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1983, No. 135

An Act to establish a Health Service Personnel Commission to be the employing authority in respect of persons employed in the public sector of the health service, to define the functions, duties, and powers of the Commission, and to promote and provide for a unified career structure for the persons so employed

[16 December 1983]

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 Health Service Personnel Act 1983.

(2) This section and section 3 of this Act, and the First Schedule to this Act, shall come into force on the 1st day of January 1984.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the 1st day of April 1984.

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

“Appeal Board” means the Health Service Appeal Board established by section 30 of this Act:

“Area health board” means an area health board established under section 6 of the Area Health Boards Act 1983:

“Casual employee” means an employee who has no set hours or days of work and is usually asked to work as and when required:

“Commission” means the Health Service Personnel Commission established by section 3 of this Act:

“Director-General” means the Director-General of Health appointed under the Health Act 1956; and, in relation to any power under this Act delegated by him to any other person pursuant to section 5A of that Act, includes that other person:

“Employer”, in relation to any person employed in the Health Service, means the Commission or the area health board or the hospital board by which that person is employed:

“Health Service” means service in the employment of the Commission or an area health board or a hospital board:

“*Health Service Official Circular*” means the official circular published by the Commission under section 25 of this Act:

“Hospital board” means a hospital board constituted by section 25 of the Hospitals Act 1957:

“Minister” means the Minister of Health:

“Occupational class”,—

(a) In relation to employees of the Health Service whose remuneration is determined in accordance with the State Services Conditions of Employment Act 1977, means a class or group of employees prescribed under that Act by determination by the Commission or by Tribunal order as an occupational class:

(b) In relation to employees of hospital boards whose remuneration is determined in accordance with an award or collective agreement under the Industrial Relations Act 1973, means a class or category of employees covered by any such award or collective agreement:

(c) In relation to medical practitioners employed as medical officers in the Health Service or persons who, in their capacity as persons studying to qualify as medical practitioners, are employed in the Health Service, means all such persons:

“Part-time employee” means an employee, other than a casual employee, who works on a regular basis but less than the ordinary or normal hours prescribed in the Health Service determination, or in the award or collective agreement, applicable to the relevant occupational class:

“Promotion” means advancement from one grade to another within an occupational class, or transfer from one occupational class to another, involving in either case an increase in maximum salary:

“Service organisation” has the same meaning as it has in section 5 of the State Services Conditions of Employment Act 1977.

PART I

HEALTH SERVICE PERSONNEL COMMISSION

3. Establishment of Commission—(1) There is hereby established a commission, to be called the Health Service Personnel Commission.

(2) The Commission shall consist of—

- (a) The Director-General of Health or his nominee, who shall be the chairman of the Commission; and
- (b) The Chairman of the State Services Commission or his nominee; and
- (c) Two other persons, 1 of whom shall be appointed to be the deputy chairman of the Commission.

(3) The provisions of the First Schedule to this Act shall have effect in relation to the Commission and its proceedings.

4. Commission responsible to Minister—(1) Subject to subsection (2) of this section, the Commission shall be responsible to the Minister for the administration of this Act and the performance and exercise of its functions, duties, and powers under this Act or any other Act.

(2) Subject to section 20 of this Act, in matters relating to individual employees (whether matters relating to the appointment, promotion, transfer, or cessation of employment of any employee, or any other personnel matter) the Commission shall not be responsible to the Minister but shall act independently.

Cf. 1962, No. 132, s. 10 (1)

5. General functions, duties, and powers—(1) The general functions and duties of the Commission shall be—

- (a) To act as a central personnel authority with power to determine uniform and consistent personnel policies to meet the needs of the Health Service;
- (b) To promote and develop personnel policies and standards of training and education in management and administration, and to develop national career

structures, within the Health Service in order to improve the efficiency and economy of the Health Service:

- (c) To determine appropriate employer policies relating to the setting of conditions of employment and remuneration for persons employed in the Health Service:
- (d) To promote high standards of personnel administration in the Health Service, and to provide such consultative and advisory services in the field of personnel administration as may from time to time be requested by area health boards or hospital boards or directed by the Minister:
- (e) To perform the functions prescribed for the Commission by this Act or any other Act.

(2) Notwithstanding anything in subsection (1) (d) of this section, the Commission's functions do not include the determination of any matter relating to manpower planning, or service development planning, or staffing levels for area health boards or hospital boards.

(3) The Commission shall have all such powers, rights, and authorities as may be reasonably necessary or expedient to enable it to carry out its functions.

Cf. 1976, No. 132, s. 17 (1), (2)

6. Commission to be employing authority—For the purposes of the application of the State Services Conditions of Employment Act 1977 to the Health Service, the Commission shall be the employing authority.

Cf. 1976, No. 132, s. 40 (2) (b)

7. Obligation to consult boards and other organisations—In the performance and exercise of its functions, duties, and powers, the Commission shall consult with area health boards and hospital boards and employee and other organisations whenever it considers it necessary or appropriate to do so.

8. Power to issue instructions—(1) Subject to this Act and any regulations made under this Act, the Commission may from time to time issue instructions, to be called Health Service Personnel Instructions, relating to any matter within the scope of its functions, duties, and powers.

(2) All Health Service Personnel Instructions shall be binding on the Commission's employees, on every area health board and its employees, and on every hospital board and its employees.

Cf. 1962, No. 132, s. 73

9. Commission may require information from boards—

(1) The Commission may at any time, by notice in writing, require any area health board or hospital board to furnish such returns or such other information as may be specified in the notice, in such manner as the Commission may from time to time require for the purposes of this Act.

(2) It shall be the duty of the board to furnish the returns or other information specified in the notice within such time as may be specified in the notice.

10. Annual report and other reports—(1) As soon as practicable after the 31st day of March, and not later than the 30th day of June, in each year, the Commission shall send to the Minister a report on its operations and activities for the year ending with that earlier date.

(2) A copy of the report shall be laid before Parliament as soon as practicable after its receipt by the Minister.

(3) The Commission may from time to time send to the Minister such other reports relating to its proceedings and the performance and exercise of its functions, duties, and powers as it thinks fit or as the Minister may require.

Cf. 1976, No. 132, s. 21

PART II

EMPLOYMENT IN THE HEALTH SERVICE

11. Method of prescribing conditions of employment—

(1) Except as otherwise provided in section 12 of this Act or the State Services Conditions of Employment Act 1977, and except in respect of employees of hospital boards whose remuneration is determined in accordance with an award or collective agreement under the Industrial Relations Act 1973, but notwithstanding anything to the contrary in any other enactment, as from the commencement of this Act, the conditions of employment of employees of the Health Service, so far as they are matters to be determined under the State Services Conditions of Employment Act 1977, shall be prescribed by the Commission by determination under that Act and not otherwise.

(2) Every determination issued by the Commission pursuant to section 18 of the State Services Conditions of Employment Act 1977 shall be signed by the Chairman and at least 2 other members of the Commission.

(3) Except as provided in section 27 of the State Services Conditions of Employment Act 1977, nothing in the Industrial Relations Act 1973 shall apply to persons employed in the Health Service whose remuneration and conditions of employment are fixed by the Commission under the State Services Conditions of Employment Act 1977 or by the Minister under section 12 of this Act.

Cf. 1976, No. 132, s. 41; 1977, No. 95, s. 6 (1)

12. Medical staff—(1) Subject to the provisions of this Act and the Hospitals Act 1957, the following matters shall be fixed by the Minister:

- (a) The conditions of employment (other than remuneration) of medical practitioners employed as medical officers in the Health Service:
- (b) The conditions of employment (other than remuneration) of persons who, in their capacity as persons studying to qualify as medical practitioners, are employed in the Health Service.

(2) The remuneration of medical practitioners employed as medical officers in the Health Service, and of persons who, in their capacity as persons studying to qualify as medical practitioners, are employed in the Health Service, shall be determined by the Higher Salaries Commission on the advice of the Health Medical Officers' Advisory Committee appointed under subsection (7) of this section.

(3) For the purposes of subsection (1) of this section, the Minister may from time to time, after considering any relevant report or recommendations made by the said Health Medical Officers' Advisory Committee,—

- (a) Issue determinations in such form as he thinks fit; and
- (b) Revoke or amend any determination, or consolidate any determinations;—

and every determination for the time being in force shall, subject to this section, be binding on an employer and its employees according to its tenor.

(4) The provisions of sections 9 to 12 of the State Services Conditions of Employment Act 1977, with any necessary modifications, shall apply to the prescribing of pay scales under this section in the same manner as they apply to the prescribing of pay scales under that Act.

(5) Subject to subsection (6) of this section, any determination or amendment of a determination under this section may be expressed to come into force on any date specified by the Minister or (as the case may require) the Higher Salaries Commission, whether that date is before or after the making of the determination, and if no date is specified it shall come into force on the day on which it is made.

(6) No determination or amendment of a determination—

- (a) Shall take effect earlier than 12 months before it was made; or
- (b) Shall be expressed to continue in force for less than 12 months.

(7) The Minister shall appoint, in accordance with regulations made under subsection (8) of this section, a committee to be known as the Health Medical Officers' Advisory Committee to advise—

- (a) The Minister on the conditions of employment (other than the remuneration) of—
 - (i) Medical practitioners employed in the Health Service; and
 - (ii) Persons who, in their capacity as persons studying to qualify as medical practitioners, are employed in the Health Service:

- (b) The Higher Salaries Commission on the remuneration of the persons referred to in paragraph (a) of this subsection.

(8) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the constitution of the Health Medical Officers' Advisory Committee to be appointed under subsection (7) of this section, regulating the procedure of that committee, and prescribing the matters to be taken into consideration by it;
- (b) Providing for the grading of medical practitioners employed in the Health Service;
- (c) Providing for the appointment by the Minister of committees for the purposes of any regulations made under paragraph (b) of this subsection, and prescribing the functions, and regulating the procedure, of any such committees.

(9) No determination or regulation made under this section shall be invalid merely because it delegates to, or confers on, an employer or any other person any discretionary authority.

Cf. 1957, No. 40, s. 52 (1), (1A), (2), (6), (8)–(11); 1977, No. 95, s. 10

13. Superannuation—(1) Subject to section 57 (3) of this Act, for the purposes of the Government Superannuation Fund Act 1956, employees of the Commission or of any area health board shall be deemed to be employed in the Government service, and the provisions of that Act shall apply to every such employee in all respects as if employment in the service of the Commission or that board were Government service.

(2) For the purposes of applying the Government Superannuation Fund Act 1956 to such employees, the term “controlling authority”, in relation to such an employee who is a contributor to the Government Superannuation Fund, means the Commission.

(3) Notwithstanding the foregoing provisions of this section, the Minister of Health after consultation with the Minister of Finance may, by determination, exempt any occupational class of employees from the application of those provisions on being satisfied that it is in the best interests of that class of employees to do so.

14. Transitional provision—Every determination issued under the State Services Conditions of Employment Act 1977 before the commencement of this Act by the Director-General, in relation to any occupational class within the Hospital Service, and in force immediately before the commencement of this Act shall continue in force in respect of employees in that occupational class in the Health Service, without further authority than this section, and shall be deemed to be a determination issued by the Commission under that Act.

Appointments and Promotions

15. Vacancies to be notified—Except as the Commission may from time to time prescribe either generally or in any particular case, no area health board or hospital board shall appoint any person to a position in its service without first advertising the vacancy and inviting applications through the *Health Service Official Circular*.

16. Criteria for making appointments—(1) Where 2 or more persons are available for the same position, preference shall be given to the one who, in the opinion of the employer, has the most merit for appointment to the position.

(2) The merit of a person for appointment to the Health Service, and the merit of an employee for promotion in that Service, shall be determined by—

- (a) Work experience and competence shown in performance of duties previously carried out by him; and
- (b) Personal qualities, characteristics, and attributes relevant to the position to be filled; and
- (c) Relevant educational or other qualifications.

(3) Where 2 or more such applicants are adjudged to be equal in merit for appointment, regard shall be given to the length of continuous service in the Health Service or the Public Service or in both those services.

Cf. 1962, No. 132, ss. 26 (2), 28 (4), (5)

17. Educational qualifications—The Commission may from time to time prescribe examinations or educational levels for the purpose of ascertaining the merit of candidates for appointment and employees for promotion.

Cf. 1962, No. 23, s. 68

18. Appointments subject to appeal to be provisional—

(1) Every appointment or promotion that is subject to a right of appeal by an employee under Part III of this Act shall be provisional until all appeals lodged in accordance with section 38 of this Act have been duly determined, or if no appeal is lodged, until the time for the lodging of an appeal has expired.

(2) If any appeal against a provisional appointment or promotion is allowed, the employer shall cancel the provisional appointment or promotion.

(3) An employer may at any time cancel a provisional appointment or promotion, whether or not an appeal against the appointment or promotion is lodged, if, in its opinion,—

(a) The office is not required or can be suitably filled by the transfer without promotion of any other employee;
or

(b) Further notification of the position is desirable; or

(c) For any other sufficient reason it should do so.

Cf. 1962, No. 132, s. 35

19. Employer may allow employee to decline offer—An employer may in any case allow any employee to decline any offered promotion or appointment without prejudice to his right to any future promotion or appointment for which he may be qualified.

Cf. 1962, No. 132, s. 28 (7)

20. Notice to Commission of principal appointments—

(1) This section applies to the appointment by an area health board or a hospital board to any position designated in respect of that employer by the Governor-General by Order in Council made under subsection (2) of this section.

(2) The Governor-General shall from time to time, by Order in Council, specify in respect of each area health board or hospital board the number and designations of the principal officers of the board.

(3) Except with the prior approval of the Commission, no area health board or hospital board shall make any appointment to which this section applies without first inviting applications for the position in the prescribed manner.

(4) On receiving any such applications, the employer shall send to the Commission a list of the applicants together with such particulars concerning them as the Commission may require.

(5) As soon as practicable after receiving the list, the Commission shall submit to the employer for its guidance such reports and recommendations as it thinks fit, and shall indicate the names of the applicants it considers would be suitable for appointment.

(6) After giving due and fair consideration to the report and recommendations submitted by the Commission, the employer—

(a) May appoint any applicant whom the Commission has indicated would be suitable for appointment; or

(b) If it proposes to appoint any other applicant, shall notify the Commission of the name of that other applicant, and shall defer the making of the appointment until the expiration of 21 days after the Commission has been so notified.

(7) In any case to which subsection (6)(b) of this section applies, the Commission shall reconsider its decision made under subsection (5) of this section; and, if it confirms its original decision, it shall refer the case to the Minister and notify the employer accordingly.

(8) Where the case is referred to the Minister under subsection (7) of this section, the employer shall not make the appointment without the Minister's approval.

Cf. 1957, No. 40, s. 50; 1971, No. 49, s. 15

21. Effective date of appointment—(1) The power conferred by an employer to appoint a person to a position in the Health Service shall include the power to appoint that

person from and including a date to be specified in that behalf in the instrument or minute of appointment, whether or not that date is earlier or later than the date on which the power of appointment is exercised, and salary or wage shall be payable from and including such date (not being earlier than the date specified) as the employer may determine.

(2) Subsection (1) of this section shall apply notwithstanding that any other person previously appointed to the position may on the specified date and for any time thereafter continue to hold and receive the salary for the position although (by reason of absence or other circumstance) not actually performing the duties thereof.

Cf. 1962, No. 132, s. 32

22. Acting appointments—(1) In the case of absence from duty of any employee in the Health Service (from whatever cause arising) or on the occurrence of a vacancy in any position (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the employee or pertaining to the position may be exercised and performed by any other employee for the time being directed by the employer to exercise and perform them, whether the direction has been given before the absence or vacancy occurs or while it continues.

(2) No such direction and no acts done by any employee acting pursuant to any such direction shall in any proceedings be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee had not been appointed to any position to which the direction relates.

Cf. 1962, No. 132, s. 33

23. Evidence of appointments—(1) Any appointment to any position in the Health Service shall be made, confirmed, or approved in writing by an instrument or minute by the chairman of the Commission or the employing board or any officer of the Commission or that board duly authorised in that behalf.

(2) A certificate signed by—

(a) The chairman or a member of the Commission; or

(b) The chairman, deputy chairman, or the principal executive officer of the employing board—

to the effect that the person named in the certificate was appointed to a position specified in the certificate from and

including a day stated therein shall be sufficient evidence that the person so named was duly so appointed to and continues to hold the position so specified unless the contrary is proved.

Cf. 1962, No. 132, s. 34

24. Reappointment after absence for child care purposes—(1) In this section, “eligible period”, in relation to any person, means a period—

- (a) During which that person has cared for one or more pre-school children (being a child or children dependent on that person); and
- (b) No substantial part of which has been devoted by that person to paid employment.

(2) Any person who has at any time resigned from employment by the Commission or an area health board or a hospital board may apply to that employer for a declaration that the period between the resignation and the application is an eligible period; and if that employer is satisfied that the period is an eligible period it shall make such a declaration.

(3) Subject to subsections (4) and (8) of this section, where an employer makes a declaration under subsection (2) of this section in respect of any person, that person shall be eligible for reappointment by that employer in accordance with this section.

(4) No person (hereafter in this subsection called the claimant) shall be eligible for reappointment in accordance with this section if, in the opinion of the employer concerned, the total of the following periods (calculated in accordance with subsection (5) of this section) exceeds 4 years:

- (a) The eligible period concerned;
- (b) Every other eligible period immediately following the claimant’s resignation from employment in any part of the State Services (within the meaning of the State Services Conditions of Employment Act 1977) or the Health Service;
- (c) Every period immediately following the resignation from any part of the State Services or the Health Service of any other person—
 - (i) During which that other person cared for the child, or one or more of the children, cared for by the claimant during any of the eligible periods to which paragraph (a) or paragraph (b) of this subsection relates (being a child or children dependent on that other person); and
 - (ii) No substantial part of which has been devoted by that other person to paid employment.

(5) In the calculation of any period to which subsection (4) of this section relates, no account shall be taken of any period during which, but for the resignation concerned, the person resigning would have been entitled to maternity leave.

(6) A person who is eligible for reappointment by the Commission or an employing board under this section may be appointed, as if he or she were already employed by the Commission or that board, to fill any vacancy in a position in the employment of the Commission or the board for which that person is qualified.

(7) Where the position to which a person who is eligible for reappointment under this section is appointed—

(a) Involves duties and responsibilities that are the same or substantially the same as those of the position held at the time of resignation; and

(b) Does not have a current maximum salary that exceeds the current maximum salary for the position held at the time of resignation,—

section 38 of this Act shall not apply to the appointment, and no appeal by any employee shall lie against that appointment.

(8) Notwithstanding that an employer has made a declaration in respect of any person under subsection (2) of this section, that person shall cease to be eligible for reappointment under this section if he is not appointed under subsection (6) of this section within 3 months of the expiration of the eligible period.

Cf. 1957, No. 40, s. 50B; 1981, No. 114, s. 3

25. Health Service Official Circular—(1) The Commission shall publish an official circular, to be known as the *Health Service Official Circular*.

(2) The Commission shall arrange for the publication in the *Health Service Official Circular* of every advertisement of a vacancy notified to it by an area health board or a hospital board for the purposes of section 15 of this Act.

(3) Every appointment to a position that was previously advertised in the *Health Service Official Circular* shall be notified in the *Health Service Official Circular*.

Cf. 1962, No. 132, s. 28 (2), (6)

Classification and Grading

26. Classification and grading of employees—(1) Subject to subsections (2) and (3) of this section, the Commission shall be responsible for establishing, and conducting a regular review

of, the classification and grading of positions or (where appropriate) persons in the Health Service, and in discharging that responsibility shall—

- (a) Ascertain whether or not there is a need to adjust the scope and content of occupational classes, or the salary scale or grading pattern, or conditions of employment, of any occupational class:
- (b) Ensure that all positions are placed in the occupational class most closely related to the nature of the duties involved:
- (c) For every position in each occupational class determine a grade appropriate to the nature and relative importance of the duties and responsibilities of, and the level of skill required for, the position.

(2) The Commission shall ensure that every person appointed to a position in the Health Service is placed in an appropriate occupational class and grading according to the level of responsibility and skill required to be exercised in the performance of the duties of that person.

(3) The provisions of subsection (1) of this section shall not apply—

- (a) To employees of hospital boards who are employed under an award or collective agreement made pursuant to the Industrial Relations Act 1973; or
- (b) Medical practitioners employed as medical officers in the Health Service, and persons who, in their capacity as persons studying to qualify as medical practitioners, are employed in the Health Service.

(4) Every review of the salary scale or grading pattern of any occupational class, and every adjustment necessary in that salary scale or grading pattern, shall be carried out by the Commission in accordance with the provisions of the State Services Conditions of Employment Act 1977.

(5) Without limiting the general powers of the Commission to appoint committees under clause 10 of the First Schedule to this Act, the Commission may appoint such advisory or technical committees as it considers necessary to assist it in the performance of its functions under subsection (1) (c) of this section.

(6) Nothing in this section shall prevent an area health board or a hospital board in its capacity as employer from seeking a review of a decision made by the Commission under subsection (1) (c) of this section.

Cf. 1962, No. 132, s. 44 (1); 1969, No. 64, s. 55 (5); 1977, No. 95, s. 84 (2)

27. Review of grading—(1) Every employee in the Health Service shall have the right to apply to the Commission in writing for a review of the grading of the position that he occupies, or his personal grading if that position is not graded, if—

(a) He has not applied to a Grading Review Committee constituted under section 28 of this Act within the period of 5 years immediately preceding the application; and

(b) There is scope for further advancement within his occupational class.

(2) On receipt of any application under subsection (1) of this section, the Commission shall review the case, and shall notify the employee in writing of the result of the review.

(3) In considering any application for a review of grading, no regard shall be had to any rates of remuneration or conditions of employment of other persons except those employed in the same occupational class as the applicant.

(4) If the employee is not satisfied with any decision of the Commission given under subsection (2) of this section, he may, within 30 days after the date on which that decision has been notified, request that his application be referred for consideration by a Grading Review Committee constituted under section 28 of this Act.

(5) The provisions of this section shall not apply to medical practitioners who are employed as medical officers in the Health Service and persons who, in their capacity as persons studying to qualify as medical practitioners, are employed in the Health Service.

(6) Every application for a review of the grading of a position in the employment of any hospital board pending at the commencement of this Act shall be deemed to have been made under this section, and shall be dealt with in accordance with this section and sections 28 and 29 of this Act.

Cf. 1962, No. 132, s. 45

28. Grading Review Committees—(1) Subject to the provisions of this section, the Commission may from time to time appoint Grading Review Committees constituted in accordance with this section.

(2) Each such committee shall consist of—

(a) An independent chairman, who shall be appointed by the Commission after consultation with such persons and organisations as the Commission considers appropriate:

- (b) One member, who shall be appointed by the Commission after consultation with the Hospital Boards' Association of New Zealand Incorporated:
 - (c) One other member, who shall be appointed by the Commission on the nomination of the service organisation representing the interests of the employee whose application for review is to be considered by the committee.
- (3) Every Grading Review Committee shall have power to investigate in such manner as it thinks fit, and make a recommendation to the Commission regarding,—
- (a) Any application lodged under section 27 (1) of this Act:
 - (b) Any other matter relating to grading referred to it by the Commission.
- (4) Except as otherwise provided in this Act and in any regulations made under this Act, each Grading Review Committee shall determine its own procedure.
- (5) Each Grading Review Committee may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not the evidence is otherwise admissible in a court of law.
- (6) An applicant for a review shall be entitled to be present at the hearing of the application, and may be represented by counsel, or by an employee, or by a person representing the employee organisation that represents the interests of the applicant.

Cf. 1962, No. 132, s. 46 (1)–(6)

29. Procedure on completion of review of grading—

- (1) When a Grading Review Committee has completed its review of the grading of a position or (where the position is not graded) the personal grading of an employee, it may recommend to the Commission that the employer—
- (a) Decline to alter the present grading; or
 - (b) Appoint the applicant to the position at the new grading;
- or
- (c) Declare the position vacant and fill it in any manner authorised under this Act; or
 - (d) Promote the employee to the new grade, where the position is not graded.
- (2) On receipt of a recommendation from a Grading Review Committee, the Commission shall consider the recommendation and advise the employer of its decision; and the employer shall comply with that decision.

(3) The Commission shall also send to the employer and the employee a copy of the Grading Review Committee's recommendations.

(4) Where the Commission's decision differs from the recommendation of the Grading Review Committee, it shall record in writing the reasons for its decision, and shall send a copy of the record to the employer and the employee.

Cf. 1962, No. 132, s. 47

PART III

APPEAL PROVISIONS

Appeal Boards

30. Health Service Appeal Board established—(1) There is hereby established for the purposes of this Act a board, to be called the Health Service Appeal Board.

(2) The Appeal Board shall have the following functions:

(a) To hear any appeal made under section 37 or section 38 or section 39 or section 40 of this Act:

(b) To determine every such appeal, and to report its findings in respect of any such appeal to the appellant and to the employer concerned:

(c) To direct employers to implement its decisions.

(3) The Appeal Board shall also deal with every appeal lodged but not determined before the commencement of this Act under section 51C or section 51D or section 51E of the Hospitals Act 1957; and the provisions of this Part of this Act shall apply in respect of any such appeal as if it were an appeal under section 37 or section 38 or section 39 of this Act.

(4) Subject to sections 33, 34, and 42 of this Act, the Appeal Board shall comprise—

(a) One person appointed by the Minister, after consultation with such persons and organisations as the Minister considers appropriate, to be chairman of the Appeal Board, who shall hold office for a term of 3 years but may from time to time be reappointed; and

(b) One person appointed by the Minister on the nomination of the Commission made after consultation with the Hospital Boards' Association of New Zealand, Incorporated, who shall hold office for a term of 3 years but may from time to time be reappointed; and

(c) One person nominated by the organisation recognised by the Minister under section 31 of this Act as representing the interests of the group of employees to which the appellant belongs.

(5) No member or employee of the Commission shall be appointed to be a member of the Appeal Board.

Cf. 1957, No. 40, s. 51A, (1), (2), (7), (8); 1981, No. 114, s. 4 (1)

31. Appointment of members—(1) Subject to subsection (2) of this section, the Minister may from time to time recognise any organisation as representing, for the purposes of this section, the interests of any specified group or groups of employees in the Health Service and may at any time, after consultation with any organisation so recognised, withdraw that recognition.

(2) Every organisation for the time being recognised under subsection (1) of this section may at any time, by notice in writing to the Secretary of the Appeal Board, nominate—

(a) A person to be a member of the Appeal Board from time to time; and

(b) A person to act as that member's alternate—
and may similarly withdraw the nomination of either of those persons and nominate another person in his place.

(3) The nomination of every person under subsection (2) of this section shall lapse after 3 years, but he may from time to time be renominated.

(4) The same person may be nominated under subsection (2) of this section by 2 or more employee organisations.

Cf. 1957, No. 40, s. 51A (3)–(6); 1981, No. 114, s. 4 (1)

32. Conflict of interest—No person shall act as a member of the Appeal Board in respect of any appeal—

(a) That in any way affects himself; or

(b) That affects any employee of an area health board or a hospital board if he himself is a member of or is employed by that board.

Cf. 1962, No. 132, s. 61 (6)

33. Deputies and alternates—(1) The Minister may from time to time appoint a person to be the deputy chairman of the Appeal Board, and a person to be the deputy of the member of the Appeal Board appointed pursuant to section 30 (4) (b) of this Act (such member being hereafter in this section called the Commission's nominee).

(2) The Minister shall not appoint any person under subsection (1) of this section without first consulting such persons or organisations as he would have been obliged to

consult had he been appointing the chairman or (as the case may require) the Commission's nominee.

(3) Where—

(a) The chairman of the Appeal Board or the Commission's nominee is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office; or

(b) It appears to the Minister that it would be inconvenient or inappropriate for the chairman or the Commission's nominee to act in respect of any particular appeal,—

the deputy chairman may act for the chairman during the chairman's incapacity or during the hearing of the appeal (and any other appeal to be heard on the same day), as the case may be, and the deputy of the Commission's nominee may act for him during his incapacity or during any such appeal or appeals.

(4) An alternate nominated under section 31 (2) (b) of this Act,—

(a) Where the member of the Appeal Board whose alternate he is dies or has his nomination withdrawn; and

(b) At any other time, unless that member otherwise directs,—

shall have and may exercise all the rights and powers as a member of the Appeal Board of that member, and while exercising any of those powers shall be deemed to be a member of the Appeal Board.

(5) The fact that the deputy chairman or an alternate exercises any powers under this section shall be conclusive evidence of his authority to do so, and no proceedings shall be called in question on the grounds that the occasion for the appointment of the deputy chairman or alternate, or for the exercise of that power by him, had not arisen or had ceased.

Cf. 1957, No. 40, s. 51A (9)-(11); 1981, No. 114, s. 4 (1)

34. Vacancy in office of chairman or deputy chairman—

If the chairman of the Appeal Board, or the deputy chairman,—

(a) Dies; or

(b) By notice in writing to the Minister resigns his office; or

(c) Refuses or neglects without sufficient cause to attend any duly appointed meeting of the Appeal Board,—

his office shall become vacant, and the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made.

Cf. 1962, No. 132, s. 61 (7)

35. Services for Appeal Board—The Department of Health shall furnish such secretarial, recording, and clerical services as may be necessary to enable the Appeal Board to discharge its functions.

Cf. 1962, No. 132, s. 65

36. Special Health Service Appeal Board—(1) All appeals by employees in the Health Service under this Act or any other enactment shall be heard either by the Appeal Board, or by any Special Appeal Board constituted in the same manner except that the chairman and members shall hold office at the pleasure of the Minister.

(2) Subject to the provisions of this section, all the provisions of this Act or any other enactment relating to the Appeal Board and its chairman and members shall, so far as they are applicable and with any necessary modifications, apply with respect to any Special Appeal Board and its chairman and members.

(3) The fact that any person is a member of the Appeal Board or of any Special Appeal Board constituted under this section shall not render him ineligible for appointment as a deputy of a member or as an acting member of any other Appeal Board.

Cf. 1962, No. 132, s. 62

Jurisdiction, Procedures, and Powers

37. Employees to have right of appeal against dismissal—(1) Where any employer dismisses or serves notice purporting to dismiss from its employment any part-time or full-time employee, the employee may appeal against that dismissal and the following provisions shall apply:

- (a) The employee shall prepare his appeal, in writing, and forward it to his employer 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 is given to him:
- (b) As soon as practicable, and in no case later than 14 days, after receiving the appeal, the employer shall refer the appeal to a local reconsideration committee consisting of an equal number of representatives nominated respectively by the employee organisation representing the interests of the appellant and the employer but not exceeding 2 from each party, and

an independent chairman agreed upon by both parties or, failing such agreement, appointed by the Commission:

- (c) The employer and the appellant shall have the right to be represented before the local reconsideration committee by an organisation representing the interests of the employer or the appellant, or by counsel:
 - (d) The local reconsideration committee shall consider the appeal and attempt to effect a settlement, but if no agreement is reached, it shall be referred to the Appeal Board:
 - (e) The reference to the Appeal Board may be made by the employer or his representative or by the appellant or his representative, or by both:
 - (f) Any settlement reached under paragraph (d) of this subsection may, if it includes a finding that the appellant was unjustifiably dismissed, provide for any one or more of the following:
 - (i) The reimbursement to the appellant of a sum equal to the whole or any part of the remuneration lost by the appellant since the dismissal:
 - (ii) His reinstatement in his former position or in a position not less advantageous to him:
 - (iii) The payment to the appellant of compensation by the employer.
- (2) Every person giving evidence before a local reconsideration committee shall have the same privileges and immunities as witnesses have before the Appeal Board.
- (3) Every settlement reached before a local reconsideration committee shall be binding on the parties, and may be enforced in the same manner as if it were an order of the Appeal Board.
- (4) Where an appeal is referred to the Appeal Board under subsection (1) (d) of this section and the Appeal Board is satisfied that the appellant was unjustifiably dismissed, it may direct the employer concerned to do all or any of the following things:
- (a) To reimburse to the appellant a sum equal to the whole or any part of the remuneration lost by him:
 - (b) To reinstate him in his former position or in a position not less advantageous to him:
 - (c) To pay compensation to him.
- (5) An appeal under this section shall lapse if, before the appeal is determined,—
- (a) The appellant withdraws it by notice in writing to the secretary of the Appeal Board; or

(b) The appellant, in the opinion of the chairman of the Appeal Board, without sufficient cause fails or neglects to pursue the appeal.

(6) The provisions of this section shall not apply to employees of hospital boards who are employed under an award or collective agreement made pursuant to the Industrial Relations Act 1973.

(7) Nothing in this section shall prevent an employer from withdrawing a dismissal notice at any time.

Cf. 1957, No. 40, s. 51C (1), (4)–(6); 1971, No. 49, s. 19

38. Appeals in respect of certain appointments—

(1) Subject to section 24 (7) of this Act and to subsection (2) of this section, where any part-time or full-time employee of the Commission or an area health board or a hospital board is aggrieved at the failure of an employer to appoint him to a full-time position in the Health Service—

(a) Of a class specified for the purposes of this section by regulations made under this Act or, while no such regulations are in force under this Act, by determination of the Commission; and

(b) That has been advertised; and

(c) For which that person was an applicant; and

(d) Appointment to which carries a higher maximum salary and grading than that presently available to that person; and

(e) Where appropriate, for which that person is qualified by law, or registration under any enactment, to discharge the duties thereof,—

he may, in accordance with the provisions of subsections (5) to (7) of this section, appeal against the decision not to appoint him.

(2) There shall be no right of appeal under this section against—

(a) The appointment by an area health board or a hospital board of a person to any position specified in respect of that employer by the Governor-General under section 20 of this Act; or

(b) The appointment of any person who is employed in the Health Service and who has not, by virtue of his appointment,—

(i) Advanced from one grade within an occupational class to a higher grade; or

(ii) Been transferred from one occupational class to another,—

and, in either case, become entitled to an increase in his maximum salary.

(3) 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 employer making the appointment to reconsider its decision not to appoint him.

(4) As soon as practicable after receiving the application and no later than 21 days after the expiration of the period of 14 days referred to in subsection (3) of this section, the employer that made the appointment shall reconsider its decision, and may, after considering such evidence and representations as it thinks fit,—

(a) Cancel the appointment; or

(b) Confirm the appointee in the appointment; or

(c) Revoke the appointment and appoint the appellant in his place,—

and, on so doing, shall notify the persons concerned of its decision.

(5) If the employer confirms the original appointment, the appellant shall, if he desires to pursue the matter further, lodge an appeal with the secretary of the Appeal Board by notice in writing against the decision not to appoint him within 14 days after the date on which the decision was notified to him, or within such extended period as the chairman of the Appeal Board may allow.

(6) If the employer revokes the original appointment and appoints the appellant in the place of the person originally appointed, subsections (3) and (4) of this section shall have no application in respect of the new appointment of the appellant, but subsection (5) and subsections (8) to (10) of this section and section 41 of this Act shall apply as if the employer had confirmed the appointment of the appellant at the time when it so appointed him and as if the person originally appointed was a person aggrieved by the new appointment.

(7) Nothing in subsection (6) of this section shall confer on any person who has not made application under subsection (3) of this section in respect of the original appointment (other than the person originally appointed) a right to appeal under subsection (5) of this section.

(8) Every employer 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 persons who applied for the position.

(9) Any notice required to be given under subsection (8) of this section to any person 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.

(10) 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 Health Service terminated in any other manner; or

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

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

(d) The appointment that is the subject of appeal is cancelled; or

(e) The appellant withdraws his appeal by notice in writing to the secretary of the Appeal Board; or

(f) The appellant, in the opinion of the chairman of the Appeal Board, without sufficient cause fails or neglects to pursue the appeal.

(11) In deciding any appeal against an appointment, the Appeal Board may—

(a) Confirm the appointment; or

(b) Direct that the appellant be appointed to the position concerned; or

(c) Direct that the appointment be cancelled and that the position concerned be readvertised.

(12) Every person who, immediately before the commencement of this Act, was employed in the Department of Health or by the Hospital Boards' Association of New Zealand, Incorporated shall be deemed for the purposes of this section to be an employee in the Health Service in respect of any appointment to a position in the employment of the Commission made within 2 years after the commencement of this Act.

Cf. 1957, No. 40, s. 51D; 1971, No. 49, s. 19; 1981, No. 114, s. 8 (3)

39. Appeals by employees against transfer—(1) Where any part-time or full-time employee of the Commission or an area

health board or a hospital board is notified that the employer has decided to transfer him from one locality to another, and the employee is aggrieved by the decision, the following provisions shall apply:

- (a) The employee may apply in writing to the employer, within 14 days after the date on which he was notified of the decision, to reconsider its decision to transfer him:
- (b) As soon as practicable, and in any case within 21 days after the expiration of the period of 14 days referred to in paragraph (a) of this subsection, the employer 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 employer confirms its decision to transfer the employee, the employee shall, if he desires to pursue the matter further, appeal in writing to the Secretary of the Appeal Board within 14 days after the date on which he was notified of the confirmation of the decision to transfer him, or within such extended period as the chairman of the Appeal Board may allow.

(2) An appeal may be received under subsection (1) (c) 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 employer has informed him that, in its opinion, the immediate transfer is required for the proper performance of its functions; 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 employer has reconsidered the decision and has notified the employee of the outcome of the reconsideration, and, if it has confirmed its decision, until the period for appealing to the Appeal Board in respect of the decision has expired; or
- (b) In the event of there being an appeal pending, until the Appeal Board has dealt with the appeal and has given any direction or advice in respect of the appeal.

(4) The provisions of this section shall not apply to employees of hospital boards who are employed under an award or collective agreement made pursuant to the Industrial Relations Act 1973.

(5) An appeal under this section shall lapse if, before it is determined,—

- (a) The appellant withdraws his appeal by notice in writing to the secretary of the Appeal Board; or
- (b) The appellant, in the opinion of the chairman of the Appeal Board, without sufficient cause fails or neglects to pursue the appeal; or
- (c) The appellant resigns or retires, or has his employment terminated in any other manner.

Cf. 1957, No. 40, s. 51E; 1971, No. 49, s. 51E; 1981, No. 114, s. 7

40. Appeals by employees against certain decisions relating to grading—(1) Where, on an application by an employee in the Health Service for a review of the grading of a position or (where the position is not graded) the personal grading of the employee, the Commission's decision differs from the recommendation of the Grading Review Committee and the employee is aggrieved by the Commission's decision, the following provisions shall apply:

- (a) The employee may apply in writing to the Commission, within 14 days after the date on which he was notified of the decision, to reconsider its decision:
- (b) As soon as practicable, and in any case within 21 days after the expiration of the period of 14 days referred to in paragraph (a) of this subsection, the Commission 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 Commission confirms its decision, the employee shall, if he desires to pursue the matter further, appeal in writing to the Secretary of the Appeal Board within 14 days after the date on which he was notified of the confirmation of the decision, or within such extended period as the chairman of the Appeal Board may allow.

(2) The provisions of this section shall not apply to employees of hospital boards who are employed under an award or collective agreement made pursuant to the Industrial Relations Act 1973.

(3) An appeal under this section shall lapse if, before it is determined,—

(a) The appellant withdraws his appeal by notice in writing to the secretary of the Appeal Board; or

(b) The appellant, in the opinion of the chairman of the Appeal Board, without sufficient cause fails or neglects to pursue the appeal; or

(c) The appellant resigns or retires, or has his employment terminated in any other manner.

(4) On any appeal under this section, the Appeal Board may dismiss the appeal, or direct the employer—

(a) To appoint the appellant to the position concerned at a new grading; or

(b) To declare the position vacant and fill it in any manner authorised under this Act; or

(c) To promote the appellant to the new grade, where the position is not graded.

41. Procedure of Appeal Board—(1) On receipt of any appeal in accordance with sections 37 to 40 of this Act, the chairman of the Appeal Board shall convene such meetings of the Board as may be necessary to enable it to hear the appeal.

(2) On hearing any appeal, the Appeal Board 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 Board, the appellant or other person may, at his own expense, be represented by an advocate.

(4) Every statement made during the hearing of an appeal or in any report (including any direction or advice forwarded with the report under subsection (8) of this section) of the Appeal Board 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 Appeal Board may regulate its procedure in such manner as it thinks fit.

(6) In any appeal under section 37 of this Act, and in any appeal under section 38 of this Act where the provisional appointee was not previously employed in the Health Service, the onus of proof shall lie on the employer.

(7) In any other appeal under section 38 of this Act, and in any appeal under section 39 of this Act, the onus of proof shall lie on the appellant.

(8) On completion of the hearing, and after considering all representations made and evidence given to it, the Appeal Board shall prepare a report of its findings (including the reasons therefor) and forward it, together with any direction or advice made under this Act, to the appellant and to the employer, and in the case of appeal against an appointment, to the person provisionally appointed.

(9) For the purposes of this section, the decision and report of the majority of members of the Appeal Board shall be the decision and report of that Board; but any member who disagrees with the majority may, if he so desires, submit to the chairman a minority report.

(10) Every decision and direction of the Appeal Board under this section shall be binding on the appellant and on the employer that made the decision appealed against, and, in the case of an appeal against an appointment, on the person appointed; and every employer shall forthwith comply with every such direction.

Cf. 1957, No. 40, s. 51F; 1971, No. 49, s. 19; 1981, No. 114, s. 8

42. Power to appoint assessors—(1) Notwithstanding any of the foregoing provisions of this Part of this Act, if, in the opinion of the Appeal Board, any appeal involves consideration of matters of a professional, technical, or specialised nature, the Board may, with the consent of the parties to the appeal, appoint any person who in its opinion has expert knowledge of those matters to be an assessor for the purposes of the appeal.

(2) Every such assessor shall sit with the Appeal Board and in all respects act as an extra member thereof for the hearing and determination of the appeal, except that the assessor shall have no vote in the determination of the appeal.

(3) The provisions of section 33 (5) of this Act, with any necessary modifications, shall apply in respect of any assessor appointed under this section.

Cf. 1962, No. 132, s. 61 (12)

43. Appeal Board to be Commission of Inquiry—The Appeal Board shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions

of Inquiry Act 1908; and, subject to this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.

Cf. 1957, No. 40, s. 51A (13)

44. Appeal Board may order costs where appeal frivolous or vexatious—(1) If, in the opinion of the Appeal Board, any appeal under this Part of this Act is frivolous or vexatious, the Appeal Board may order the appellant to pay the costs of the hearing and determination of the appeal, and the costs of the employer concerned, in whole or in part.

(2) The sum so ordered to be paid shall, subject to any directions given by the Appeal Board, be recoverable as a debt due to the Crown.

Cf. 1957, No. 40, s. 51A (14)

PART IV

TRANSITIONAL PROVISIONS

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

“Affected district office”, in relation to an area health board, means the district office that, on the date of transfer, is replaced by that board and, in any case where 2 or more such offices are so replaced, means each of those district offices:

“Date of transfer”, in relation to—

(a) A hospital board, or a district office, that is replaced by an area health board; or

(b) An employee of a hospital board or a district office that is replaced by an area health board who thereupon becomes an employee of the area health board,—

means the date specified in the Order in Council made under section 5 (1) of the Area Health Boards Act 1983 for the establishment of the area health district of that board:

“District office” means a district office of the Department of Health:

“Employer” means an area health board or a hospital board or the Crown, as the case may require:

“Crown” means the Public Service as defined in section 2 of the State Services Act 1962:

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

“Initiating hospital board”, in relation to an area health board, means the hospital board on whose application the area health district of the area health board was established; and, in any case where 2 or more hospital boards joined in the application, means each of those hospital boards:

“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:

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

“Transferred employee” means a person who is employed by an area health board by virtue of section 47 of this Act.

Cf. 1971, No. 49, s. 2

46. Application of Part—The provisions of this Part of this Act apply whenever an area health board is established under the Area Health Boards Act 1983.

47. Transfer of staff—(1) On the date of transfer, every person employed by the initiating hospital board or by the Crown in the affected district office shall cease to be employed by the board or the Crown, as the case may be, and shall become an employee of the area health board.

(2) Every person who, on the date of transfer, becomes an employee of the area health board by virtue of subsection (1) of this section shall, as from that date, have the same functions, duties, and powers as he had immediately before that date unless and until the area health board otherwise determines.

Cf. 1971, No. 49, s. 3 (1)

48. Election by employees transferred from district office—(1) This section applies to every transferred employee who, immediately before the date of transfer, was employed by the Crown in the affected district office and who—

- (a) Was, at the date of transfer, employed in an occupational class within the Public Service on terms that required him to work a full working week; and
- (b) Has, since the date of transfer, been continuously in the employment of the area health board, or of that board and one or more other area health boards; and

(c) Has not, since the date of transfer, applied for and been promoted to a position in the employment of an area health board 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 by the area health board on the date of transfer.

(2) Any transferred employee to whom this section applies may, within 12 months after the date of transfer or, in the case of a transferred employee who was on leave of absence at the date of transfer, within 12 months after the expiry of his leave of absence, by notice in writing to the area health board by whom he is for the time being employed, elect to resume employment in the Public Service.

(3) An area health board that receives a notice of election under subsection (2) of this section shall immediately transmit the notice to the State Services Commission.

(4) Except with the consent of the area health board by whom he is for the time being employed, no transferred employee may resume employment in the Public Service pursuant to an election under subsection (2) of this section before the expiration of 2 years after the date of transfer or, in the case of a person who was on leave of absence at the date of transfer, before the expiration of 2 years after the date of expiry of his leave of absence.

(5) Where a transferred employee elects under subsection (2) of this section to resume employment in the Public Service, the area health board by whom he is for the time being employed 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 (4) of this section, intended to take effect, notify the State Services Commission in writing of that date.

(6) Upon receipt of a notice under subsection (5) of this section, the State Services Commission shall endeavour to find suitable employment in the Public Service for the transferred employee, and the area health board shall release him from its service on a date to enable him to begin any such employment.

(7) Subject to subsection (4) of this section, if within 3 months after the receipt of a notice under subsection (5) of this section the State Services Commission is unable to find suitable employment in the Public Service for the employee, the State Services Commission shall so inform the area health board, which shall so inform the transferred employee.

(8) Subject to subsection (4) of this section, the fact that the State Services Commission has not received a notice under subsection (3) or subsection (5) of this section in respect of a transferred employee shall not prevent it from reinstating the employee in the Public Service pursuant to an election under subsection (2) of this section.

(9) Subsections (2) to (8) 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 (12) of this section.

(10) If—

(a) Any person resumes employment in the Public Service pursuant to an election under subsection (2) of this section; or

(b) Any question arises as to the application of any employment provisions relating to the appointment, promotion, or transfer of an employee who has made such an election,—

the employment of that person in the Public Service shall be deemed to have continued without interruption, or shall be deemed for the purposes of that provision to have continued without interruption, as the case may require, notwithstanding any enactment to the contrary.

(11) No person to whom subsection (10) of this section applies 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 an area health board; and any leave of absence (whether annual leave or otherwise) taken by that person while employed by the area health board shall be deemed to be leave of absence taken in the Public Service.

(12) The obligation of the State Services Commission to endeavour to find employment in the Public Service for any transferred employee shall lapse—

(a) On the termination of his employment with an area health board, without re-engagement, for any reason other than—

(i) For the purpose of being employed by another area health board; or

(ii) For the purpose of resuming employment in the Public Service; or

(b) On his promotion to a position in the employment of an area health board 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 by an area health board at the date of transfer; or

- (c) On the area health board being informed under subsection (7) of this section that the State Services Commission has been unable to find suitable employment for him.

Cf. 1971, No. 49, s. 3 (2)-(13); 1972, No. 68, s. 3

49. Conditions of employment of transferred employees—Every transferred employee—

- (a) Whose conditions of employment, immediately before the date of transfer, were prescribed by—

(i) A determination issued under the State Services Conditions of Employment Act 1977; or

(ii) An award or collective agreement issued under the Industrial Relations Act 1973; or

(iii) An apprenticeship order made under the Apprentices Act 1948; and

- (b) Whose position in the employment of the area health board on the date of transfer is the same in terms of responsibility and function as that which he occupied immediately before that date,—

shall continue to be employed on the same conditions until a new determination affecting his conditions of employment is issued by the Commission pursuant to the State Services Conditions of Employment Act 1977.

Cf. 1971, No. 49, ss. 4, 5

50. Powers of Minister—(1) 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 by another area health board who are in the same occupational class; or

- (c) In relation to the terms on which the transferred employees were employed immediately before the date of transfer.

(2) The Minister shall not act under subsection (1) of this section unless he is satisfied that no other means exists for the satisfactory resolution of the matter.

Cf. 1971, No. 49, s. 6

Preservation of Existing Rights

51. Appeal rights of transferred employees of district office—(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, an appeal under the State Services Act 1962 is pending or there is a right to such an appeal, in respect of—

- (a) A penalty imposed under section 55 or section 57 or section 58 of that Act on a person employed in the Public Service; or
- (b) Any appointment or promotion to a position which, immediately before the date of transfer, existed in the affected district office and which continues after that date in the service of the area health board; or
- (c) Any appointment or promotion to a position continuing, after the date of transfer, to be a position in the Public Service, if a transferred employee (being one who was, immediately before that date, employed in the affected district office) is the appellant or if any such transferred employee has a right of appeal pending,—

the provisions of Part IV, 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 district office where the transferred employee was employed immediately before the date of 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 area health board which is for the time being 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 area health board controlling the position and the person provisionally appointed to the position:
- (d) The State Services Commission.

(3) The decision of the State Services 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 subsections (2) and (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 State Services 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 the employment of an area health board; or

(b) In the case of an appeal involving an appointment or promotion to a position previously in the affected district office, the functions of the district office had not been transferred to an area health board.

(5) If a person becomes an employee of an area health 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; but he shall not be entitled to receive any remuneration as an employee of the area health 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 by an area health board 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 section 48 of this Act shall apply as if the resumption had been effected pursuant to an election under that section.

Cf. 1971, No. 49, s. 8

52. Further provisions relating to such 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 48 of this Act; or

(b) If he has elected to resume employment in the Public Service pursuant to that subsection, during any further period while he remains in the employment

of an area health board before the obligation of the State Services Commission towards him is fulfilled or has lapsed under subsection (12) of that section,— 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.

Cf. 1971, No. 49, s. 10

53. Rights relating to regrading of transferred employees of district offices—(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, there is pending—

- (a) An application for a review of the grading of a position in the affected district office under section 45 of that 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 section 64 (1) (b) of that Act in respect of a decision of the State Services 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 State Services Commission on any such application (except to the extent that it is varied or reversed by that Appeal Board), shall be binding on the area health board controlling the position to which the application relates.

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

Cf. 1971, No. 79, s. 9

54. Appeal rights of transferred employees of hospital board—(1) If, immediately before the date of transfer, an appeal under any of the provisions of sections 37 to 39 of this Act is pending in respect of any position which, immediately before the date of transfer, existed in the service of the initiating hospital board and which continues after that date in the service of the area health board, the appeal shall be dealt with in accordance with the appropriate provisions of Part III of this Act as if the position were still in the service of the initiating hospital board.

(2) The decision of the Health Service Appeal Board on any appeal to which subsection (1) of this section applies shall be binding on and enforceable against—

(a) The appellant, as if he were still employed by the hospital board:

(b) In the case of an appeal against an appointment or promotion to a position, the area health board controlling the position and the person provisionally appointed to the position.

(3) If a person becomes an employee of an area health board as the result of an appeal to which this section applies, he shall be deemed for the purposes of this Part of this Act to have become a transferred employee at the date of transfer; but he shall not be entitled to receive any remuneration as an employee of the area health board in respect of any period during which he was in fact employed by a hospital board.

55. Rights relating to regrading of transferred employees of hospital board—(1) If, immediately before the date of transfer, there is pending an application for a review of the grading of a position in the employment of the initiating hospital board under section 27 of this Act, the provisions of that section and sections 28 and 29 of this Act, so far as they are applicable, shall continue to apply to that position as if the position were still a position in the employment of a hospital board.

(2) Notwithstanding anything to the contrary in any other enactment, the decision of the Commission on any application for grading or request for reconsideration of a determination shall be binding on the area health board controlling the position to which the application or request relates.

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

56. Rights relating to appointment and appeal in respect of certain designated occupations—(1) While this subsection remains in force, a person employed by an area health board in any of the occupational classes specified in the Second Schedule to this Act may be appointed under section 31 of the State Services Act 1962 to any other position in any of those occupational classes; and for the purposes of that section and of section 64 of that Act, in relation to any such position, that person shall be deemed to be an officer of the Public Service.

(2) A person employed in the Department of Health in any of the occupational classes specified in the Second Schedule to this Act may be appointed to any of those occupational classes in an area health board under section 16 of this Act; and for the purposes of that section and of section 38 of this Act, in relation to any such position, that person shall be deemed to be an employee in the Health Service.

(3) Subject to subsection (4) of this section, subsection (1) of this section shall remain in force for 5 years, and shall then expire.

(4) The Minister of Health, with the agreement of the Minister of State Services, may, by notice in the *Gazette*, extend the period specified in subsection (3) of this section for such further period or periods as he considers necessary or desirable in the interests of the Health Service.

(5) The Governor-General may from time to time, by Order in Council made on the advice of the Minister tendered after consultation with the Commission, amend the Second Schedule to this Act by adding or removing any occupational class, or substitute a new Schedule for that Second Schedule.

57. Superannuation of transferred employees of hospital board—(1) Where, immediately before the date of transfer, a transferred employee of the initiating board was contributing to any scheme under the National Provident Fund Act 1950 containing provisions for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this section, he may, by notice in writing to the area health board, elect to continue to contribute to that scheme.

(2) Every election under this section shall be binding on the area health board, and that board shall make all such contributions, and do all such other things, as may be necessary to give full effect to the election.

(3) Notwithstanding anything in section 13 of this Act or in the Government Superannuation Fund Act 1956, no transferred employee of the initiating hospital board shall be obliged to become a contributor under that Act.

58. Bonds and indemnities—If any transferred employee has, before the date of transfer, signed a bond in accordance with section 71 of the State Services Act 1962, or section 132A of the Health Act 1956 or the Hospitals Act 1957, 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, the payment shall be made to the area health board and not to the Crown or the initiating board:
- (c) Any condition of the bond requiring the employee to render service to the Crown or to the initiating board shall be deemed to have been performed if the employee renders, or completes the rendering of, the service to an area health board under the provisions of this Part of this Act:
- (d) While the employee is employed by an area health board under the provisions of this Part of this Act, every reference in the bond to the Crown, the Minister, the hospital board, the Director-General, or any other agent or officer of the Crown or of the hospital board, shall, subject to the provisions of this subsection, be read as a reference to that area health board:
- (e) 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.

Cf. 1971, No. 49, s. 13 (1)

PART V

MISCELLANEOUS PROVISIONS

59. Employers to pay back-pay to former employees—
Where—

- (a) Any person who was employed in any position by any employer has ceased to be employed by that employer; and

- (b) The rate of remuneration for that position has been lawfully increased after he ceased to be so employed; and
- (c) The increase applies retrospectively to a period commencing before he ceased to be so employed,—
- the employer shall, on application by that person, pay to him remuneration at the increased rate for any part of the period during which he was so employed.

Cf. 1957, No. 40, s. 52 (7); 1976, No. 54, s. 4 (1)

60. Notices to employees—Where any notice has to be given under this Act to any employee, it may be given—

- (a) By delivering it to the employee; or
- (b) By sending it to the employee in a letter addressed and posted to him at his usual place of employment or at his last known place of residence.

Cf. 1962, No. 132, s. 74

61. Offence to attempt to influence Commission or Appeal Board—(1) Every person commits an offence against this section who directly or indirectly solicits or endeavours to influence the Commission, or any member of the Commission, or any other person or persons to whom the Commission has delegated its powers under clause 15 of the First Schedule to this Act, with respect to decisions on the matters described in section 5 (1) of this Act.

(2) Every person commits an offence who directly or indirectly solicits or endeavours to influence the Appeal Board, or any member of the Appeal Board, in respect of any appeal.

(3) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$500.

(4) Nothing in this section shall apply to any person giving information or advice or making representations to the Commission, or any other person or persons to whom the Commission has delegated its powers under clause 15 of the First Schedule to this Act, in respect of any appointment, promotion, or grading at the request or invitation of the Commission or that other person or those other persons to whom the Commission has so delegated its powers.

(5) Nothing in this section shall prevent any organisation, being an organisation representing the interests of a class or classes of employees in the Health Service, from making representations to the Commission, or any other person or persons to whom the Commission has delegated its powers

under clause 15 of the First Schedule to this Act, on any matter affecting the salaries, wages, or conditions of employment of any employee or class of employees.

(6) Nothing in this section shall prohibit any person from giving information or making representations in respect of any appeal at the request or invitation of the Appeal Board, or as a witness or as an appellant or the representative of an appellant at a hearing before the Appeal Board.

Cf. 1962, No. 132, s. 76

62. Fees and travelling allowances—There shall be paid out of money appropriated by Parliament for the purpose to the members of any Grading Review Committee, and to the members of the Appeal Board (including alternates), and to persons appointed as assessors under section 42 of this Act, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951 as if the Grading Review Committee or Appeal Board were a statutory Board within the meaning of that Act.

Cf. 1957, No. 40, s. 51A (12)

63. Money to be appropriated by Parliament for purposes of this Act—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

64. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Regulating the conduct of employees; and prescribing the obligations and rights of employees in relation to the performance of official duties, the confidentiality of information and the furnishing of such information, and the maintenance of impartiality in the performance of official duties;
- (b) Prescribing rules covering private employment of, and private practice by, employees, and retention of fees or payments for services rendered within the course of an employee's normal duties;
- (c) Prescribing retirement policy and the conditions of retirement; and prescribing terms for granting

resigning leave, retiring leave, grants in lieu of retiring leave, and compassionate grants to dependants of employees in the event of the death of an employee:

- (d) Conferring discretionary powers on employers or other persons in respect of any matter referred to in this section or arising under any such regulations:
- (e) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Regulations made for the purposes of this Act may be expressed to have come into force before the day on which they are enacted.

(3) The regulations specified in the Third Schedule to this Act, so far as they were in force immediately before the commencement of this Act, and so far as they are not inconsistent with this Act or any regulations made under this Act or any Health Service Instructions issued under section 8 of this Act shall, notwithstanding the repeal by section 65 of this Act of any enactment specified in the Fourth Schedule to this Act, continue in force and be deemed to have been made under this Act.

65. Consequential amendments—(1) The enactments specified in the first column of the Fourth Schedule to this Act are hereby amended in the manner specified in the second column of that Schedule.

(2) Notwithstanding the repeal by subsection (1) of this section of section 52A of the Hospitals Act 1957 (as inserted by section 2 (1) of the Hospitals Amendment Act 1962), a hospital board may continue to exercise the powers conferred on such boards by that section as if this Act had not been made unless and until regulations are made under this Act relating to the payment of gratuities to retired employees and expressed to be made (so far as they relate to hospital boards) in substitution for the powers conferred on hospital boards by the said section 52A.

(3) The Hospitals Amendment Act 1964 is hereby repealed.

SCHEDULES

FIRST SCHEDULE

Section 3 (3)

PROVISIONS RELATING TO HEALTH SERVICE PERSONNEL COMMISSION

1. Manner of appointment—(1) The members of the Commission referred to in paragraph (c) of section 3 (2) of this Act shall be appointed by the Governor-General on the recommendation of the Minister of Health made after consultation with the Hospital Boards' Association of New Zealand Incorporated, and such other persons and organisations as he thinks appropriate.

(2) The member of the Commission who is to be appointed to be the deputy chairman of the Commission shall be so appointed on the recommendation of the Minister of Health.

2. Term of office of members—(1) Except as otherwise provided in this Schedule, every member of the Commission shall be appointed for a term not exceeding 5 years, but may from time to time be reappointed.

(2) Notwithstanding that the term of office of a member of the Commission has expired or that a member of the Commission has resigned his office, he shall be deemed to continue to be a member of the Commission for the purposes of completing any inquiry, application, or matter in which he took part and which was commenced before the expiration of his term of office or before his resignation took effect, as the case may be.

3. Vacation of office—(1) Any member of the Commission may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(2) Any member of the Commission may at any time resign his office by writing addressed to the Minister.

(3) If any member of the Commission dies or resigns his office or is removed from office, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

4. Filling of extraordinary vacancy—(1) An extraordinary vacancy shall be filled in the manner in which the appointment to the vacant office was originally made.

(2) Every person appointed to fill an extraordinary vacancy shall hold office for the remainder of the term for which his predecessor was appointed.

5. Powers of Commission not affected by vacancy—The powers of the Commission shall not be affected by any vacancy in its membership.

6. Deputies—(1) During the absence or incapacity from any cause of the chairman of the Commission, and during any vacancy in the office of chairman, the deputy chairman shall have and may exercise all the functions, duties, and powers of the chairman.

(2) In the case of the incapacity of the deputy chairman of the Commission, the Minister may appoint another member of the Commission to act for

FIRST SCHEDULE—continued

the deputy chairman during his incapacity, and that deputy shall have and may exercise all the functions, duties, and powers of the deputy chairman.

(3) In any case where the Director-General of Health (or his nominee) or the Chairman of the State Services Commission (or his nominee) is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Director-General of Health or (as the case may require) the Chairman of the State Services Commission may appoint a deputy to act for him during his incapacity.

(4) In any case where any other member of the Commission is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint a deputy to act for that member during his incapacity.

(5) No appointment of any such deputy, and no act done by him as such, and no act done by the Commission while he is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

7. Meetings of Commission—(1) The first meeting of the Commission shall be held on a day to be appointed by the Minister.

(2) Subsequent meetings shall be held at such times and places as the Commission shall from time to time appoint.

(3) The chairman or any 2 members may at any time call a special meeting of the Commission.

(4) At every meeting of the Commission the quorum necessary for the transaction of business shall be 3 members.

(5) The chairman shall preside at every meeting of the Commission at which he is present.

(6) All questions arising at any meeting of the Commission shall be decided by a majority of the votes cast by the members present.

(7) The chairman or other person presiding at the meeting shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(8) Except as expressly provided in this Act, or in any regulations for the time being in force under this Act, the Commission may determine its own procedure.

8. Assent to resolution without a meeting—A resolution in writing signed, or assented to by letter, telegram, cable, or telex message, by all the members of the Commission shall be as valid and effectual as if it had been passed at a meeting of the Commission duly called and constituted.

9. Officers of Commission may attend meetings—(1) Any officer of the Commission may attend a meeting of the Commission, or of a subcommittee of the Commission, at the invitation of the chairman of the Commission or subcommittee.

(2) Any person attending a meeting under the authority of this section may, at the invitation of the person presiding at the meeting, take part in the deliberations but shall have no vote at the meeting, and shall, if the Commission or subcommittee so directs, retire temporarily from the meeting.

10. Commission may appoint committees—(1) The Commission may from time to time appoint committees to advise it on any matter within the scope of its functions, duties, and powers.

FIRST SCHEDULE—*continued*

(2) Every such committee shall consist of one or more persons who may or may not be members or officers of the Commission.

(3) Subject to the provisions of this Act and of any regulations made under this Act, and to any general or special directions of the Commission, any committee appointed under this section may determine its own procedure.

11. Commission may take specialist advice—(1) The Commission may invite any person (including any officer of the Public Service or the Health Service or a representative of any body) who, in the opinion of the Commission, has expert knowledge in any field that is likely to be of assistance to the Commission, to attend any meeting of the Commission or of any committee or subcommittee of the Commission and take part in the proceedings.

(2) No such person shall be entitled to vote on any matter before the meeting.

12. Director-General to provide specialist advice on certain matters—The Director-General shall provide the Commission with such specialist advice as it may require from time to time.

13. Power to summon witnesses—For the purposes of performing and exercising its functions, duties, and powers under this Act or any other Act, the Commission or any member of the Commission shall have the same powers and authority to summon witnesses and receive evidence as are conferred upon Commissions of Inquiry by the Commissions of Inquiry Act 1908.

14. Inspection of institutions—(1) For the purposes of performing and exercising its functions, duties, and powers under this Act, any member of the Commission may at any time, with or without previous notice, visit and inspect any institution, hospital, or premises under the control of an area health board or hospital board.

(2) Whenever a member of the Commission exercises his powers under this clause, it shall be the duty of every person—

(a) Being an employee of an area health board or a hospital board, to give to the member of the Commission all information required by him in respect of matters within that employee's jurisdiction:

(b) Being an employee to whom paragraph (a) of this subclause applies, to produce any documents, books, or records in his custody or under his control relating to the affairs of the board or, as the case may require, the institution, hospital, or premises when required by the member of the Commission to do so, and to permit the member of the Commission to make any copy of the whole or part of any such document, book, or record or of any entry therein.

(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$500 who—

(a) Wilfully obstructs, hinders, or resists a member of the Commission or any other person in the exercise of his powers under this clause; or

(b) Refuses or wilfully fails to give any information required pursuant to this clause; or

(c) Wilfully gives any untrue or misleading information in respect of any matters to which this clause applies.

FIRST SCHEDULE—*continued*

15. Commission may delegate functions, duties, and powers—(1) The Commission may from time to time, by resolution, delegate such of its functions, duties, and powers under this Act or any other Act as it thinks fit to—

- (a) Any member of the Commission; or
- (b) Any committee appointed by it under clause 10 of this Schedule; or
- (c) Any officer of the Commission as the holder for the time being of any specified office; or
- (d) Any other person or persons.

(2) Any such delegation may be revoked at any time, and no such delegation shall prevent the exercise of any power by the Commission.

(3) Any such delegation may be made subject to such conditions and restrictions (if any) as the Commission thinks fit, and may be made either generally or in relation to any particular matter.

(4) If an officer to whom such a delegation has been made ceases to hold his office, it shall continue to have effect as if made to the person who for the time being holds that office.

(5) The fact that an officer exercises any power of the Commission shall, in the absence of proof to the contrary, be sufficient evidence of his authority to do so.

16. Members of Commission not personally liable—No member of the Commission shall be personally liable for any act done or any default made by the Commission or by any of its members in good faith in the performance and exercise of its functions, duties, and powers.

17. Superannuation or retiring allowances—(1) For the purpose of providing a superannuation fund or retiring allowance for any members of the Commission, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this clause.

(2) Notwithstanding anything in this Act, any person who, immediately before becoming a member of the Commission, is a contributor to the Government Superannuation Fund under Part II of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of that Act, employed in the Government service so long as he continues to be a member of the Commission, and that Act shall apply to him in all respects as if his service as such a member were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) of this clause shall entitle any such person to become a contributor to the Government Superannuation Fund after he has once ceased to be a contributor.

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2) of this clause, to a member of the Commission who is a contributor to the Government Superannuation Fund, the term “controlling authority”, in relation to that member, means the Commission.

18. Staff—(1) Subject to the provisions of this clause, the Commission may from time to time appoint a chief executive and such other officers and employees as it thinks necessary for the efficient carrying out of its functions, duties, and powers under this Act or any other enactment.

FIRST SCHEDULE—*continued*

(2) The Commission may at any time dismiss any of its officers or employees.

(3) The number of officers and employees who may be appointed under subclause (1) of this clause, whether generally or in respect of any specified duties, shall from time to time be determined by the Commission.

19. Remuneration and expenses of members of Commission and committees—(1) The Commission is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to the members of the Commission, and to the members of any committee appointed by it (not being members, officers, or employees of the Commission or persons employed in the Health Service or the Public Service) remuneration by way of salary, fees, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

SECOND SCHEDULE

Section 56

Occupations to which section 56 of this Act applies.

- Dental Nurses.
- Inspectors of Health.
- Pharmacists.
- Public Health Nurses.
- Public Health Dentists.
- Health Education Officers.
- Medical Officers.

THIRD SCHEDULE

Section 64 (3)

REGULATIONS CONTINUED IN FORCE

Title	Statutory Regulations Serial Number
The Hospital Board Employees (Conditions of Employment) Regulations 1959	1959/125
The Hospital Employment Regulations 1963	1963/101
The Hospital Employment Regulations 1963, Amendment No. 1	1964/99
The Hospital Employees Gratuities Regulations 1964	1964/198
The Hospital Board Employees (Conditions of Employment) Regulations 1959, Amendment No. 1	1966/151
The Hospital Board Appointments Regulations 1972	1972/39
The Hospital Board (Review Committee) Regulations 1972	1972/191
The Hospital Board Employees (Conditions of Employment) Regulations 1959, Amendment No. 2	1975/296
The Hospital Employment Regulations 1963, Amendment No. 2	1977/212

FOURTH SCHEDULE

Section 65 (1)

CONSEQUENTIAL AMENDMENTS

Enactment	Amendment
<p>1956, No. 47—The Government Superannuation Fund Act 1956 (Reprinted 1975, Vol. 4, p. 3263)</p>	<p>By inserting in the definition of the term “controlling authority” in section 2 (1), after the words “Director-General of Education;”, the words “and, in relation to a contributor employed by an area health board established under section 6 of the Area Health Boards Act 1983 by the Health Service Personnel Commission established under the Health Service Personnel Act 1983, means the chairman of that Commission;”.</p> <p>By inserting in the definition of the term “Government service” in that provision, after the words “the Education service”, the words “, the Health Service,”.</p> <p>By inserting in that provision, after that definition, the following definition: “‘Health Service’ means employment by an area health board established under the Area Health Boards Act 1983 or by the Health Service Personnel Commission established under the Health Service Personnel Act 1983:”.</p>
<p>1957, No. 40—The Hospitals Act 1957 (R.S. Vol. 2, p. 757)</p>	<p>By inserting in section 2, after the definition of the term “health centre” (as inserted by section 2 (2) of the Hospitals Amendment Act 1970), the following definition: “‘Health Service Personnel Commission’ or ‘Commission’ means the Health Service Personnel Commission established by section 3 of the Health Service Personnel Act 1983:”.</p> <p>By repealing sections 49, 50, 50A (as inserted by section 16 of the Hospitals Amendment Act (No. 2) 1971), and section 50B (as inserted by section 3 of the Hospitals Amendment Act 1981), and substituting the following section: “49. Appointment and dismissal of employees—(1) Subject to the provisions of this Act and of the Health Service Personnel Act 1983, and subject to any instructions given by the Commission, a Board may from time to time engage or appoint such employees (including acting or temporary or casual employees) as may be necessary for the efficient performance and exercise</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
<p>1957, No. 40—The Hospitals Act 1957 (R.S. Vol. 2, p. 757)— <i>continued</i></p>	<p>of its functions, duties, and powers within the limits of the resources available, and may at any time remove any such employee from office or employment.</p> <p>“(2) Subject to the provisions of this Act, and to any Health Service Personnel Instruction given under section 8 of the Health Service Personnel Act 1983,—</p> <p>“(a) Any person may be an employee of 2 or more Boards, or of 1 or more Boards and 1 or more area health boards:</p> <p>“(b) Any Board may appoint any employee for the purpose of performing services both for that Board and for any other Board or area health board:</p> <p>“(c) Any 2 or more Boards, or any 1 or more Boards and any 1 or more area health boards, may combine to appoint any person as an employee of those Boards jointly for any specified purpose, upon and subject to such terms and conditions, whether as to the apportionment of his duties among those Boards or otherwise, as may be agreed upon by those Boards and approved by the Commission.</p> <p>“(3) Without limiting the general powers of the Minister under section 5 of this Act, the Minister may from time to time in accordance with that section direct any Board—</p> <p>“(a) To appoint such number of employees of any specified occupational class as he thinks necessary for the efficient performance and exercise by the Board of its functions, duties, and powers:</p> <p>“(b) To limit, to such number or in such manner or to such extent as he thinks fit, the number of persons to be appointed by the Board to any specified occupational class:</p> <p>“(c) Not to appoint employees of any specified occupational class.”</p> <p>By omitting from section 51 the word “Minister” wherever it occurs, and substituting in each case the word “Commission”.</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
<p>1957, No. 40—The Hospitals Act 1957 (R.S. Vol. 2, p. 757)— <i>continued</i></p>	<p>By repealing sections 51A (as substituted by section 4 (1) of the Hospitals Amendment Act 1981), 51B to 51F (as substituted by section 19 of the Hospitals Amendment Act (No. 2) 1971), 52, and 52A (as inserted by section 2 (1) of the Hospitals Amendment Act 1962), and substituting the following sections:</p> <p>“51A. Medical examinations—A Board may require any employee or prospective employee to submit himself to medical examination by a registered medical practitioner, who shall not be an employee of the Board unless the person undergoing the examination otherwise agrees.</p> <p>“51B. Bonds—(1) Any employee or prospective employee of a Board to whom money is advanced, or on whose behalf expenditure is incurred with the approval of the Board in connection with transportation, education, training, or sustenance, condition of that advance or expenditure to sign a bond, in a form to be determined by the Board but including such conditions (if any) as the Health Service Personnel Commission may require or for any other special purpose, may be required as a either generally or in any particular case, requiring him to pay to the Board the sum therein specified if he makes default in the performance of any condition of the bond.</p> <p>“(2) That amount shall be reduced during the currency of the bond by an amount equivalent to the proportion that the service rendered by the employee in accordance with the condition of the bond bears to the full period of service required for the discharge of the bond.</p> <p>“(3) The Board may require that such a bond shall also be signed by a parent or guardian of the employee or prospective employee, or by some other person approved by the Board, as surety; and the parent or guardian or person who signs such a bond shall be jointly and severally liable thereunder.</p> <p>“(4) Every bond shall be enforceable against the employee or prospective employee and the surety who signs it, notwithstanding anything in this Act or any other Act or any rule of law.</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
1957, No. 40—The Hospitals Act 1957 (R.S. Vol. 2, p. 757)— <i>continued</i>	<p>“(5) The Board shall not waive the terms of any bond under this section without the consent of the Commission, who may require, as a condition of that consent, the performance by the employee of a period of service in the employment of another hospital board, or an area health board, or the Commission, or the Department of Health.</p> <p>“51c. Superannuation—For the purpose of providing a superannuation fund or retiring allowance for any of its employees, a Board may from time to time pay sums by way of subsidy into any scheme under the National Provident Fund Act 1950 containing provisions for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this section.</p> <p>“52. Remuneration and conditions of employment of hospital board employees subject to awards or collective agreements—(1) The Minister may from time to time issue a determination, or revoke or amend a determination, specifying the limits to which area health boards may provide rates of pay or allowances and other conditions of employment in excess of those prescribed in any relevant award or collective agreement.</p> <p>“(2) A determination made under subsection (1) of this section shall apply to a person whose conditions of employment are fixed by an award or collective agreement under the Industrial Relations Act 1973 or by an apprenticeship order under the Apprentices Act 1948 only to the extent that its application is to his advantage.</p> <p>“(3) The provisions of sections 9 to 12 of the State Services Conditions of Employment Act 1977 shall, with any necessary modifications, apply to the prescribing of pay scales under this section in the same manner as they apply to the prescribing of pay scales under that Act.</p> <p>“(4) Subject to subsection (5) of this section, any determination or amending determination may be expressed to come into force on any date specified by the Minister, whether that date is before or after the</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
<p>1957, No. 40—The Hospitals Act 1957 (R.S. Vol. 2, p. 757)— <i>continued</i></p>	<p>making of the determination, and if no date is so specified it shall come into force on the day on which it is made.</p> <p>“(5) No determination or amendment of a determination—</p> <p>“(a) Shall take effect on a date earlier than 12 months before the day on which it is made; or</p> <p>“(b) Shall be expressed to continue in force for less than 12 months.</p> <p>“(6) Subject to subsections (7) and (8) of this section, the Industrial Relations Act 1973 shall not apply to any hospital employee whose remuneration or conditions of employment have been the subject of a determination under Part II of the State Services Conditions of Employment Act 1977 or who belongs to an occupational class for the time being exempted from the application of the Act by Order in Council made under subsection (9) of this section.</p> <p>“(7) Subsection (6) of this section shall not prevent any service organisation from registering as an industrial union of workers under the Industrial Relations Act 1973.</p> <p>“(8) Subject to the State Services Conditions of Employment Act 1977, every service organisation and every member of any such organisation registered as an industrial union of workers shall be subject to Parts XII and XIII of the Industrial Relations Act 1973, so far as they are applicable and with the necessary modifications; but none of the other provisions of that Act shall apply to any such organisation or member.</p> <p>“(9) Subject to subsection (10) of this section, the Governor-General may, by Order in Council, exempt any occupational class of hospital employee from the application (except to the extent specified in subsections (6) to (8) of this section) of the Industrial Relations Act 1973.</p> <p>“(10) No Order in Council shall be made under subsection (9) of this section,—</p> <p>“(a) In the case of an occupational class the majority of the hospital employees belonging to which are paid in accordance with a determination made under the State</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
<p>1957, No. 40—The Hospitals Act 1957 (R.S. Vol. 2, p. 757)— <i>continued</i></p>	<p>Services Conditions of Employment Act 1977, unless the appropriate service organisation (within the meaning of that Act) has so requested; or</p> <p>“(b) In the case of an occupational class the majority of the hospital employees belonging to which are paid in accordance with an award or collective agreement made or deemed to be made under the Industrial Relations Act 1973, unless the appropriate industrial union (within the meaning of that Act) has so requested; or</p> <p>“(c) In any case to which section 214 of the Industrial Relations Act 1973 applies.</p> <p>“(11) Subject to subsection (12) of this section, any Order in Council or provision thereof made under subsection (9) of this section in relation to any occupational class may be expressed to come into force on a day before the date it is made (being the day on which a determination was made under the State Services Conditions of Employment Act 1977 prescribing or purporting to prescribe the rates of remuneration of persons belonging to that class); and, in the case of an Order in Council a provision of which is so expressed to come into force on a day before the day it is made, that provision shall be deemed to have come into force accordingly, and that Act shall be deemed to have applied to all hospital employees belonging to that class on and after that day.</p> <p>“(12) The rights of a person employed by a Hospital Board pursuant to an award or collective agreement (within the meaning of the Industrial Relations Act 1973) immediately before the making of such an order shall not be affected unless and until he elects, by notice in writing addressed to the Hospital Board, that the relevant determination apply to him; and the determination shall apply to him instead of the award or collective agreement on and after the date he so elects.</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
1957, No. 40—The Hospitals Act 1957 (R.S. Vol. 2, p. 757)— <i>continued</i>	<p>“(13) Nothing in the State Services Conditions of Employment Act 1977 shall prevent a Hospital Board from contracting with a hospital employee in respect of any condition of employment not fixed by a determination or Tribunal order or Order in Council or under any regulations made under this Act, or by an award or collective agreement made under the Industrial Relations Act 1973, or by an apprenticeship order made under the Apprentices Act 1948; but any term of any such contract that is inconsistent with the State Services Conditions of Employment Act 1977 or with this Act, or with the Health Service Personnel Act 1983 or with any determination, Tribunal order, Order in Council, or regulation, or with any such award, agreement, or order shall be void to the extent of the inconsistency.</p> <p>“52A. Where a Board proposes to contract with another person for the provision by that person of any service, the Board shall comply with any Health Service Personnel Instruction given under section 8 of the Health Service Personnel Act 1983 relating to such contracts.</p> <p>“52B. Board not to enter into contract contrary to Health Service Personnel Act 1983—A Board shall not, in its capacity as employer, enter into an agreement (whether under this Act or the Industrial Relations Act 1973 or any other Act or otherwise) that is contrary to any of the provisions of the Health Service Personnel Act 1983, and any term of any agreement entered into by a Board that is contrary to any such provision shall be unenforceable.</p> <p>“52C. Board to consult Commission on obligations under the Industrial Relations Act 1973—(1) Every Board shall from time to time consult with the Health Service Personnel Commission in respect of its obligations as an employer under the Industrial Relations Act 1973, and shall observe such policies and procedures as the Commission may determine in respect of such matters.</p> <p>“(2) Nothing in subsection (1) of this section shall empower the Commission or a</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
1957, No. 40—The Hospitals Act 1957 (R.S. Vol. 2, p. 757)— <i>continued</i>	Board to act in a manner that is contrary to any of the provisions of the Industrial Relations Act 1973.” By omitting from section 59 (1A) (as inserted by section 9 (1) of the Hospitals Amendment Act 1973) the words “terms of the agreement”, and substituting the words “approval of the Health Service Personnel Commission”.
1962, No. 43—The Hospitals Amendment Act 1962	By repealing section 152 (2) (f). By repealing section 2 (1). By repealing section 152 (2) (f).
1962, No. 132—The State Services Act 1962 (Reprinted 1971, Vol. 4, p. 2533)	By repealing the definition of the term “Hospital service” in section 2 (as inserted by section 3 (2) of the State Services Amendment Act 1973), and substituting the following definition: “‘Health Service’ means service in the employment of the Health Service Personnel Commission or an area health board or a hospital board.”.
	By revoking paragraph (d) of section 31 (2) (as substituted by section 2 of the State Services Amendment Act 1982), and substituting the following paragraph: “(d) In the Health Service; or”.
	By repealing paragraph (e) of section 31 (3) (as so substituted), and substituting the following paragraph: “(e) In the Health Service; or”.
1966, No. 35—The Hospitals Amendment Act 1966 (R.S. Vol. 2, p. 888)	By repealing section 6.
1968, No. 57—The Hospitals Amendment Act 1968 (R.S. Vol. 2, p. 890)	By repealing section 6.
1970, No. 12—The Hospitals Amendment Act 1970 (R.S. Vol. 2, p. 891)	By repealing section 7.
1971, No. 49—The Hospitals Amendment Act (No. 2) 1971 (R.S. Vol. 1, p. 895)	By repealing sections 16, 18, and 19.
1975, No. 9—The Ombudsmen Act 1975	By inserting in Part II of the First Schedule, after the item “The Government Superannuation Board”, the item “The Health Service Personnel Commission”.

FOURTH SCHEDULE—*continued*

Enactment	Amendment
1976, No. 54—The Hospitals Amendment Act 1976 (R.S. Vol. 2, p. 910)	By repealing sections 4 and 5.
1977, No. 95—The State Services Conditions of Employment Act 1977	<p>By omitting from the definition of the term “branch” in section 2 (1) the expression “the Hospital service”, and substituting the expression “the Health Service”.</p> <p>By revoking paragraph (d) of the definition of the term “employing authority” in that provision, and substituting the following paragraph:</p> <p>“(d) In relation to the Health Service, means the Health Service Personnel Commission.”.</p> <p>By inserting in that provision, after the definition of the term “Government Service Tribunal”, the following definitions:</p> <p>“ ‘Health Service’ means service in the employment of the Health Service Personnel Commission or of an area health board or of a hospital board:</p> <p>“ ‘Health Service Tribunal’ means the Health Service Tribunal established by section 51 of this Act.”.</p> <p>By omitting from that provision the definitions of the terms “Hospital service” and “Hospital Service Tribunal”.</p> <p>By inserting in the definition of the term “published” in that provision, after paragraph (c), the following paragraph:</p> <p>“(ca) In relation to the Health Service, means published in the <i>Health Service Official Circular</i>.”.</p> <p>By omitting from the definition of the term “Single Service Tribunal” in that provision the word “Hospital”, and substituting the word “Health”.</p> <p>By omitting from section 4 (1) (b) (i) the words “Hospital service”, and substituting the words “Health Service”.</p> <p>By omitting from section 4 (1) (c) (iii) the words “Hospital Boards”, and substituting the words “area health boards or hospital boards”.</p> <p>By repealing paragraph (f) of section 13 (2), and substituting the following paragraph:</p> <p>“(f) The Chairman of the Health Services Personnel Commission.”.</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
<p>1977, No. 95—The State Services Conditions of Employment Act 1977—<i>continued</i></p>	<p>By repealing section 16, and substituting the following section:</p> <p>“16. Health Service Committee—</p> <p>(1) There is hereby established a Health Service Committee.</p> <p>“(2) The Health Service Committee shall consist of—</p> <p>“(a) The Chairman, who shall be the Chairman of the Health Service Personnel Commission or his nominee;</p> <p>“(b) One or two members appointed by the Hospital Boards’ Association of New Zealand, as that Association thinks fit;</p> <p>“(c) One member appointed by the Chairman of the Health Service Personnel Commission;</p> <p>“(d) One member appointed by the State Services Commission.</p> <p>“(3) The Health Service Committee shall be responsible for all negotiations on behalf of the employing authority conducted under this Act in so far as the negotiations relate to a matter affecting the Health Service alone, whether arising from an application by a service organisation or otherwise.</p> <p>“(4) The Health Service Committee is hereby declared to be the same committee as that established under the name of the Hospital Service Committee by this section as originally enacted.”</p> <p>By omitting from section 19 the word “Hospital”, and substituting the word “Health”.</p> <p>By repealing paragraph (c) of section 46 (4), and substituting the following paragraph:</p> <p>“(c) Every area health board and every hospital board in the case of an order affecting the Health Service; and”.</p> <p>By repealing section 51, and substituting the following section:</p> <p>“51. Health Service Tribunal—(1) There is hereby established a tribunal to be known as the Health Service Tribunal, which shall have jurisdiction in relation to the Health Service.</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
<p>1977, No. 95—The State Services Conditions of Employment Act 1977—<i>continued</i></p>	<p>“(2) Subject to the provisions of section 55 (3) of this Act, the Health Service Tribunal shall consist of—</p> <p>“(a) The Chairman for the time being of the Public Sector Tribunal who shall also be the Chairman of the Health Service Tribunal:</p> <p>“(b) The two official members for the time being of the Public Sector Tribunal:</p> <p>“(c) One service member and an alternate service member who shall be appointed by the Governor-General in Council on the recommendation of the Minister of Health on the joint nomination of the service organisations for the Health Service or, in default of a joint nomination, after consultation with each of those service organisations:</p> <p>“Provided that a nomination made by those service organisations under such system of voting as may be agreed to by those service organisations, or, in default of agreement, as may be prescribed, shall be deemed to be the joint nomination of those service organisations.</p> <p>“(3) The two official members shall not be entitled to sit as members of the Tribunal at the same time, and shall mutually agree on the one to act as a member of the Tribunal during any particular application or applications. In default of agreement in any case, the Chairman shall determine by lot which official member shall so act.</p> <p>“(4) The service member and the alternate service member shall not be entitled to sit as members of the Tribunal at the same time. The service member shall sit as a member of the Tribunal, and the alternate service member shall sit in place of the service member only when the service member is unable to sit by reason of illness, absence, or other cause (whatever its nature).</p> <p>“(5) The Health Service Tribunal is hereby declared to be the same tribunal as that established under the name of the Hospital Service Tribunal by this section as originally enacted.”</p>

FOURTH SCHEDULE—*continued*

Enactment	Amendment
1977, No. 95—The State Services Conditions of Employment Act 1977— <i>continued</i>	<p>By repealing paragraph (b) of section 59 (4), and substituting the following paragraph: “(b) Every area health board and every hospital board in the case of an order by the Health Service Tribunal; and”.</p> <p>By omitting from section 81 (1) the word “Hospital” in both places where it occurs, and substituting in each case the word “Health”.</p> <p>By repealing so much of the Second Schedule as relates to section 52 of the Hospitals Act 1957.</p>
1977, No. 110—The Higher Salaries Commission Act 1977	By repealing so much of the Fifth Schedule as relates to section 52 of the Hospitals Act 1957.
1980, No. 142—The State Services Conditions of Employment Amendment Act 1980	By repealing subsections (5) and (6) of section 2.
1981, No. 114—The Hospitals Amendment Act 1981	By repealing sections 3 to 9.

This Act is administered in the Department of Health.
