted under the State Services Act 1962:

“Date of transfer”—

(a) In relation to a psychiatric hospital, means the date on which the control of that hospital is transferred to a Hospital Board pursuant to section 7 of the Mental Health Act 1969:

(b) In relation to a transferred employee, means the date on which he became an employee of a Hospital Board by virtue of subsection (1) of section 3 of this Act:

“Hospital Service” means service in the employment of a Hospital Board:

“Hospital service salary” means the salary or wage payable—

(a) In respect of an employee of a Hospital Board whose remuneration is fixed under the State Services Remuneration and Conditions of Employment Act 1969, pursuant to a determination made by the Director-General of Health or an order made by the Hospital Service Tribunal or by the State Services Tribunal under that Act; or

(b) In respect of a medical officer, pursuant to a determination issued by the Minister under subsection (2) of section 52 of the principal Act; or

(c) In respect of an employee of a Hospital Board employed under an award, pursuant to an award and a determination (if any) issued under subsection (2) of the said section 52:

“Occupational class”, in relation to the Hospital Service, includes—

(a) Any class or group of employees employed in the Hospital Service prescribed by a determination made by the Director-General of Health or by an order of the Hospital Service Tribunal as an occupational class:

(b) Medical officers employed by Hospital Boards:

(c) Any class or group of employees employed in the Hospital Service under an award:

“Occupational class”, in relation to the Public Service, means an occupational class prescribed by the State Services Commission under section 41 of the State Services Act 1962:

“Psychiatric hospital” has the meaning assigned to that term by section 2 of the Mental Health Act 1969:

“Public service salary” means—

(a) In relation to a transferred employee who has not received promotion, involving an increase in his basic salary or wage, in or to a position in a psychiatric hospital within 5 years after the date of his transfer, the salary or wage which he would have been receiving at any specified time had he remained in the service of the Crown in the position that he occupied at the date of his transfer, having regard to any increase in salary or wages to which he would have been entitled in that position by way of personal merit or of any statutory review:

(b) In relation to a transferred employee who has received promotion or further promotion, involving an increase in his basic salary or wage, in or to a position in a psychiatric hospital within 5 years after the date of his transfer, the salary or wage which he would have been receiving at any specified time had he received such promotion or further promotion, as the case may require, in or to a position in the Public Service which is substantially equivalent in responsibility and status to the employee’s position or new position in the Hospital Service, having regard to any increase in salary or wages to which he would have been entitled in that equivalent position by way of personal merit or of any statutory review:

Provided that, for the purposes of this paragraph, if there is no substantially equivalent position, the public service salary of the employee shall be calculated as if he had not been promoted or further promoted, as the case may be:

“Statutory review” means any review or adjustment—

(a) Under section 24 of the State Services Remuneration and Conditions of Employment Act 1969; or

(b) Directly or indirectly consequential on the prescribing of salaries under section 18 of that Act; or

(c) Consequential on a survey of ruling rates of remuneration under section 26 of that Act in occupations outside the State services; or

(d) Consequential on an application made to the Commission before the date of transfer of the employee concerned, or on an application to the Government Service Tribunal or the State Services Tribunal in respect of the same or part of the same matter, under section 20 of that Act.

“Transferred employee” means a person who is employed in the Hospital Service by virtue of subsection (1) of section 3 of this Act.

3. Transfer and election—(1) Subject to sections 4 to 9 of this Act, every person employed in the service of the Crown in a position in a psychiatric hospital immediately before the date of its transfer shall, if he continues to be employed in the hospital, cease to be employed in the service of the Crown and become an employee of the Hospital Board to which the control of the hospital is transferred.

(2) Any transferred employee to whom this subsection applies by virtue of subsection (3) of this section may elect to resume employment in the Public Service by giving notice in writing to the Board for the time being employing him before the expiration of 12 months from the date of his transfer.

(3) Subsection (2) of this section shall apply to any transferred employee who—

(a) Was employed in an occupational class within the Public Service at the commencement of this Part of this Act on terms that required him to work a full working week; and

- (b) Remains in the employment of a Hospital Board, and has been continuously in the employment of the Board, or of the Board and one or more other Boards, since the date of his transfer; and
- (c) Has not since that date applied for and been promoted to a position in the Hospital Service in respect of which there is payable a maximum salary higher than the maximum salary payable in respect of the position in which he was employed in the Hospital Service on that date.

(4) If a person who is on leave of absence from his employment in the Public Service immediately before the date of transfer of a psychiatric hospital was, immediately before the commencement of his leave of absence, employed in the Public Service at that hospital, he shall, for the purposes of this Part of this Act, be deemed to be employed in the hospital immediately before the date of transfer:

Provided that, if his leave of absence extends for a period of more than 6 months after the date of transfer of the hospital, the period referred to in subsection (2) of this section shall be calculated from the date of expiry of the leave of absence instead of from the date of transfer.

(5) If a Board receives a notice of election under subsection (2) of this section, it shall immediately transmit the notice to the Commission, which—

- (a) In the case of an employee who, immediately before the date of his transfer, was employed in the executive occupational class, the clerical occupational class, the office and general assistants occupational class, or the typists occupational class, shall find suitable employment in the Public Service for the employee within 12 months after the receipt of the notice; or
- (b) In the case of an employee who, immediately before the date of his transfer was employed in an occupational class within the Public Service other than one specified in paragraph (a) of this subsection, shall, as soon as practicable after receipt of the notice and a further notice under subsection (7) of this section, endeavour to find suitable employment in the Public Service for the employee.

(6) An employee referred to in paragraph (b) of subsection (5) of this section may not, without the consent of the Board employing him, resume employment in the Public

Service pursuant to an election under that subsection before the expiration of 2 years from the date of his transfer or, in the case of a person to whom the proviso to subsection (4) of this section applies, before the expiration of 2 years from the date of expiry of his leave of absence.

(7) In the event of an employee to whom paragraph (b) of subsection (5) of this section relates electing to resume employment in the Public Service, the Board employing him shall, not less than 3 months but not more than 4 months, before the date on which the resumption of his employment is, subject to subsection (6) of this section, intended to take effect, notify the Commission in writing of that date.

(8) Subject to subsection (6) of this section, if within 3 months after the receipt of any notice under subsection (7) of this section, the Commission is unable to find suitable employment in the Public Service for the employee, the Commission shall inform the Board which transmitted the notice, whereupon the Board shall notify the employee of the information.

(9) Subject to subsection (6) of this section, the fact that the Commission has not received a notice under subsection (5) or subsection (7) of this section shall not prevent it from re-instating the employee in the Public Service pursuant to an election under subsection (2) of this section.

(10) Subsections (2) to (9) of this section shall cease to apply to a transferred employee immediately after his right to resume employment in the Public Service has lapsed by virtue of paragraph (a) or paragraph (b) of subsection (13) of this section.

(11) If any person resumes employment in the Public Service pursuant to an election under subsection (2) of this section, that employment shall be deemed to have continued without interruption, notwithstanding any enactment to the contrary; but no such person shall be entitled to receive any remuneration as an employee of the Public Service in respect of any period during which he was actually employed by a Hospital Board:

Provided that any leave of absence (whether annual leave or otherwise) taken by that person while employed in the Hospital Service shall be deemed to be leave of absence taken in the Public Service.

(12) A notice of election under subsection (2) of this section shall not have the effect of terminating the employment of the employee with the Hospital Board employing

him; but, subject to subsection (6) of this section, the Board shall release him from its service on such date as may enable him to resume employment in the Public Service without requiring from him any further notice terminating his employment; and his employment with the Board shall cease from that date unless it is otherwise sooner terminated.

(13) The obligation of the Commission to find employment or to endeavour to find employment, as the case may require, in the Public Service for an employee under this section shall lapse—

- (a) On the termination of his employment with a Hospital Board, without re-engagement pursuant to section 51c of the principal Act, for any reason other than—
 - (i) For the purpose of being employed by another Board; or
 - (ii) For the purpose of resuming employment in the Public Service; or
- (b) On his promotion to a position in the Hospital Service in respect of which there is payable a maximum salary higher than the maximum salary payable in respect of the position in which he was employed in the Hospital Service at the date of his transfer; or
- (c) On the Board being informed under subsection (8) of this section that the Commission has been unable to find suitable employment for him.

4. Salaries of transferred employees—(1) Every transferred employee shall be entitled to receive from the Hospital Board employing him, in addition to his hospital service salary, the amount (in this section referred to as a salary adjustment) by which, for the time being, his public service salary exceeds his hospital service salary.

(2) To the extent that overtime payments, allowances, and other emoluments and rights are required to be calculated or assessed on the basis of the amount of salary earned by a transferred employee, that amount shall be his hospital service salary aggregated with his salary adjustment (if any).

5. Other conditions of employment—(1) Where a transferred employee who is not subject to an award was, immediately before his transfer, employed in the Public Service under terms and conditions (not being terms and conditions fixing his salary) fixed by a determination or order under the State Services Remuneration and Conditions of Employment Act

1969, he shall continue to be employed on those terms so long as he is employed at a psychiatric hospital in the same occupational class in the Hospital Service, unless he makes an election to the contrary under subsection (3) of this section.

(2) *Except as provided in section 4 and section 6 of this Act, and in subsection (1) of this section, the terms and conditions subject to which a transferred employee is employed in the Hospital Service shall be the same terms and conditions as those subject to which employees in the Hospital Service (other than transferred employees) belonging to the same occupational class as the transferred employee are employed.*

(3) A transferred employee may at any time, by notice in writing to the Board employing him, elect that subsection (1) of this section shall no longer apply to him. On any such election, the said subsection (1) shall cease to apply to him, subject to any arrangements that may be necessary to effect the transition from the previous terms of service to the new terms of service.

6. Powers of the Minister of Health—Without limiting the powers conferred on the Minister of Health by section 52 of the principal Act, the Minister may from time to time correct any anomalies, hardships, or inequities arising from the application of this Act that detrimentally affect transferred employees, or any particular class or classes of transferred employees,—

- (a) In relation to each other; or
- (b) In relation to other persons employed in the Hospital Service in the same occupational class; or
- (c) In relation to the terms on which the transferred employees were employed when in the service of the Crown.

7. Protection of superannuation rights of transferred employees—(1) Where any transferred employee was, immediately before the date of his transfer, a contributor to the Government Superannuation Fund under Part II of the Superannuation Act 1956, he shall, so long as he continues in the service of a Hospital Board, be deemed to be, for the purposes of the Superannuation Act 1956, employed in the Government service; and the provisions of that Act shall apply to him in all respects as if his service in the Hospital Service were Government service.

(2) Subject to the Superannuation Act 1956, nothing in this section shall entitle a transferred employee to become a contributor to the Government Superannuation Fund after he has once ceased to be a contributor.

(3) For the purposes of applying the Superannuation Act 1956 to a transferred employee, the term “controlling authority” in relation to a transferred employee who is a contributor to the Government Superannuation Fund means the Director-General of Health.

8. Preservation of acquired appeal rights—(1) Notwithstanding anything to the contrary in this Part of this Act or in the State Services Act 1962, if, immediately before the date of the transfer of a hospital, an appeal under the State Services Act 1962, or the right to such an appeal, is pending in respect of—

- (a) A penalty imposed under section 55, section 57, or section 58 of that Act on a person employed in that hospital; or
- (b) Any appointment or promotion to a position in that hospital; or
- (c) Any appointment or promotion to a position continuing after the date of transfer of the hospital to be a position in the Public Service, if a person employed in that hospital is the appellant or if any such person has a right of appeal pending—

the provisions of Part IV, and section 35, and subsections (2) and (3) of section 57, of that Act, so far as they are applicable, shall continue to apply to the employee as if he were still employed in the Public Service, and, in the case of an appeal or right of appeal against an appointment or promotion to a position in the hospital where the transferred employee was employed immediately before the date of his transfer, as if the position were still a position in the Public Service.

(2) The decision of the Public Service Appeal Board on any appeal made to it under section 64 of the State Services Act 1962 and preserved by subsection (1) of this section shall be binding on and enforceable against—

- (a) The appellant, as if he were still employed in the Public Service:

- (b) In the case of an appeal against a penalty imposed under section 55 or section 58 of that Act, the Hospital Board employing the person on whom the penalty was imposed:
- (c) In the case of an appeal against an appointment or promotion to a position, the Hospital Board controlling the position and the person provisionally appointed to the position:
- (d) The Commission.

(3) The decision of the Commission on any appeal made to it under section 57 of the State Services Act 1962 and preserved by subsection (1) of this section shall be binding on and enforceable against the appellant as if he were still employed in the Public Service.

(4) Subject to subsection (2) and subsection (5) of this section, the decision of the Public Service Appeal Board, or, in the case of an appeal under section 57 of the State Services Act 1962, of the Commission, on any appeal preserved by subsection (1) of this section shall be implemented, as far as practicable, in the same manner as it would have been implemented if—

(a) In the case of an appeal against a penalty, the appellant had not been transferred to a Hospital Board; or

(b) In the case of an appeal involving an appointment or promotion to a position in a hospital, the control of the hospital had not been transferred to a Hospital Board.

(5) If a person becomes an employee of a Hospital Board as the result of an appeal preserved by this section, he shall be deemed for the purposes of this Part of this Act to have become a transferred employee at the date of transfer of the hospital in which he is first employed by the Board:

Provided that he shall not be entitled to receive any remuneration as an employee of the Board in respect of any period during which he was in fact employed in the Public Service.

(6) If a person ceases to be employed in the Hospital Service as a result of the success of any appeal preserved by this section, he shall be deemed, without further authority than this subsection, to have resumed his employment in the Public Service; and the provisions of subsection (11) of section 3 of this Act shall apply as if the resumption had been effected pursuant to an election under that section.

9. Preservation of acquired rights in respect of applications for regrading—(1) Notwithstanding anything to the contrary in this Part of this Act or in the State Services Act 1962, if, immediately before the date of transfer of a hospital, there is pending—

- (a) An application for a review of the grading of a position in the hospital under section 45 of the said State Services Act; or
 - (b) A request, or a right to make a request, that any such application be referred for consideration by a Classification and Grading Committee under sections 45 and 46 of that Act; or
 - (c) An appeal or right of appeal to the Public Service Appeal Board under paragraph (b) of subsection (1) of section 64 of that Act in respect of a decision of the Commission arising out of the recommendation of a Classification and Grading Committee—
- the provisions of Part IV and of sections 45 and 46 of that Act, so far as they are applicable, shall continue to apply to that position and that application or appeal or right to an appeal, as the case may be, as if the position were still a position in the Public Service.

(2) Notwithstanding anything to the contrary in any other enactment, the decision of the Public Service Appeal Board in any such case, and the decision of the Commission on any such application, except to the extent that it is varied or reversed by the said Appeal Board, shall be binding on the Hospital Board controlling the position to which the application relates.

(3) If a position in a hospital is regraded pursuant to this section, the regrading shall be deemed to have taken effect not later than the date of transfer of the hospital.

10. Further protection of appeal rights—Notwithstanding anything in this Part of this Act or in the State Services Act 1962, any transferred employee who—

- (a) During the period referred to in subsection (2) of section 3 of this Act; or
- (b) If he has elected to resume employment in the Public Service pursuant to the said subsection (2), during any further period while he remains in the employment of a Hospital Board before the obligation of the Commission towards him is fulfilled or has lapsed under subsection (13) of the said section 3—

applies for a position in the Public Service to which another person is appointed, shall have the same right of appeal (if any) against the appointment as he would have had if he had remained in the Public Service.

11. Transfer of hostels, clinics, etc., carried on in connection with psychiatric hospitals—Notwithstanding anything in the principal Act, or in the Mental Health Act 1969, but without limiting subsection (9) of section 129 of the last-mentioned Act, the power conferred on the Minister of Health by subsection (2) of section 7 of that Act to transfer to a Hospital Board the control of a psychiatric hospital carried on by the Crown includes power to transfer any hostel, clinic, or other place maintained by the Crown in connection with or for the benefit of the patients or former patients of any such hospital; and subsections (1) to (4) of the said section 7, and the provisions of the principal Act, shall apply as if any such hostel, clinic, or other place so transferred were part of a psychiatric hospital.

12. Effect on other Acts—(1) Nothing in the Nurses and Midwives Act 1945 shall prevent any transferred employee from continuing his employment on the same kind of duties as those on which, and under the name, style, title, or description under which, he was employed before the date of his transfer.

(2) The State Services Remuneration and Conditions of Employment Act 1969 and subsection (3) of section 7 of the Mental Health Act 1969 shall be read subject to sections 3 to 9 of this Act.

(3) Section 7 of the Mental Health Act 1969 is hereby consequentially amended by repealing the proviso to subsection (2).

13. Bonds and indemnities—(1) If any transferred employee has, before the date of his transfer, signed a bond in accordance with section 71 of the State Services Act 1962, or section 132A of the Health Act 1956, and the bond is still in force on that date, the following provisions shall apply:

- (a) The bond shall be read and construed subject to the provisions of this Part of this Act:
- (b) If the employee seeks to discharge the bond by the payment of money—

- (i) Before he performs any condition of the bond;
or
- (ii) After he has begun to perform the conditions of the bond and during any period while he is employed by the Crown—
the payment shall be made to the Crown:
- (c) If the employee seeks to discharge the bond by the payment of money after he has begun to perform the conditions of the bond and during any period while he is employed by a Hospital Board, the payment shall be made to the Hospital Board and not to the Crown:
- (d) Any condition of the bond requiring the employee to render service to the Crown shall be deemed to have been performed if the employee renders, or completes the rendering of, the service to a Hospital Board under the provisions of this Part of this Act:
- (e) While the employee is employed by a Hospital Board under the provisions of this Part of this Act, every reference in the bond to the Crown, the Minister, the Commission, the Director-General, or any other agent or officer of the Crown, shall, subject to the provisions of this subsection, be read as a reference to that Board:
- (f) Except as otherwise provided in this subsection, nothing in this Part of this Act shall derogate from or otherwise affect the obligations of the employee under the bond.

(2) Without limiting the provisions of subsection (3) of section 7 of the Mental Health Act 1969, if a transferred employee has, before the date of his transfer, entered into an agreement with the Crown under subsection (2) of section 36 of the Workers' Compensation Act 1956, the agreement shall, while the employee is employed by a Hospital Board under the provisions of this Part of this Act, be deemed to have been entered into with that Board.

14. Application of this Part may be extended to other undertakings—The provisions of this Part of this Act shall, with the necessary modifications, apply to any undertaking (not being a psychiatric hospital) carried on by the Crown through the Department of Health, and to the persons employed therein, that is transferred to the control of a Hospital Board, as if the undertaking were a psychiatric hospital.

PART II

AMENDMENTS TO PRINCIPAL ACT

15. Appointment of officers or employees—Section 50 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) This section shall apply to the appointment by a Board of its principal medical officer, its principal nursing officer, or the Secretary to the Board, or of a person to a position (by whatever title it may be known) corresponding to any of those positions.”

16. Appointment of officers other than principal medical officers, principal nursing officers, and Secretaries—The principal Act is hereby further amended by inserting, after section 50, the following section:

“50A. (1) This section shall apply to the appointment (not being an appointment to which section 50 of this Act applies) by the Board of any person to any office or employment in any class for the time being specified for the purposes of this section in regulations made under this Act.

“(2) Except with the prior approval of the Minister, the Board shall not make any appointment to which this section applies without first inviting applications therefor in the prescribed manner.”

17. Functions of Review Committee—(1) Section 51A of the principal Act (as inserted by section 6 of the Hospitals Amendment Act 1968) is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) The committee shall have the following functions:

“(a) To inquire into any complaint relating to the dismissal from employment by a Board of any person who is employed in a whole-time capacity, or of any other person declared to be subject to the committee’s jurisdiction pursuant to section 51B of this Act:

“(b) To hear any appeal made under section 51D or section 51E of this Act by any person employed in a whole-time capacity by a Board:

“(c) To report its findings in respect of any such complaint or appeal to the Minister.”

(2) The said section 51A is hereby further amended by repealing the proviso to paragraph (c) of subsection (3), and substituting the following proviso:

“Provided that, where any complaint is made under section 51c or any appeal is made under section 51D or section 51E of this Act by any person under the committee’s jurisdiction who is not a medical practitioner, the Minister may, at the request of that person and for the purposes of the inquiry into that complaint or the hearing of that appeal, as the case may be, appoint to be a member of the committee, in substitution for the member appointed under this paragraph, a person nominated by an organisation which appears to the Minister to be competent to represent the interests of the class of employees to which the person making the complaint or appeal belongs.”

(3) The said section 51A is hereby further amended by omitting from subsection (6) the expression “section 51c”, and substituting the expression “section 51F”.

(4) The said section 51A is hereby further amended by adding the following subsection:

“(7) For the purposes of this section, and of sections 51B to 51F of this Act, the term ‘employee’ includes ‘officer’”.

18. Power of Minister to extend Review Committee’s jurisdiction—Section 51B of the principal Act (as inserted by section 6 of the Hospitals Amendment Act 1968) is hereby amended—

- (a) By omitting from subsection (1) the words “(including officers)”, and substituting the words “(not employed in a whole-time capacity)”;
- (b) By adding to that subsection the words “for the purposes of enabling the committee to inquire into complaints made by those employees under section 51c of this Act”.

19. Inquiries into complaints and hearing of appeals—The principal Act is hereby further amended by repealing sections 51c and 51D (as inserted by section 6 of the Hospitals Amendment Act 1968), and substituting the following sections:

“51c. Employees to have right of complaint against dismissal—(1) Where any Board dismisses or has served a notice purporting to dismiss from its employment any employee who is for the time being under the jurisdiction of the Review Committee and that employee is aggrieved by the dismissal or notice, the following provisions shall apply:

“(a) The employee may prepare a complaint in writing setting out his grievance and forward it to the Board within 14 days after the date of the dismissal or, as the case may be, within 14 days after the date on which the notice of dismissal was given:

“(b) As soon as practicable after receiving the complaint, the Board shall reconsider the dismissal or notice of dismissal, and may, after considering such evidence and representations as it thinks fit, either confirm or revoke the dismissal or notice of dismissal, and, on so doing, shall forthwith notify the complainant of its decision:

“(c) If the Board confirms the dismissal or notice of dismissal, the complainant shall, if he desires to pursue the complaint further, forward the complaint to the Minister within 14 days after the date on which he was notified of the confirmation of the dismissal or notice of dismissal or within such extended period as the Minister may in any particular case allow.

“(2) Neither the fact that a complaint has been made under subsection (1) of this section, nor the fact that inquiries into any such complaint have yet to be completed, shall affect the dismissal of the complainant or any notice purporting to dismiss him from his employment; but, notwithstanding anything in section 51 of this Act, if the Board re-engages the complainant pursuant to a reconsideration under paragraph (b) of subsection (1) of this section or in accordance with any direction or advice given to it by the Minister under section 51F of this Act, the re-engagement shall be on terms and conditions not less favourable than those subsisting immediately before the dismissal or expiration of the notice of dismissal, as the case may be. In addition, every complainant so re-engaged shall be entitled to be paid the salary or wage and other emoluments to which he would have been entitled if he had not been dismissed.

“(3) The rights conferred on a complainant by this section in relation to the termination of his employment shall be in addition to any other legal remedy he may have against the Board.

“(4) Nothing in this section or in section 51F of this Act shall prevent a Board from withdrawing a dismissal notice at any time.

“51D. Appeals in respect of certain appointments—

(1) Where any person employed by a Board in a whole-time capacity is aggrieved at the failure of that Board or any other Board to appoint him to a position—

“(a) Which belongs to a class of office or employment to which section 50A of this Act applies; and

“(b) For which applications have been invited in the prescribed manner; and

“(c) For which he has applied pursuant to that invitation; and

“(d) Appointment to which would involve his advancement from one grade to a higher grade within an occupational class, or his transfer from one occupational class to another, and in either case result in his being entitled to receive a higher maximum salary—

he may, in accordance with the provisions of subsections (2) to (4) of this section, appeal against the decision not to appoint him:

“Provided that there shall be no right of appeal under this section against the appointment of a person to any such position unless the appointee has, by virtue of the appointment, advanced from one grade within an occupational class to a higher grade or been transferred from one occupational class to another, and, in either case, has become entitled to an increase in his maximum salary, or unless the appointee was not, immediately before his appointment, a member of any occupational class.

“(2) Every person who desires to pursue a right of appeal conferred on him by this section shall, within 14 days after the date on which he was notified of the appointment, apply in writing to the Board making the appointment to reconsider its decision not to appoint him.

“(3) As soon as practicable after receiving the application, the Board shall reconsider its decision, and may, after considering such evidence and representations as it thinks fit, either confirm the appointee in the appointment or revoke

the appointment and appoint the aggrieved person in his place, and, on so doing, shall notify the persons concerned of its decision.

“(4) If the Board confirms the original appointment, the person aggrieved shall, if he desires to pursue the matter further, appeal to the Minister by notice in writing against the decision not to appoint him within 14 days after the date on which the decision of the Board under subsection (3) of this section was notified to him, or within such extended period as the Minister may allow.

“(5) If the Board revokes the original appointment and appoints the person aggrieved in the place of the person originally appointed, subsections (2) and (3) of this section shall have no application in respect of the new appointment, but subsection (4) and subsections (6) to (9) of this section shall apply as if the Board had confirmed the appointment of the person aggrieved at the time when it so appointed him and as if the person originally appointed was a person aggrieved by the new appointment:

“Provided that nothing in this subsection shall confer on any person who has not made application under subsection (2) of this section in respect of the original appointment (other than the person originally appointed) a right to appeal under subsection (4) of this section.

“(6) Every appointment to a position referred to in subsection (1) of this section for which a person has unsuccessfully applied shall be provisional—

“(a) If an appeal has been made in accordance with subsection (4) of this section, until—

“(i) The Review Committee has disposed of the appeal and has reported its findings on it to the Minister; and

“(ii) The Minister has given a direction or an advice to the Board that made the appointment or has informed that Board that he does not intend to give any direction or advice in respect of the appeal; or

“(b) If no such appeal has been made, but an application has been made to the Board, pursuant to subsection (2) of this section, to reconsider its decision not to appoint the applicant to the position, until the expiration of 14 days after the date on which it notifies that person of its decision in accordance with subsection (3) of this section; or

“(c) If no such application has been made to the Board, until the expiration of the period of 14 days specified in the said subsection (2).

“(7) Every Board that makes an appointment to a position in respect of which there is a right of appeal by virtue of this section shall forthwith give notice of the provisional appointment to all employees who applied for the position.

“(8) Any notice required to be given under subsection (7) of this section to an employee of a Board may be given—

“(a) By delivering it to him personally; or

“(b) By sending it to him by letter or telegram addressed to him at his last known place of residence or place of employment, or to the place (if any) shown in his application for the position; or

“(c) By publishing it in the publication (if any) issued from time to time by the Hospital Boards Association of New Zealand Incorporated for the purpose of informing employees of Hospital Boards of positions for which applications for appointments are invited.

“(9) An appeal under this section shall lapse if, before the appeal is determined—

“(a) The appellant resigns or retires or has his employment in the Hospital Service terminated in any other manner; or

“(b) The appellant is appointed to a position carrying at least the same maximum salary in the Hospital Service as the position that is appealed against; or

“(c) By publishing it in the publication (if any) issued cancelled; or

“(d) The person who was originally appointed dies, or vacates or renounces or becomes incapable of taking up the position.

“(10) In this section ‘occupational class’ in relation to the Hospital Service has the same meaning as in Part I of the Hospitals Amendment Act (No. 2) 1971.

“51E. Appeals by employees against transfer—(1) Where any employee is notified by the Board employing him that it has decided to transfer him from one institution under its control to another such institution and is aggrieved by the decision, the following provisions shall apply:

“(a) The employee may apply in writing to the Board within 14 days after the date on which he was notified of the decision:

“(b) As soon as practicable after receiving the application, the Board shall reconsider the decision, and may, after considering such evidence and representations as it thinks fit, either confirm or revoke the decision, and, on so doing, shall forthwith notify the employee of the outcome of the reconsideration:

“(c) If the Board confirms its decision to transfer the employee, he shall, if he desires to pursue the matter further, appeal in writing to the Minister within 14 days after the date on which he was notified of the confirmation of the Board’s decision, or within such extended period as the Minister may in any particular case allow.

“(2) An appeal may be received under paragraph (c) of subsection (1) of this section only if it is made on the grounds of exceptional personal hardship to the appellant.

“(3) The fact that an application or appeal has been made under subsection (1) of this section against a decision to transfer an employee shall not relieve him of his obligation to comply with that decision if the Board has informed him that, in its opinion, his immediate transfer is required for the proper performance of the functions of the Board; but in every other case implementation of that decision shall be suspended—

“(a) In the event of there being an application for a reconsideration, until the Board has reconsidered the decision and has notified the employee of the outcome of the reconsideration, and, if the Board has confirmed its decision, until the period for appealing to the Minister in respect of the decision has expired; or

“(b) In the event of there being an appeal pending, until the Review Committee has dealt with the appeal and has reported its findings to the Minister, and the Minister has given any direction or advice in respect of the appeal.

“(4) An appeal under this section shall lapse if, before the appeal is determined, the appellant resigns or retires or has his employment terminated in any other manner.

“51F. **Procedure of Review Committee**—(1) On receipt of any complaint or appeal in accordance with sections 51c to 51E of this Act, the Minister shall refer it to the chairman of the Review Committee who shall convene such meetings of the

committee as may be necessary to enable it to inquire into the complaint or hear the appeal, as the case may be, and report on it to the Minister as provided in subsection (6) of this section.

“(2) In inquiring into the complaint or on hearing the appeal the committee shall not be bound to follow any formal procedure, but shall follow the rules of natural justice, and may admit such evidence as it thinks relevant, whether that evidence would be admissible in a court of law or not.

“(3) When appearing before or making representations to the committee, a complainant, appellant, or other person may, at his own expense, be represented by an advocate.

“(4) Every statement made during the inquiry or hearing or in any report submitted to the Minister shall be absolutely privileged for the purposes of the law relating to defamation.

“(5) Subject to the provisions of this section, and of any regulations made under this Act, the committee may regulate its procedure in such manner as it thinks fit.

“(6) On completion of the inquiry or hearing, as the case may be, and after considering all representations made and evidence given to it, the committee shall prepare a report of its findings (including the reasons therefor) and submit it to the Minister. The report may include such recommendations relating to the complaint or appeal as the committee thinks fit, but in any event shall state whether or not the committee considers that the complaint is justified or, as the case may require, that the appeal ought to be allowed.

“(7) For the purposes of this section the report of the majority of members of the committee shall be the report of the committee; but any member who disagrees with the majority may, if he so desires, submit a minority report to the Minister through the chairman.

“(8) When submitting its report to the Minister pursuant to subsection (6) of this section, the committee shall supply a copy of the report (together with any minority report) to the complainant or, as the case may be, the appellant and to the Board concerned, and in the case of an appeal against an appointment, to the person appointed by the Board.

“(9) The Minister shall consider the report as soon as practicable after receiving it, and may then, if he thinks fit, (whether or not he has previously given any direction or advice) give such direction or advice to the Board as he considers appropriate.

“(10) Every direction of the Minister under this section shall be binding on the complainant or appellant, as the case may be, and on the Board which made the decision complained of or appealed against, and, in the case of an appeal against an appointment, on the person appointed by the Board.”

20. Regulations relating to conditions of employment—Section 52 of the principal Act (as substituted by section 58 of the State Services Remuneration and Conditions of Employment Act 1969) is hereby amended by adding to paragraph (d) of subsection (8) the words “or conducted by the Review Committee established under section 51A of this Act”.

This Act is administered in the Department of Health.
