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Health Practitioners Competence Assurance Act 2003

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Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Health.

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1 Title

This Act is the Health Practitioners Competence Assurance Act 2003.

Part 1
Preliminary and key provisions

Preliminary provisions

2 Commencement

- (1) This section and sections 1, 5, 6, and 222 come into force on the day on which this Act receives the Royal assent.

- (2) Sections 52 to 63, and 177 come into force on the 28th day after the date on which this Act receives the Royal assent.
- (3) Sections 11 to 14, section 114(2) to (5), sections 115 to 117, section 118(a), sections 119 to 122, and clauses 1 to 16 of Schedule 3 come into force on the day that is 3 months after the date on which this Act receives the Royal assent.
- (4) The amendments in Schedule 4 to the Health and Disability Commissioner Act 1994 and to the Social Workers Registration Act 2003 (other than to section 4 of the latter Act) come into force—
 - (a) on the day that is 12 months after the date on which this Act receives the Royal assent if section 59 of the Social Workers Registration Act 2003 is in force on that day; or
 - (b) if section 59 of the Social Workers Registration Act 2003 is not in force on that day, then on the day on which that section comes into force.
- (5) The rest of this Act comes into force on the day that is 1 year after the date on which this Act receives the Royal assent.

3 Purpose of Act

- (1) The principal purpose of this Act is to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions.
- (2) This Act seeks to attain its principal purpose by providing, among other things,—
 - (a) for a consistent accountability regime for all health professions; and
 - (b) for the determination for each health practitioner of the scope of practice within which he or she is competent to practise; and
 - (c) for systems to ensure that no health practitioner practises in that capacity outside his or her scope of practice; and
 - (d) for power to restrict specified activities to particular classes of health practitioner to protect members of the public from the risk of serious or permanent harm; and
 - (e) for certain protections for health practitioners who take part in protected quality assurance activities; and
 - (f) for additional health professions to become subject to this Act.

4 Outline

- (1) Part 1 is concerned with preliminary matters, such as the definitions of terms used in the Act. It also contains certain key provisions. These include provisions that—
 - (a) prohibit persons who are not qualified to be registered as health practitioners of a profession from claiming or implying to be health practitioners of that profession:

- (b) prohibit persons other than registered health practitioners of a profession with current practising certificates from claiming to be practising the profession:
 - (c) prohibit health practitioners from practising their professions without current practising certificates or from practising their professions outside their scopes of practice:
 - (d) authorise the making of Orders in Council restricting the provision of the whole or part of certain health services to health practitioners who are permitted to perform those activities by their scopes of practice.
- (2) Part 2 sets out the conditions that a health professional must meet in order to practise as a health practitioner under this Act. The Part includes provisions that—
- (a) require every health practitioner to be registered for a scope of practice:
 - (b) require applicants for registration—
 - (i) to have the qualifications prescribed by the responsible authority for the applicant’s intended scope of practice; and
 - (ii) to be competent to practise within that scope of practice; and
 - (iii) to be fit for registration, which includes the ability to communicate effectively for the purposes of practising within that scope of practice:
 - (c) stop a health practitioner from practising without a current practising certificate:
 - (d) stop the authority, in the case of applications for practising certificates, from approving those applications unless the authority is satisfied that the health practitioners concerned are competent to practise in accordance with their scopes of practice.
- (3) Part 3 provides mechanisms for improving the competence of health practitioners and for protecting the public from health practitioners who practise below the required standard of competence or who are unable to perform the required functions. These mechanisms include competence reviews, competence programmes, recertification programmes, medical examinations, and protected quality assurance activities. The Part also contains provisions that—
- (a) allow health practitioners to notify the responsible authority if they have reason to believe that another health practitioner may pose a risk of harm to the public by practising below the required standard of competence:
 - (b) enable the responsible authority to order the interim suspension of a health practitioner’s practising certificate if there are reasonable grounds for believing that the practitioner poses a risk of serious harm to the public by practising below the required standard of competence:

- (c) enable the responsible authority to order the suspension of a health practitioner if the authority is satisfied that the practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition or if the practitioner has not complied with a requirement for a medical examination:
 - (d) enable the Minister to confer protection on quality assurance activities conducted to improve the practices or competence of health practitioners and so protect the confidentiality of information that becomes known solely as a result of those activities and give those engaged in those activities immunity from civil liability.
- (4) Part 4 provides for the establishment by each authority of professional conduct committees to investigate complaints referred to the authority by the Health and Disability Commissioner. Professional conduct committees are also required to investigate the circumstances of certain offences committed by health practitioners. The Part also establishes a single tribunal, called the Health Practitioners Disciplinary Tribunal, to hear and determine charges brought against practitioners by the Director of Proceedings or by a professional conduct committee.
- (5) Part 5 provides for appeals to the District Court against the decisions of an authority, and for appeals to the High Court against decisions of the Health Practitioners Disciplinary Tribunal.
- (6) Part 6 continues certain registration authorities as authorities under the Act. It also establishes the Midwifery Council, the Osteopathic Council, and the Pharmacy Council. The Part also contains provisions that—
 - (a) enable additional health professions to be designated under the Act and authorities to be appointed for such additional professions:
 - (b) set out the functions of authorities. These include—
 - (i) prescribing the qualifications required for scopes of practice:
 - (ii) authorising the registration of health practitioners:
 - (iii) reviewing and maintaining the competence of health practitioners:
 - (iv) setting standards of clinical competence, cultural competence, and ethical conduct:
 - (v) setting programmes to ensure the ongoing competence of health practitioners:
 - (c) provide for the membership of authorities:
 - (d) confer certain powers on the Minister in relation to authorities:
 - (e) require authorities to maintain public registers of health practitioners.
- (7) Part 7 contains (in subpart 1) miscellaneous provisions, including provisions of general application (such as, for example, a provision on the way notice is to be given under the Act), consequential amendments, repeals, savings, and (in sub-

part 2) transitional provisions, including provisions for the continued recognition of the registration of health practitioners who were, immediately before the expiry of 1 year beginning on the date on which this Act received the Royal assent, registered under a health-registration statute.

- (8) This section is only a guide to the general scheme of this Act.

Section 4(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

5 Interpretation

- (1) In this Act, unless the context otherwise requires,—

Accident Compensation Corporation means the corporation of that name continued by section 259 of the Injury Prevention, Rehabilitation, and Compensation Act 2001

applicant means a person who makes an application under this Act

authority means a body corporate appointed, by or under this Act, as the body that is, in accordance with this Act, responsible for the registration and oversight of practitioners of a particular health profession

condition includes a restriction or limit

former health practitioner means a person who was, but no longer is, registered with an authority

Health and Disability Commissioner means the Health and Disability Commissioner appointed under the Health and Disability Commissioner Act 1994

health practitioner or **practitioner** means a person who is, or is deemed to be, registered with an authority as a practitioner of a particular health profession

health profession or **profession** means the practice of a profession in respect of which an authority is appointed by or under this Act

health service means a service provided for the purpose of assessing, improving, protecting, or managing the physical or mental health of individuals or groups of individuals

layperson means a person who is neither registered nor qualified to be registered as a health practitioner

medical officer of health has the same meaning as in section 2(1) of the Health Act 1956

mental or physical condition means any mental or physical condition or impairment; and includes, without limitation, a condition or impairment caused by alcohol or drug abuse

Minister means the Minister of Health

oversight means professional support and assistance provided to a health practitioner by a professional peer for the purposes of professional development

practise a profession or **practise** means to perform services that fall within the description of a health profession

practising certificate means an annual practising certificate issued under section 26(3) or section 29(4) or an interim practising certificate issued under section 31

prescribed qualification means a qualification for the time being prescribed under section 12 for a scope of practice

professional peer, in relation to a health practitioner, is a person who is registered with the same authority with which the health practitioner is registered

register, in relation to an authority, means the register maintained by the authority under section 136

Registrar, in relation to an authority, means the Registrar of the authority appointed under section 151

required standard of competence, in relation to a health practitioner, means the standard of competence reasonably to be expected of a health practitioner practising within that health practitioner's scope of practice

responsible authority, in relation to—

- (a) a health profession, means the authority appointed in respect of the profession:
- (b) a health practitioner, an applicant, or a former health practitioner, means the authority responsible for the registration of practitioners of the profession that the person concerned practises or seeks to practise or has practised

scope of practice—

- (a) means any health service that forms part of a health profession and that is for the time being described under section 11; and
- (b) in relation to a health practitioner of that profession, means 1 or more of such health services that the practitioner is, under an authorisation granted under section 21, permitted to perform, subject to any conditions for the time being imposed by the responsible authority

supervision means the monitoring of, and reporting on, the performance of a health practitioner by a professional peer

Tribunal means the Health Practitioners Disciplinary Tribunal established by section 84.

- (2) A reference in this Act to an authority responsible for a profession is a reference to the authority that is appointed in respect of the profession concerned.
- (3) In Parts 4 and 5, **health practitioner** includes a former health practitioner.

Section 5(1) **medical practitioner**: repealed, on 12 April 2019, by section 4 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

5A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 5A: inserted, on 12 April 2019, by section 5 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

6 Act binds the Crown

This Act binds the Crown.

Key provisions

7 Unqualified person must not claim to be health practitioner

- (1) A person may only use names, words, titles, initials, abbreviations, or descriptions stating or implying that the person is a health practitioner of a particular kind if the person is registered, and is qualified to be registered, as a health practitioner of that kind.
- (2) No person may claim to be practising a profession as a health practitioner of a particular kind or state or do anything that is calculated to suggest that the person practises or is willing to practise a profession as a health practitioner of that kind unless the person—
 - (a) is a health practitioner of that kind; and
 - (b) holds a current practising certificate as a health practitioner of that kind.
- (3) No person may make an express or implied statement about another person that the other person is prohibited by subsection (1) or subsection (2) from making about himself or herself.
- (4) Subsection (2) does not prohibit a person from stating his or her willingness to practise a profession for the purposes of seeking employment if the person is, or would on obtaining that employment be, qualified to be registered as a health practitioner of that profession and to hold a current practising certificate as a health practitioner of that profession.
- (5) Every person commits an offence punishable on conviction by a fine not exceeding \$10,000 who contravenes this section.

Compare: 1995 No 95 ss 9(1), 10(1)

Section 7(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

8 Health practitioners must not practise outside scope of practice

- (1) Every health practitioner who practises the profession in respect of which he or she is registered must have a current practising certificate issued by the responsible authority.
- (2) No health practitioner may perform a health service that forms part of a scope of practice of the profession in respect of which he or she is registered unless he or she—

- (a) is permitted to perform that service by his or her scope of practice; and
 - (b) performs that service in accordance with any conditions stated in his or her scope of practice.
- (3) Nothing in subsection (1) or subsection (2) applies to a health practitioner who performs health services—
- (a) in an emergency; or
 - (b) as part of a course of training or instruction; or
 - (c) in the course of an examination, assessment, or competence review required or ordered by the responsible authority.

9 Certain activities restricted to particular health practitioners

- (1) The Governor-General may, from time to time, by Order in Council made on the recommendation of the Minister, declare an activity that constitutes or forms part of a health service to be a restricted activity.
- (2) Before the Minister makes a recommendation under subsection (1), the Minister must consult about his or her proposal for the recommendation with any organisation that the Minister considers—
- (a) will be affected by the proposal; or
 - (b) whose members will be affected by the proposal.
- (3) The Minister may recommend that an Order in Council under this section be made only if, after consulting under subsection (2), he or she is satisfied that members of the public risk serious or permanent harm if the activity is performed by persons other than health practitioners who are permitted by their scopes of practice to perform that activity.
- (4) No person may perform, or state or imply that he or she is willing to perform, an activity that, by an Order in Council made under this section, is declared to be a restricted activity unless the person is a health practitioner who is permitted by his or her scope of practice to perform that activity.
- (5) Despite subsection (4), a person does not contravene that subsection by performing an activity—
- (a) in an emergency; or
 - (b) in the course of training or instruction and under the control of a health practitioner of the kind described in that subsection; or
 - (c) in the course of an examination, assessment, or competence review required or ordered by the responsible authority.
- (6) Every person commits an offence punishable on conviction by a fine not exceeding \$30,000 who contravenes subsection (4).
- (7) An Order in Council under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 9(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 9(7): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

10 Power to issue search warrants in respect of offences against section 7 or section 9

- (1) A search warrant may be issued under section 6 of the Search and Surveillance Act 2012 in respect of an offence which has been or is suspected to have been committed against section 7 or section 9 or which is believed to be intended to be committed against either section, even though the offence is not punishable by imprisonment.
- (1A) A person who is authorised in writing by the Director-General of Health to apply for search warrants in relation to the offences referred to in subsection (1) may apply for such a warrant under section 6 of the Search and Surveillance Act 2012 as if that person were a constable.
- (2) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.
- (3) It is declared that a person who, under subpart 6 of Part 4 of the Search and Surveillance Act 2012 (as applied by subsection (2)), has custody of any thing seized under a warrant provided for by subsection (1), may disclose any information contained in or derived from the thing only—
 - (a) for the purposes of subpart 6 of Part 4 of that Act (as so applied); or
 - (b) for the purposes of investigating or prosecuting an offence; or
 - (c) for the purpose of an appeal or other application that relates to an offence; or
 - (d) for the purpose of complying with any enactment or any order or direction of a court of competent jurisdiction.

Section 10(1): amended, on 1 October 2012, by section 256(2) of the Search and Surveillance Act 2012 (2012 No 24).

Section 10(1A): inserted, on 1 October 2012, by section 256(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 10(2): replaced, on 1 October 2012, by section 256(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 10(3): amended, on 1 October 2012, by section 256(5)(a) of the Search and Surveillance Act 2012 (2012 No 24).

Section 10(3)(a): amended, on 1 October 2012, by section 256(5)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Part 2

Registration of, and practising certificates for, health practitioners

Prescribed scopes of practice, qualifications, and experience

11 Authorities must specify scopes of practice

- (1) Each authority appointed in respect of a profession must, by notice published in the *Gazette*, describe the contents of the profession in terms of 1 or more scopes of practice.
- (2) A scope of practice may be described in any way the authority thinks fit, including, without limitation, in any 1 or more of the following ways:
 - (a) by reference to a name or form of words that is commonly understood by persons who work in the health sector:
 - (b) by reference to an area of science or learning:
 - (c) by reference to tasks commonly performed:
 - (d) by reference to illnesses or conditions to be diagnosed, treated, or managed.

12 Qualifications must be prescribed

- (1) Each authority must, by notice published in the *Gazette*, prescribe the qualification or qualifications for every scope of practice that the authority describes under section 11.
- (2) In prescribing qualifications under subsection (1), an authority may designate 1 or more of the following as qualifications for any scope of practice that the authority describes under section 11:
 - (a) a degree or diploma of a stated kind from an educational institution accredited by the authority, whether in New Zealand or abroad, or an educational institution of a stated class, whether in New Zealand or abroad:
 - (b) the successful completion of a degree, course of studies, or programme accredited by the authority:
 - (c) a pass in a specified examination or any other assessment set by the authority or by another organisation approved by the authority:
 - (d) registration with an overseas organisation that performs functions that correspond wholly or partly to those performed by the authority:
 - (e) experience in the provision of health services of a particular kind, including, without limitation, the provision of such services at a nominated institution or class of institution, or under the supervision or oversight of a nominated health practitioner or class of health practitioner.

- (3) A notice under subsection (1) may state that 1 or more qualifications or experience of 1 or more kinds, or both, is required for each scope of practice that the authority describes under section 11.
- (4) An authority must monitor every New Zealand educational institution that it accredits for the purpose of subsection (2)(a), and may monitor any overseas educational institution that it accredits for that purpose.
- (5) An authority may, at any time, give notice to an educational institution accredited under subsection (2)(a) that the institution's accreditation is revoked.
- (6) The revocation of an educational institution's accreditation does not affect the registration of a health practitioner who qualified to practise within a scope of practice on the basis of having a degree or diploma from that institution.

Section 12(5): inserted, on 12 April 2019, by section 6 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 12(6): inserted, on 12 April 2019, by section 6 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

13 Principles guiding the prescribing of qualifications

In prescribing qualifications under section 12, each authority must be guided by the following principles:

- (a) the qualifications must be necessary to protect members of the public; and
- (b) the qualifications may not unnecessarily restrict the registration of persons as health practitioners; and
- (c) the qualifications may not impose undue costs on health practitioners or on the public.

14 Provisions relating to notices under sections 11 and 12

- (1) An authority may at any time, by notice in the *Gazette*, amend, revoke, or replace a notice under section 11 or section 12.
- (1A) The amendment, revocation, or replacement of a notice published under section 12 does not affect the registration of a health practitioner who qualified to practise within a scope of practice on the basis of having had a prescribed qualification for that scope of practice under the notice before the notice was amended, revoked, or replaced.
- (2) Before an authority publishes a notice under section 11 or section 12 or under this section, the authority must have consulted about its proposal for the contents of the notice—
 - (a) with persons who the authority considers are able to represent the views of health practitioners, or of classes of health practitioner, registered with the authority; and
 - (b) with organisations—
 - (i) that the authority considers will be affected by the proposal; or

- (ii) whose members the authority considers will be affected by the proposal.
- (3) Each authority must ensure that an up-to-date version of each notice that the authority has published under section 11 or section 12 is—
 - (a) available on the Internet; and
 - (b) available at the office of the authority during business hours, so that members of the public may—
 - (i) inspect the notice free of charge; or
 - (ii) obtain a photocopy of the notice for a reasonable fee.
- (4) A notice published under section 11 or 12 is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (5) Before the commencement of section 114(1), this section and sections 11 to 13 apply to each body that is referred to in column 1 of Schedule 2 as if it were already appointed as an authority under this Act in respect of the profession specified opposite to it in column 2 of that schedule.

Section 14(1A): inserted, on 12 April 2019, by section 7 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 14(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Registration of practitioners and authorisations of scopes of practice

15 Requirements for registration of practitioners

- (1) The authority appointed in respect of a health profession may register an applicant as a health practitioner permitted to practise within a scope of practice if the applicant—
 - (a) is fit for registration in accordance with section 16; and
 - (b) has the qualifications that are prescribed, under section 12, for that scope of practice; and
 - (c) is competent to practise within that scope of practice.
- (2) An authority may, for the purposes of subsection (1)(b), treat any overseas qualification as a prescribed qualification if, in the opinion of the authority, that qualification is equivalent to, or as satisfactory as, a prescribed qualification.
- (3) An authority may vary a prescribed qualification in any case where the authority—
 - (a) proposes to limit the health services that the applicant will be permitted to perform; and
 - (b) is satisfied that the varied qualification is adequate—
 - (i) for the performance of those health services; and

- (ii) for the protection of the public.

16 Fitness for registration

No applicant for registration may be registered as a health practitioner of a health profession if—

- (a) he or she does not satisfy the responsible authority that he or she is able to communicate effectively for the purposes of practising within the scope of practice in respect of which the applicant seeks to be, or agrees to be, registered; or
- (b) he or she does not satisfy the responsible authority that his or her ability to communicate in and comprehend English is sufficient to protect the health and safety of the public; or
- (c) he or she has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer, and he or she does not satisfy the responsible authority that, having regard to all the circumstances, including the time that has elapsed since the conviction, the offence does not reflect adversely on his or her fitness to practise as a health practitioner of that profession; or
- (d) the responsible authority is satisfied that the applicant is unable to perform the functions required for the practice of that profession because of some mental or physical condition; or
- (e) he or she is the subject of professional disciplinary proceedings in New Zealand or in another country, and the responsible authority believes on reasonable grounds that those proceedings reflect adversely on his or her fitness to practise as a health practitioner of that profession; or
- (f) he or she is under investigation, in New Zealand or in another country, in respect of any matter that may be the subject of professional disciplinary proceedings, and the responsible authority believes on reasonable grounds that that investigation reflects adversely on his or her fitness to practise as a health practitioner of that profession; or
- (g) he or she—
 - (i) is subject to an order of a professional disciplinary tribunal (whether in New Zealand or in another country) or to an order of an educational institution accredited under section 12(2)(a) or to an order of an authority or of a similar body in another country; and
 - (ii) does not satisfy the responsible authority that that order does not reflect adversely on his or her fitness to practise as a health practitioner of that profession; or

- (h) the responsible authority has reason to believe that the applicant may endanger the health or safety of members of the public.

Compare: 1995 No 95 s 13

17 Applications for registration of health practitioners and authorisations of scopes of practice

- (1) This section applies to every application by—
 - (a) a person who applies to be registered as a health practitioner permitted to practise within a scope of practice; and
 - (b) every health practitioner who applies for a change in the authorisation of his or her existing scope of practice.
- (2) Every application to which this section applies must be made to the responsible authority, and must—
 - (a) be made in a form, and contain the information, that is determined by the authority; and
 - (b) be accompanied by—
 - (i) an indication of the scope of practice within which the applicant proposes to practise, or, as the case requires, an indication of the changes the applicant wishes to have made to his or her existing scope of practice; and
 - (ii) any evidence in support of the application that is required by the authority; and
 - (iii) the fee (if any) set by the authority.
- (3) On receipt by the Registrar of a duly completed application made in accordance with this section, the Registrar must promptly—
 - (a) ascertain whether the Registrar is able to consider and determine the application under a delegation given to the Registrar under clause 17 of Schedule 3; or
 - (b) if that is not the case, submit the application to the authority for its consideration.
- (4) If any fine imposed on a health practitioner under section 101, or any costs payable under an order made under that section, or any costs or expenses payable under an order made under section 92(4), remains unpaid, the Registrar may decline to do any act, or to permit any act to be done, in relation to the registration of that health practitioner until the fine or costs or expenses are paid.
- (4A) If any fine, costs, or expenses imposed on a former health practitioner by or under a former registration Act remain unpaid, the Registrar may decline to do any act, or to permit any act to be done, in relation to the registration of that health practitioner until the fine, costs, or expenses are paid.

- (5) If, in accordance with subsection (4) or (4A), the Registrar declines to do any act, or to permit any act to be done, in relation to the registration of a health practitioner, that health practitioner may, by application in writing made to the authority, request the authority to review the Registrar's decision, and, on any such application,—
- (a) the authority must, as soon as practicable, review the Registrar's decision, and must either confirm or revoke that decision; and
- (b) the Registrar's decision has effect, or ceases to have effect, accordingly.
- (6) Subsections (4) and (4A) override subsection (3).
- (7) In subsection (4A),—

former health practitioner means an applicant who, at any time, has been—

- (a) registered under a former registration Act; or
- (b) deemed to be registered under a former registration Act

former registration Act has the meaning given to it by section 178(1).

Section 17(4A): inserted, on 12 April 2019, by section 8(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 17(5): amended, on 12 April 2019, by section 8(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 17(6): replaced, on 12 April 2019, by section 8(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 17(7): inserted, on 12 April 2019, by section 8(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

18 Applications for re-registration

If, under section 102, the Tribunal has imposed any conditions that must be satisfied by a person before he or she may apply to have his or her name restored to the register, the authority may not authorise the registration of that person unless the authority is satisfied that the person has satisfied those conditions.

Compare: 1995 No 95 s 35

19 Authority may obtain information about application

- (1) An authority must consider a duly completed application for registration or for a change in the authorisation of an existing scope of practice as soon as reasonably practicable after receiving it.
- (2) The authority may, if it thinks fit, receive any information from, or question, the applicant, or any other person, in respect of an application being considered by the authority; for the purposes of any such questioning, the authority may administer an oath to any person.
- (3) Before the authority questions any other person about the applicant under subsection (2), the authority must advise the applicant about the identity of the persons to be questioned and the nature of the questions.

- (4) The authority may, if it thinks fit, require—
- (a) any person to verify by statutory declaration any statement made by the person in respect of an application being considered by the authority; and
 - (b) the applicant to authorise the authority to obtain from an educational institution, whether in New Zealand or abroad, certified copies of any degree or diploma on which the applicant's application is based; and
 - (c) the applicant to provide the authority with a certificate from a nominated institute or body that the applicant is a person of good standing with the institute or body.
- (5) The authority may, before authorising the registration of an applicant or, as the case requires, authorising a change to the applicant's existing scope of practice, require the applicant to take and pass an examination or assessment that is set or recognised by the authority, for the purpose of satisfying the authority in respect of either or both of the following:
- (a) that the applicant is competent to practise, in New Zealand, within the scope of practice in respect of which the applicant seeks to be, or agrees to be, registered;
 - (b) that the applicant's ability to communicate in and comprehend English is sufficient to protect the health and safety of the public.
- (6) A requirement under subsection (5) is part of the process of considering the application and is not to be taken as a proposal to decline the application.

Compare: 1995 No 95 s 34(1)–(4)

20 Authority must inform applicant that it proposes to depart from indicated scope of practice or to decline application

- (1) In assessing an application under section 17, an authority must consider whether the applicant is qualified and competent to practise within the indicated scope of practice submitted by the applicant under section 17(2)(b)(i).
- (2) If the scope of practice that an authority proposes to authorise for an applicant differs from that indicated by the applicant under section 17(2)(b)(i), whether in respect of conditions to be stated or otherwise, the authority must inform the applicant in writing why it proposes to authorise a different scope of practice.
- (3) If, in assessing an application under section 17, the authority proposes to decline the application, the authority must inform the applicant in writing why the authority proposes to decline the application.
- (4) When the authority informs an applicant under subsection (2) or subsection (3), the authority must also give the applicant—
 - (a) a copy of any information on which the authority relies in proposing to authorise a different scope of practice or to decline the application; and

- (b) a reasonable opportunity to make written submissions and be heard, either personally or by his or her representative, in respect of the matter.
- (5) Subsection (4)(a) is subject to section 154.
Compare: 1995 No 95 s 34(5)

21 Authority may authorise scope of practice or changed scope of practice

- (1) The responsible authority may authorise a scope of practice for an applicant who applies to be registered as a health practitioner.
- (2) The responsible authority may authorise any changes to the existing scope of practice of a health practitioner who applies for a change in the authorisation of his or her scope of practice.
- (3) A change determined under subsection (2) may consist of any 1 or more of the matters described in section 22(2).
- (4) If an applicant is, under section 20(4)(b), entitled to an opportunity to make written submissions and be heard, an authorisation under subsection (1) or subsection (2) may be determined only after the applicant has had that opportunity.

22 Contents of authorisation of scope of practice

- (1) An authorisation, under section 21, of a scope of practice must state the scope of practice by describing the health services that the applicant is, subject to any conditions included in the authorisation, permitted to perform.
- (2) An authorisation, under section 21, of a change to a scope of practice must state the change involved by reference to 1 or more of the following matters:
 - (a) the health services that the applicant is permitted to perform:
 - (b) the cancellation or variation of any condition that forms part of the applicant's scope of practice:
 - (c) the inclusion in the applicant's scope of practice of any new conditions.
- (3) Any conditions included in a scope of practice under subsection (1) must be of a kind that the authority considers are required to ensure the competent practice of the applicant, and, without limitation, may include any of the following:
 - (a) a condition that the applicant practise subject to the supervision of 1 or more nominated health practitioners or health practitioners of a stated class:
 - (b) a condition that the applicant practise subject to the oversight of 1 or more nominated health practitioners or health practitioners of a stated class:
 - (c) a condition that the applicant not perform any task of a stated kind or that he or she perform those tasks only in stated circumstances:
 - (d) a condition that the applicant practise only in a stated capacity, for example, as an employee of a nominated person or a person of a stated class:

- (e) a condition that the applicant practise in association with 1 or more nominated persons or persons of a stated class:
- (f) a condition that the applicant practise only for a specified period:
- (g) a condition that the applicant attain 1 or more further stated qualifications or attain further experience of a stated kind:
- (h) any condition that the authority believes on reasonable grounds to be necessary to protect the safety of the public.

23 Assessment of practitioners practising under supervision

If an authorisation of a scope of practice requires the inclusion in the scope of practice of a condition referred to in section 22(3)(a) that the applicant practise under supervision, the authorisation may also include the following conditions in the scope of practice:

- (a) that 1 or more of the health practitioners, under whose supervision the applicant practises, assess, and report to the authority at intervals specified by the authority (whether generally or in relation to any particular case or class of case) on, the performance of the applicant; and
- (b) that each of those reports set out a recommendation as to whether the condition requiring the applicant to practise subject to supervision should continue to apply.

Compare: 1995 No 95 s 16(4)

24 Decisions of authority on registration

- (1) As soon as the responsible authority authorises a scope of practice for an applicant, the applicant is authorised to be registered as a health practitioner, and the Registrar must promptly register the applicant by entering in the register the information about the applicant required under section 138(1).
- (2) The Registrar must promptly notify an applicant who has been registered of the applicant's registration, the scope of practice in respect of which he or she has been registered, and the reasons for any conditions included in the applicant's scope of practice.
- (3) If the authority, after considering an application for registration, decides that the applicant should not be registered, the Registrar must promptly notify the applicant of the decision and the reasons for it.

Compare: 1995 No 95 s 36

25 Decisions of authority on change to existing scope of practice

- (1) As soon as practicable after the responsible authority authorises a change in the existing scope of practice within which a health practitioner is permitted to practise, the Registrar must enter the change in the register and promptly notify the health practitioner of the change and of the reasons for any conditions included in the applicant's scope of practice.

- (2) If the authority, after considering an application for a change to a scope of practice, decides that the change should not be authorised, the Registrar must promptly notify the health practitioner of the decision and the reasons for it.

Practising certificates

26 Applications for annual practising certificate

- (1) Every health practitioner who wishes to obtain an annual practising certificate must apply to the Registrar of the responsible authority in accordance with this section.
- (2) Every application for an annual practising certificate must—
 - (a) be in the form, and include the information, that is determined by the authority, including a statement specifying whether or not the applicant is, at the date of the application, practising the profession in respect of which the authority is appointed; and
 - (b) be accompanied by the fee (if any) set by the authority.
- (3) If, after receiving a duly completed application under this section, the Registrar considers that none of the cases stated in section 27(1) applies to the applicant, the Registrar must issue to the applicant an annual practising certificate.
- (4) Despite subsection (3), if any fine imposed on a health practitioner under section 101, or any costs payable under an order made under that section, or any costs or expenses payable under an order made under section 92(4), remains unpaid, the Registrar may advise that practitioner in writing that the Registrar will decline to issue a practising certificate to that practitioner until the fine or costs or expenses are paid.
- (5) If, under subsection (4), the Registrar declines to issue a practising certificate to a health practitioner, the practitioner may, by written application to the authority, request the authority to review the Registrar's decision, and, on any such application,—
 - (a) the authority must, as soon as practicable, review the Registrar's decision, and must either confirm or revoke that decision; and
 - (b) the Registrar's decision has effect, or ceases to have effect, accordingly.

Compare: 1995 No 95 s 51

27 Restrictions on issue of annual practising certificate

- (1) Subsection (2) applies to an application for an annual practising certificate to the authority concerned if the Registrar believes on reasonable grounds that—
 - (a) the applicant has, at any time, failed to maintain the required standard of competence; or
 - (b) the applicant has failed to fulfil, or has failed to comply with, a condition included in the applicant's scope of practice; or

- (c) the applicant has not satisfactorily completed the requirements of any competence programme that he or she has been ordered by the authority to complete; or
 - (d) the applicant has not held an annual practising certificate of a kind sought by the application within the 3 years immediately preceding the date of the application; or
 - (e) the applicant is unable to perform the functions required for the applicant's profession because of some mental or physical condition; or
 - (f) the applicant has not, within the 3 years immediately preceding the date of application, lawfully practised the profession to which the application relates.
- (2) If this subsection applies to an application, the Registrar must promptly—
- (a) ascertain whether the Registrar is able to consider and determine the application under a delegation given to the Registrar under clause 17 of Schedule 3; or
 - (b) if that is not the case, submit the application to the authority for its consideration.
- (3) The Registrar or the authority may decline to issue an annual practising certificate if satisfied that any information included in the application is false or misleading.
- (4) Before the Registrar or the authority decides to decline to issue an annual practising certificate under subsection (3), the Registrar or, as the case requires, the authority must—
- (a) inform the health practitioner concerned in writing why the Registrar or, as the case requires, the authority believes that the information is false or misleading; and
 - (b) give the health practitioner a reasonable opportunity to make written submissions and to be heard on the question, either personally or by his or her representative.

Compare: 1995 No 95 s 52

28 Procedure for considering applications

- (1) Each authority must promptly consider an application for an annual practising certificate that the Registrar submits to the authority.
- (2) If the authority proposes to decline an application for an annual practising certificate, or to include or vary conditions in the health practitioner's scope of practice, it must give the applicant—
 - (a) a notice containing enough particulars to inform the applicant clearly of the substance of the grounds on which the authority proposes to decline the application, or to include or vary any conditions; and

- (b) a copy of any information on which the authority relies in proposing to decline the application, or to include or vary any conditions; and
 - (c) a reasonable opportunity to make written submissions and be heard, either personally or by his or her representative, in respect of the application.
- (3) Subsection (2)(b) is subject to section 154.
Compare: 1995 No 95 s 53

29 Decisions of authority as to practising certificate and scope of practice

- (1) When an application for an annual practising certificate has been referred to the authority concerned by the Registrar, the authority must not decide that the certificate should be issued unless it is satisfied that the applicant meets the required standard of competence.
- (2) In order to satisfy the criterion stated in subsection (1), the authority may include new conditions in the applicant's scope of practice or may vary existing conditions in that scope of practice.
- (3) The authority, after considering any application for an annual practising certificate, may decide that the applicant should be issued with an annual practising certificate, either with changes, determined under subsection (2), to the applicant's scope of practice or without such changes.
- (4) As soon as practicable after the authority makes a decision under subsection (3), the Registrar must—
 - (a) issue the certificate to the applicant electronically or in hard copy form; and
 - (b) notify the applicant in writing of the reasons for any conditions included in the health practitioner's scope of practice; and
 - (c) make any necessary amendments to the registration of the health practitioner's scope of practice.
- (5) The authority, after considering an application for an annual practising certificate, may decide that—
 - (a) the applicant should not be issued with an annual practising certificate until the applicant has fulfilled 1 or more conditions determined by the authority; or
 - (b) the applicant should not be issued with an annual practising certificate.
- (6) As soon as practicable after the authority makes a decision under subsection (5), the Registrar must notify the applicant in writing of the decision and the reasons for it.
- (7) If the authority declines an application for an annual practising certificate under subsection (5)(a), it may, nevertheless, authorise the issue of an interim

practising certificate to the applicant under section 31, pending fulfilment of the conditions imposed.

Compare: 1995 No 95 s 54

Section 29(4)(a): replaced, on 12 April 2019, by section 9 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

30 Currency of annual practising certificate

- (1) An annual practising certificate is in force for a period decided by the authority (generally or in any particular case).
- (2) The period must be stated in the certificate, and must be no longer than 1 year from the date the certificate is issued.
- (3) Every health practitioner who has submitted an application, accompanied by the fee (if any) set by the authority, for a renewal of an annual practising certificate under section 26(1) is to be treated as the holder of that certificate from the date when the authority receives the application until the date it is issued or he or she is sooner notified by the Registrar that it will not be issued.

Compare: 1995 No 95 s 55(3)

31 Interim practising certificate

- (1) If, under section 29(7), an authority authorises the issue of an interim practising certificate, the Registrar must, on payment by the applicant of the fee (if any) set by the authority, issue the interim practising certificate (electronically or in hard copy form), which—
 - (a) is in force for a period stated in the certificate that may not be longer than 12 months after the date of its issue or any extension; and
 - (b) is subject to any conditions that the authority specifies.
- (2) The authority may at any time authorise the extension of an issued interim certificate by a further period stated in the certificate that may not be longer than 12 months after the date on which the interim certificate was originally issued.
- (3) The interim practising certificate is cancelled if, at any time during the currency of an interim practising certificate,—
 - (a) the holder of the certificate ceases to be registered; or
 - (b) an annual practising certificate is issued to the holder of the certificate.
- (4) The authority may at any time order the Registrar to cancel any interim practising certificate and give notice of the cancellation, and the reasons for it, to the health practitioner concerned.

Compare: 1995 No 95 s 57

Section 31(1): amended, on 12 April 2019, by section 10 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

32 Scope of practice must be endorsed on practising certificates

The Registrar must endorse on every annual practising certificate or interim practising certificate issued to a health practitioner the health practitioner's scope of practice.

Compare: 1995 No 95 s 58

33 Surrender of practising certificate

- (1) This section applies to a health practitioner who receives notice that his or her—
 - (a) name is removed from the register; or
 - (b) registration or practising certificate is suspended; or
 - (c) practising certificate is required to be endorsed by the Registrar under section 32.
- (2) If the practitioner's practising certificate was issued electronically, the practitioner must, within 14 days after receiving the notice, send to the Registrar an acknowledgement of receipt of the notice.
- (3) If the practitioner's practising certificate was issued in hard copy form, the practitioner must, within 14 days after receiving the notice, send to the Registrar his or her practising certificate.
- (4) Every person commits an offence and is liable on conviction to a fine not exceeding \$2,000 who, being required to comply with subsection (2) or (3), fails to comply with that subsection.

Section 33: replaced, on 12 April 2019, by section 11 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Part 3

Competence, fitness to practise, and quality assurance

34 Notification that practice below required standard of competence

- (1) If a health practitioner (**health practitioner A**) has reason to believe that another health practitioner (**health practitioner B**) may pose a risk of harm to the public by practising below the required standard of competence, health practitioner A may give the Registrar of the authority that health practitioner B is registered with written notice of the reasons on which that belief is based.
- (2) If a person holding office as Health and Disability Commissioner or as Director of Proceedings under the Health and Disability Commissioner Act 1994 has reason to believe that a health practitioner may pose a risk of harm to the public by practising below the required standard of competence, the person must promptly give the Registrar of the responsible authority written notice of the circumstances on which that belief is based.

- (3) Whenever an employee employed as a health practitioner resigns or is dismissed from his or her employment for reasons relating to competence, the person who employed the employee immediately before that resignation or dismissal must promptly give the Registrar of the responsible authority written notice of the reasons for that resignation or dismissal.
- (4) No civil or disciplinary proceedings lie against any person in respect of a notice given under this section by that person, unless the person has acted in bad faith.

35 Authority must notify certain persons of risk of harm to public

- (1) Whenever an authority that a health practitioner is registered with has reason to believe that the practice of the health practitioner may pose a risk of harm to the public, the authority must promptly give the following persons written notice of the circumstances that have given rise to that belief:
 - (a) the Accident Compensation Corporation;
 - (b) the Director-General of Health;
 - (c) the Health and Disability Commissioner;
 - (d) any person who, to the knowledge of the authority, is the employer of the health practitioner.
- (2) Whenever an authority that a health practitioner is registered with has reason to believe that the practice of the health practitioner may pose a risk of harm to the public, the authority may give written notice to any person who works in partnership or in association with the practitioner of the circumstances that have given rise to that belief.
- (3) If, after giving notice under this section in respect of a health practitioner, the authority forms the view that the practice of the health practitioner never posed, or no longer poses, a risk of harm to the public, the authority must promptly notify every recipient of the notice under this section of the current position in respect of the health practitioner.
- (4) Promptly after giving a notice under this section about a health practitioner, the Registrar of the authority must give a copy of the notice to the practitioner.

36 When authority may review health practitioner's competence

- (1) Promptly after receiving a notice of the kind described in subsection (2), an authority must make inquiries into, and may review, the competence of a health practitioner who is registered with the authority and who holds a current practising certificate.
- (2) The notices referred to in subsection (1) are—
 - (a) a notice of a professional conduct committee's recommendation under section 80(2)(a) or section 79(b), so far as that recommendation relates to competence; or

- (b) a notice given under section 34.
- (3) Subsection (1) does not apply if the authority has reason to believe that a notice given under section 34 by a health practitioner is frivolous or vexatious.
- (3A) An authority that receives a notice under section 34(1) or (2) must inform the person from whom the notice was received as to whether it has decided to conduct a review of the competence of the health practitioner who is the subject of the notice.
- (4) The responsible authority may at any time review the competence of a practitioner who holds a current practising certificate, whether or not—
 - (a) there is reason to believe that the practitioner’s competence may be deficient; or
 - (b) the authority receives a notice of the kind described in subsection (2).
- (5) In conducting a review under this section, the authority must consider whether, in the authority’s opinion, the health practitioner’s practice of the profession meets the required standard of competence.

Compare: 1995 No 95 s 60

Section 36(3A): inserted, on 12 April 2019, by section 12 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

37 Matters to be observed in reviewing competence

- (1) The form of a review under section 36 is at the authority’s discretion, but in every case the authority must give the health practitioner under review—
 - (a) a notice containing sufficient particulars to inform that health practitioner clearly of the substance of the grounds (if any) on which the authority has decided to carry out the review; and
 - (b) information relevant to his or her competence that is in the possession of the authority; and
 - (c) a reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative.
- (2) When a health practitioner exercises the right under subsection (1)(c) to be heard personally, the practitioner is entitled to the presence of a support person of his or her choice.
- (3) Subsection (1)(b) is subject to section 154.

38 Orders concerning competence

- (1) If, after conducting a review under section 36, the authority has reason to believe that a health practitioner fails to meet the required standard of competence, the authority must make 1 or more of the following orders:
 - (a) that the health practitioner undertake a competence programme;
 - (b) that 1 or more conditions be included in the health practitioner’s scope of practice:

- (c) that the health practitioner sit an examination or undertake an assessment specified in the order:
 - (d) that the health practitioner be counselled or assisted by 1 or more nominated persons.
- (2) If the authority is unable to conduct or complete a review of a health practitioner under section 36 because of the health practitioner's failure to respond adequately to a notice under section 37, the authority has, for the purposes of subsection (1), reason to believe that the health practitioner fails to meet the required standard of competence.
- (3) If an order is made under this section following receipt of a notice given under section 34(1) or (2), the Registrar of the authority must, as soon as practicable after the making of the order, inform the person from whom the notice was received that an order under subsection (1)(a), (b), (c), or (d), as the case may be, has been made.

(4) *[Repealed]*

Compare: 1995 No 95 s 61

Section 38(3): replaced, on 12 April 2019, by section 13 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 38(4): repealed, on 12 April 2019, by section 13 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

39 Interim suspension of practising certificate or inclusion of conditions in scope of practice pending review or assessment

- (1) This subsection applies to a health practitioner if—
- (a) the health practitioner has been, or is to be, reviewed under section 36; and
 - (b) there are reasonable grounds for believing that the health practitioner poses a risk of serious harm to the public by practising below the required standard of competence.
- (2) If subsection (1) applies to a health practitioner, the responsible authority may order that—
- (a) the practising certificate of the health practitioner be suspended; or
 - (b) the health practitioner's scope of practice be altered—
 - (i) by changing any health services that the practitioner is permitted to perform; or
 - (ii) by including any condition or conditions that the authority considers appropriate.
- (3) The authority may not make an order under subsection (2) unless it has first—
- (a) informed the health practitioner concerned why it is considering making the order; and

- (b) given the health practitioner a reasonable opportunity to make written submissions and be heard on the question, either personally or by his or her representative.
- (4) If an order is made under this section following a review conducted on receipt of a notice given under section 34(1) or (2), the Registrar of the responsible authority must, as soon as practicable after the making of the order, inform the person from whom the notice was received that an order under subsection (2)(a), (b)(i) or (ii), as the case may be, has been made.
- (5) An order under subsection (2) ceases to have effect on the later of—
 - (a) the completion of the review; or
 - (b) the attainment of a pass in any examination or assessment specified in the order under section 38(1)(c).

Section 39(4): replaced, on 12 April 2019, by section 14 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

40 Competence programmes

- (1) For the purpose of maintaining, examining, or improving the competence of health practitioners to practise the profession in respect of which an authority is appointed, the authority may from time to time set or recognise competence programmes in respect of health practitioners who hold or apply for practising certificates.
- (2) Any competence programme may be made to apply generally in respect of all such health practitioners, or in respect of a specified health practitioner, or in respect of any specified class or classes of such health practitioners.
- (3) Any competence programme may require a health practitioner to do any 1 or more of the following, within a period, or at intervals, prescribed in the programme:
 - (a) pass any examinations or assessments, or both:
 - (b) complete a period of practical training:
 - (c) complete a period of practical experience:
 - (d) undertake a course of instruction:
 - (e) permit another health practitioner specified by the authority to examine the clinical records of the health practitioner in relation to his or her clients:
 - (f) undertake a period of supervised practice.
- (4) The authority may specify a period within which the health practitioners to which a competence programme applies must comply with the requirements of the programme.
- (5) The authority may exempt any health practitioner or class of health practitioner from all or any of the requirements of a competence programme.

- (6) Within 20 working days after a competence programme is set or recognised by the authority, the Registrar must notify every health practitioner who is required to undertake the programme of that fact and of the details of the programme.

Compare: 1995 No 95 s 62

41 Recertification programmes

- (1) For the purpose of ensuring that health practitioners are competent to practise within the scopes of practice in respect of which they are registered, each authority may from time to time set or recognise recertification programmes for practitioners who are registered with the authority.
- (2) A recertification programme may be made to apply generally in respect of all health practitioners, or in respect of a specified health practitioner, or in respect of a specified class or classes of health practitioner.
- (3) A recertification programme may require a practitioner to do any 1 or more of the following at intervals (if any) prescribed in the programme:
- (a) pass any examinations or assessments, or both:
 - (b) complete a period of practical training:
 - (c) undertake a course of instruction:
 - (d) permit a health practitioner specified by the authority to examine—
 - (i) any or all of his or her clinical and other practices:
 - (ii) any or all of his or her relations with other health practitioners:
 - (iii) any or all of the clinical records of the practitioner in relation to his or her patients or clients:
 - (e) undergo an inspection:
 - (f) adopt and undertake a systematic process for ensuring that the services provided by the practitioner meet the required standard of competence.
- (4) Every recertification programme must allow a reasonable time for a practitioner to whom it relates to comply with its requirements.
- (5) The authority may exempt any health practitioner or class of health practitioner from all or any of the requirements of a recertification programme.
- (6) Within 20 working days after a recertification programme is set or recognised by the authority, the Registrar must notify every health practitioner who is required to undertake the programme of that fact and of the details of the programme.

Compare: 1995 No 95 s 63

42 Health practitioners may be required to make records available

An authority that is reviewing the competence of a health practitioner or that has set a competence programme or recertification programme for a health

practitioner may, for the purposes of the review or programme, inspect all or any of the clinical records of the health practitioner, and that health practitioner must make those records available for those purposes to any person duly authorised by the authority.

43 Unsatisfactory results of competence programme or recertification programme

- (1) If a health practitioner who is required to complete a competence programme or a recertification programme does not satisfy the requirements of the programme, the responsible authority may make either of the following orders:
 - (a) that the health practitioner's scope of practice be altered—
 - (i) by changing any health services that the practitioner is permitted to perform; or
 - (ii) by including any condition or conditions that the authority considers appropriate:
 - (b) that the practitioner's registration be suspended.
- (2) If the authority proposes to make an order under subsection (1), it must give to the health practitioner concerned—
 - (a) a notice stating—
 - (i) why the authority proposes to make the order; and
 - (ii) that he or she has a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by his or her representative; and
 - (b) a copy of any information on which the authority is relying in proposing to make the order.
- (3) The notice under subsection (2)(a)(i) must contain sufficient detail to inform the person clearly of the particular grounds for the proposal to make the order.
- (4) Any order made under subsection (1) remains in effect until the health practitioner concerned has satisfied all the requirements of the competence programme or, as the case requires, the recertification programme, and for that purpose the authority may, on the application of the practitioner, extend the period within which the practitioner is required to satisfy those requirements.
- (5) The failure of a health practitioner to satisfy the requirements of any competence programme or recertification programme that applies to the health practitioner is not, of itself, a ground for taking disciplinary action under Part 4 against that health practitioner.
- (6) Subsection (2)(b) is subject to section 154.

Compare: 1995 No 95 s 64

44 Confidentiality of information

- (1) No person who examines any clinical records of any health practitioner under a requirement of a competence review, competence programme, or recertification programme may disclose any information (being information about any identifiable individual) obtained by that person as a result of that examination, except for 1 or more of the following purposes:
 - (a) for the purpose of making a report to the authority in relation to the health practitioner concerned;
 - (b) for the purposes of any criminal investigation or any criminal proceedings taken against that health practitioner;
 - (c) for the purpose of making the information available to the person to whom the information relates in any case where—
 - (i) the authority directs that the information be made available; or
 - (ii) the person requests access to the information.
- (2) Subsection (1)(c)(ii) does not affect the Privacy Act 1993.
- (3) Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 who discloses any information in contravention of subsection (1).
- (4) No information, statement, or admission that is disclosed or made by any health practitioner in the course of, or for the purposes of satisfying the requirements of, any competence review, competence programme, or recertification programme and that relates to any conduct of that health practitioner (whether that conduct occurred before or during that review or programme)—
 - (a) may be used or disclosed for any purpose other than the purposes of that review or programme; or
 - (b) is admissible against that person, or any other person, in any proceedings in any court or before any person acting judicially.

Compare: 1995 No 95 s 65

Section 44(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Inability to perform required functions***45 Notification of inability to perform required functions due to mental or physical condition**

- (1) Subsection (2) applies to a person who—
 - (a) is in charge of an organisation that provides health services; or
 - (b) is a health practitioner; or
 - (c) is an employer of health practitioners; or
 - (d) is a medical officer of health.

- (2) If a person to whom this subsection applies has reason to believe that a health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the person must promptly give the Registrar of the responsible authority written notice of all the circumstances.
- (3) If any person has reason to believe that a health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the person may give the Registrar written notice of the matter.
- (4) Subsection (5) applies to a person in charge of an educational programme in New Zealand that includes or consists of a course of study or training (a **course**) that is a prescribed qualification for a scope of practice of a health profession.
- (5) If a person to whom this subsection applies has reason to believe that a student who is completing a course would be unable to perform the functions required for the practice of the relevant profession because of some mental or physical condition, the person must promptly give the Registrar of the responsible authority written notice of all the circumstances.
- (6) No civil or disciplinary proceedings lie against any person in respect of a notice given under this section by that person, unless the person has acted in bad faith.

Compare: 1995 No 95 s 76

46 Power to seek medical advice

- (1) When a person contemplates giving a Registrar notice under section 45, he or she may seek whatever medical advice, whether psychiatric or otherwise, he or she considers appropriate to assist him or her in forming his or her opinion.
- (2) Any notice given under section 45 must state any medical advice obtained under this section in respect of that notice.

Compare: 1995 No 95 s 77

47 Duty of Registrar

On receiving a notice given under section 45, the Registrar must take all reasonable steps to have the notice considered by the authority as soon as reasonably practicable.

Compare: 1995 No 95 s 78

48 Interim suspension of practising certificate or inclusion of conditions in scope of practice in cases of suspected inability to perform required functions due to mental or physical condition

- (1) This section applies to a health practitioner if the authority considers (whether or not as a result of a notice given under section 45 or of a recommendation made under section 79) that the health practitioner may be unable to perform

the functions required for the practice of his or her profession because of some mental or physical condition.

- (2) If subsection (1) applies to a health practitioner, the responsible authority may order that for a period of not more than 20 working days from the date that a copy of the order is given to the health practitioner under subsection (6)—
 - (a) the practising certificate of the health practitioner be suspended; or
 - (b) the health practitioner's scope of practice be altered—
 - (i) by changing any health services that the practitioner is permitted to perform; or
 - (ii) by including any condition or conditions that the authority considers appropriate.
- (3) The authority may order that the period of an order made under subsection (2) be extended by a further period of not more than 20 working days if that extension is necessary for any examination or testing required under section 49.
- (4) The authority is not obliged to give the health practitioner notice that the authority intends to make an order under this section.
- (5) If an order is made under this section following receipt of a notice given under section 45, the Registrar of the authority must, as soon as practicable after the making of the order, inform the person from whom the notice was received that an order under subsection (2)(a), (b)(i) or (ii), as the case may be, has been made.
- (6) *[Repealed]*

Compare: 1995 No 95 s 79

Section 48(1): amended, on 12 April 2019, by section 15(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 48(3): amended, on 12 April 2019, by section 15(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 48(5): replaced, on 12 April 2019, by section 15(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 48(6): repealed, on 12 April 2019, by section 15(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

49 Power to order examination or testing

- (1) If the responsible authority considers (whether or not as a result of a notice given under section 45 or of a recommendation made under section 79) that a health practitioner may be unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the authority may, by notice given to the health practitioner, require him or her to submit himself or herself for examination or testing by an assessor at the expense of the authority.
- (2) Every notice given under this section must—
 - (a) specify—

- (i) the mental or physical condition that may make the health practitioner unable to perform the functions required for the practice of his or her profession; and
 - (ii) the name and address of the assessor who is to conduct the examination or test; and
 - (iii) a date by which the examination or test is to be conducted, being a date that is not less than 5 working days after the date on which the notice is given to the health practitioner, to submit himself or herself for examination or testing; and
- (b) be signed by the Registrar.
- (3) Before giving a notice under this section, the authority must endeavour to consult with the health practitioner about the assessor who is to conduct the examination or test.
- (4) A health practitioner who is required by a notice given under this section to submit himself or herself for examination or testing by an assessor may have another person chosen by him or her attend the examination or testing as an observer.
- (5) An assessor who conducts an examination or a test under this section may consult any other practitioner who the assessor considers is able to assist in the completion of the examination or test.
- (6) When an assessor has examined or tested a health practitioner under this section, he or she must, as soon as reasonably practicable after the examination or test, make a written report to the Registrar of the responsible authority on whether or not the practitioner has the mental or physical condition stated under subsection (2) and, if that is the case, the extent, if any, to which that condition affects the practitioner's ability to perform the functions required for the practice of his or her profession.
- (7) The Registrar must, promptly after receiving a report under subsection (6), send a copy to the health practitioner to whom the report relates.
- (8) In this section and section 50, **assessor** means a medical practitioner or any other health practitioner.

Compare: 1995 No 95 s 80

Section 49 heading: replaced, on 12 April 2019, by section 16(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 49(1): amended, on 12 April 2019, by section 16(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 49(2)(a)(ii): amended, on 12 April 2019, by section 16(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 49(3): amended, on 12 April 2019, by section 16(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 49(4): amended, on 12 April 2019, by section 16(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 49(5): replaced, on 12 April 2019, by section 16(4) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 49(6): amended, on 12 April 2019, by section 16(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 49(8): inserted, on 12 April 2019, by section 16(5) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

50 Restrictions may be imposed in case of inability to perform required functions

- (1) Subsection (2) applies if a health practitioner has been given a notice under section 49; and
 - (a) either—
 - (i) the health practitioner has not, by the time specified in the notice, submitted himself or herself for examination or testing by the assessor named in the notice; or
 - (ii) the Registrar of the responsible authority has received a written report in respect of the health practitioner from the assessor named in the notice; and
 - (b) the authority has given the health practitioner a reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative.
- (2) The authority must consider the report (if any) and all the relevant circumstances of the case.
- (3) The authority may order that the health practitioner's registration be suspended if the authority has considered the case of the health practitioner and the authority is satisfied that—
 - (a) the health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition; or
 - (b) the health practitioner has not submitted himself or herself for examination or testing in accordance with a notice under section 49.
- (4) The authority may order that conditions be included in the practitioner's scope of practice if the authority has considered the case of the practitioner and the authority is satisfied that the practitioner is able to perform the functions required for the practice of his or her profession, but only if those conditions are observed.
- (5) If an order is made under subsection (3) or (4) following receipt of a notice given under section 45, the Registrar of the authority must, as soon as practicable after the making of the order, inform the person from whom the notice was received that an order under subsection (3) or (4), as the case may be, has been made.
- (6) *[Repealed]*

(7) *[Repealed]*

Compare: 1995 No 95 s 81

Section 50(1)(a)(i): amended, on 12 April 2019, by section 17(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 50(1)(a)(ii): amended, on 12 April 2019, by section 17(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 50(5): replaced, on 12 April 2019, by section 17(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 50(6): repealed, on 12 April 2019, by section 17(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 50(7): repealed, on 12 April 2019, by section 17(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

51 Revocation of suspension or conditions

- (1) An authority may at any time make an order revoking any suspension that it has imposed under section 39, 48, 50, or 67A if it is satisfied that the health practitioner concerned is again able to practise the health practitioner's profession satisfactorily.
- (2) The authority may at any time make an order revoking any conditions or changes imposed under section 39, 48, 50, 67A, or 69A if it is satisfied that those conditions or changes are no longer necessary.
- (3) The authority may make an order varying a condition imposed under section 39, 48, 50, 67A, or 69A if it is satisfied that the variation should have been part of the original order or is required by a change in circumstances.
- (4) The authority may not make an order under subsection (3) otherwise than in accordance with an application from the health practitioner concerned unless it has first—
 - (a) informed the health practitioner why it may vary the condition; and
 - (b) given the health practitioner a reasonable opportunity to make written submissions on the proposed variation, and be heard on the question, either personally or by his or her representative.
- (5) An order under this section may be made on the application of the health practitioner or on the authority's own initiative.
- (6) If an order is made under this section, the Registrar of the responsible authority must, as soon as practicable after the making of the order,—
 - (a) ensure that a copy of the order is given to any person who,—
 - (i) under section 39(4), has received a copy of an order made under section 39 to which the revocation relates; or
 - (ii) under section 48(5) or 50(5), has received a copy of an order made under section 48 or 50 to which the revocation relates; and
 - (b) take all administrative steps necessary to give effect to the order.

(7) An order under this section takes effect immediately.

Compare: 1995 No 95 s 82

Section 51(1): amended, on 12 April 2019, by section 18(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 51(2): amended, on 12 April 2019, by section 18(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 51(3): amended, on 12 April 2019, by section 18(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 51(6): replaced, on 12 April 2019, by section 18(4) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Quality assurance activities

52 Purpose of sections 54 to 63

The purpose of sections 54 to 63 is to encourage effective quality assurance activities in relation to health services performed by health practitioners by—

- (a) protecting the confidentiality of—
 - (i) information that becomes known solely as a result of such activities; and
 - (ii) documents brought into existence solely for the purposes of such activities; and
- (b) giving immunity from civil liability to persons who engage in such activities in good faith.

Compare: 1995 No 95 s 67

53 Interpretation

- (1) In sections 52 to 63, unless the context otherwise requires,—

health practitioner means,—

- (a) in the period commencing with the commencement of this section and ending on the day that is 1 year after the date on which this Act receives the Royal assent, a registered health professional within the meaning of section 4 of the Health and Disability Commissioner Act 1994; and
- (b) after that period, a health practitioner as defined in section 5(1)

investigation means any of the following:

- (a) the proceedings of a Royal Commission or a commission of inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908:
 - (aa) an inquiry to which section 6 of the Inquiries Act 2013 applies:
- (b) the proceedings of an inquiry board appointed under the New Zealand Public Health and Disability Act 2000:
- (c) an inquiry required by the Director of Mental Health under section 95 of the Mental Health (Compulsory Assessment and Treatment) Act 1992:

- (d) an inquiry conducted by the Director-General of Health:
- (e) an inquiry or investigation conducted by the Health and Disability Commissioner:
- (f) an inquiry conducted by the Police

judicial proceeding means any proceeding that is a judicial proceeding within the meaning of section 108 of the Crimes Act 1961

Ministerial authority means an authority given by the Minister under section 61 and for the time being in force

protected quality assurance activity means a quality assurance activity in respect of which a notice issued under section 54 is in force when the activity is engaged in

quality assurance activity—

- (a) means an activity that is undertaken to improve the practices or competence of 1 or more health practitioners by assessing the health services performed by those health practitioners (whenever those services are or were performed); and
- (b) includes the following acts that are done in the course of, or as a result of, that activity:
 - (i) the whole or part of any assessment or evaluation:
 - (ii) the whole or part of a study of the incidence or causes of conditions or circumstances that may affect the quality of health services performed by 1 or more of those health practitioners:
 - (iii) any preparation for that assessment, evaluation, or study:
 - (iv) making recommendations about the performance of those services:
 - (v) monitoring the implementation of those recommendations

serious offence means an offence punishable by imprisonment for a term of 2 years or more

sponsor, in relation to a quality assurance activity, means the person or association of persons on whose initiative and under whose guidance the activity is undertaken, continued, or resumed.

- (2) For the purposes of sections 54 to 63,—
 - (a) information about a matter may not be taken to have become known merely because of the existence or dissemination of suspicions, allegations, or rumours about that matter:
 - (b) information may be taken to have become known solely as a result of a protected quality assurance activity, even though the information was previously known to a person whose conduct has been or is being inves-

tigated by the persons engaging in the protected quality assurance activity:

- (c) information is not to be taken to have become known solely as a result of a protected quality assurance activity if, after a person has been requested to respond to, or give evidence in, a judicial proceeding or an investigation, the information is disclosed in the course of a protected quality assurance activity wholly or partly for the purpose of preventing its disclosure in the judicial proceeding or the investigation:
- (d) information that has become known solely as a result of a protected quality assurance activity (not being information of the kind described in paragraph (c)) may be disclosed in a judicial proceeding or an investigation only if its disclosure is permitted by section 59 or section 60.

Compare: 1995 No 95 s 66

Section 53(1) **investigation** paragraph (aa): inserted, on 27 August 2013, by section 39 of the Inquiries Act 2013 (2013 No 60).

54 Application for, and conferral of, protection on quality assurance activity

- (1) The sponsor of a quality assurance activity may apply for the activity to be protected by forwarding an application to the Minister.
- (2) An application under subsection (1) must—
 - (a) comply with any requirements for the time being in force under subsection (5); and
 - (b) nominate a person who is to be responsible for the activity and who is suitable for appointment under section 55.
- (3) The Minister may from time to time, by written notice, declare a quality assurance activity to be protected on being satisfied that—
 - (a) the sponsor of the activity has duly completed an application under subsection (1); and
 - (b) the person nominated as the person responsible for the activity is suitable for appointment under section 55; and
 - (c) it is in the public interest that the protections conferred by sections 59 to 62 should apply in respect of the activity.
- (4) Every notice issued under subsection (3), unless sooner revoked, remains in force for a period of 5 years and is revoked at the end of that 5-year period.
- (4A) Subsection (4) does not prevent the Minister from issuing another notice in respect of the same quality assurance activity.
- (5) The Director-General of Health may from time to time, by notice in the *Gazette*, state requirements relating to the form, content, and quality standards of an application under subsection (1); and such requirements may, without limitation, require statements in the application to be verified by statutory declaration.

Section 54(4): replaced, on 17 December 2016, by section 57 of the Statutes Amendment Act 2016 (2016 No 104).

Section 54(4A): inserted, on 17 December 2016, by section 57 of the Statutes Amendment Act 2016 (2016 No 104).

55 Minister must appoint person responsible for activity

- (1) When the Minister declares a quality assurance activity to be protected under section 54, the Minister must also, by written notice and in accordance with the nomination in the application for the declaration, appoint the person who is to be responsible for the activity.
- (2) The Minister may, by written notice, on the nomination of the sponsor of a protected quality assurance activity, appoint a person to fill a vacancy in the position of person responsible for the activity.
- (3) A person may be appointed under this section only if—
 - (a) the person is a natural person who, in the opinion of the Minister, is sufficiently independent of the health practitioners whose services are to be assessed or evaluated through the quality assurance activity; and
 - (b) the person has not been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer; and
 - (c) the person has not been adjudged bankrupt under the Insolvency Act 2006.

Section 55(3)(c): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

56 Revocation of protection or revocation of appointment of person responsible

- (1) The Minister may at any time,—
 - (a) by written notice, revoke a notice issued under section 54; or
 - (b) by written notice, revoke the appointment of a person responsible for a protected quality assurance activity if, in the Minister's opinion, the person has neglected his or her duties or is not able to perform those duties or has ceased to be suitable for appointment under section 55(3).
- (2) A notice, issued under section 54, in respect of a protected quality assurance activity or the appointment of a person responsible for a protected quality assurance activity may, without limitation to the generality of subsection (1), be revoked if—
 - (a) the person has failed to comply with section 58; or
 - (b) each of the reports provided by the person under section 58 in the previous 2 years has, in the Minister's opinion, been unsatisfactory, taking into account the subject matter of the quality assurance activity; or

- (c) the progress of the quality assurance activity has, in the Minister's opinion, been unsatisfactory, taking into account the subject matter of the activity.
- (3) Before the Minister revokes a notice issued under section 54 or revokes the appointment of a person responsible for a protected quality assurance activity, the Minister must—
- (a) inform the person why the Minister believes that the notice or the appointment should be revoked; and
 - (b) give the person a reasonable opportunity to make written submissions in respect of the matter.

57 Consequence of not replacing person responsible for activity in certain cases

A quality assurance activity ceases to be a protected quality assurance activity if—

- (a) there is a vacancy in the position of person responsible for the activity because of the revocation of the person's appointment or because of the person's death or resignation; and
- (b) on the 31st working day after the day on which the vacancy occurred, the vacancy has not been filled under section 55(2).

58 Reporting requirements

- (1) Within 2 months after the expiry of each period of 1 year (the **reporting period**) that follows the date of a notice under section 54 declaring a quality assurance activity to be protected, the person for the time being appointed to be responsible for the activity must give each provider of health services (the **provider**) who has, or whose employees or agents have, been assessed in the reporting period through the activity a report relating to the reporting period that sets out information on the following matters:
- (a) any problems or issues concerning the operations of the provider that have been identified in the course of the activity;
 - (b) any action that has been taken, as a result of the activity, to resolve or address the problems or issues stated under paragraph (a);
 - (c) any recommendations that have been, or are to be, made to the provider as a result of the activity;
 - (d) the manner in which the implementation of the recommendations stated under paragraph (c) is to be monitored;
 - (e) the manner in which improvements in the competence or practice of the provider or any of the agents or employees of the provider are to be monitored.

- (2) Within 2 months after the expiry of each period of 1 year (the **reporting period**) that follows the date of a notice under section 54 declaring a quality assurance activity to be protected, the person for the time being appointed to be responsible for the activity must give the Minister a report that contains the information set out in the reports given by the person under subsection (1) to providers in respect of the reporting period.
- (3) A report given under subsection (2) may not identify, either expressly or by implication, a particular individual.
- (4) Subsection (2) is subject to subsection (3).
- (5) As soon as practicable after the person for the time being appointed to be responsible for a protected quality assurance activity gives a provider or the Minister a report under this section, the person must give the sponsor of the activity a copy of the report.

Section 58(1): amended, on 12 April 2019, by section 19 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

59 Confidentiality of information

- (1) Subject to section 60, no person who obtains any information that became known solely as a result of a protected quality assurance activity may, except for the purposes of that activity (including compliance with the reporting requirements under section 58) or in accordance with a Ministerial authority,—
 - (a) make a record of that information; or
 - (b) disclose that information to another person or in any judicial proceeding or investigation.
- (2) Subsection (1) applies whether the person obtained the information in the course of engaging in the protected quality assurance activity or as a result of a disclosure in accordance with a Ministerial authority or in any other way.
- (3) Subject to section 60, no person may be required—
 - (a) to produce in any judicial proceeding or investigation any document that was brought into existence solely for the purposes of the quality assurance activity; or
 - (b) to disclose in any judicial proceeding or investigation any information that became known solely as a result of any such activity.
- (4) Subsection (3) does not apply if it is necessary to produce a document or disclose information for the purposes of a protected quality assurance activity or in accordance with a Ministerial authority.
- (5) Even though an activity has since ceased to be a protected quality assurance activity, this section continues to apply in respect of—
 - (a) information that became known solely as a result of the activity at any time when it was a protected quality assurance activity; and

- (b) documents brought into existence solely for the purposes of that activity at any time when it was a protected quality assurance activity.
- (6) Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 who acts in contravention of subsection (1).

Compare: 1995 No 95 ss 70, 142(1)(b)

Section 59(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

60 Exceptions to prohibition on disclosure

- (1) Nothing in section 59 prohibits the production, disclosure, or recording of any information that does not identify, either expressly or by implication, a particular individual.
- (2) Nothing in section 59 prohibits the production or disclosure of a document that does not identify, either expressly or by implication, a particular individual.
- (3) Nothing in section 59 prohibits the disclosure of any information with the consent of every person who would be directly or indirectly identified by the disclosure.
- (4) Nothing in section 59 prohibits the disclosure of any information to the Minister, or to any person authorised by the Minister, for the purpose of enabling the Minister to decide whether or not to authorise the disclosure of the information under section 61.
- (5) Nothing in section 59 prohibits the disclosure of any information for the purposes of the prosecution of an offence against section 59(6).
- (6) Nothing in section 59 prohibits the production or disclosure of information to a mortality review committee in accordance with a requirement of the chairperson of the committee, or of an agent appointed by the committee, under clause 2 of Schedule 5 of the New Zealand Public Health and Disability Act 2000.

Compare: 1995 No 95 s 71

61 Minister may authorise disclosure of information

- (1) If the Minister is satisfied, in respect of any information to which section 59 applies, that the information relates to conduct (whenever occurring) that constitutes or may constitute a serious offence, the Minister may, by notice in writing signed by the Minister, authorise the disclosure of that information, in any manner and on any conditions that are specified in the notice, for any 1 or more of the following purposes:
 - (a) for the purposes of the investigation and prosecution of offences:
 - (b) for the purposes of a Royal Commission, or a commission of inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908, or an inquiry board appointed under the New Zealand Public Health and Disability Act 2000:

- (c) for the purposes of an inquiry to which section 6 of the Inquiries Act 2013 applies.
- (2) Subsection (1) does not authorise the Minister to authorise the disclosure of information of a non-factual nature (such as expressions of opinion) unless the information consists only of matter contained in a report prepared by a person who engaged in the protected quality assurance activity.
- (3) The Minister may at any time—
 - (a) revoke any Ministerial authorisation under subsection (1); or
 - (b) revoke, amend, or add to any condition imposed on a Ministerial authorisation under subsection (1).
- (4) The fact that a Ministerial authorisation authorises the disclosure of information does not—
 - (a) require the disclosure of that information; or
 - (b) create a duty to disclose that information.

Compare: 1995 No 95 s 72

Section 61(1)(c): inserted, on 27 August 2013, by section 39 of the Inquiries Act 2013 (2013 No 60).

62 Exclusion of liability

- (1) No civil or disciplinary proceedings lie against any person in respect of conduct engaged in in good faith in connection with a protected quality assurance activity.
- (2) This section continues to apply in respect of conduct that was engaged in by any person in connection with a protected quality assurance activity, even though that activity has since ceased to be a protected quality assurance activity.

Compare: 1995 No 95 s 73

63 Application of Legislation Act 2012 to notices under section 54

A notice issued under section 54, and an amendment or revocation of a notice issued under that section, is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 63: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Part 4

Complaints and discipline

Referral of complaints and interim suspensions

64 Complaints about practitioners

- (1) Whenever the responsible authority receives a complaint alleging that the practice or conduct of a health practitioner has affected a health consumer, the authority must promptly forward the complaint to the Health and Disability Commissioner.
- (2) This section does not apply to a complaint that an authority receives from the Health and Disability Commissioner.
- (3) In subsection (1), **health consumer** has the same meaning as in the Health and Disability Commissioner Act 1994.

65 Response to complaints referred by Health and Disability Commissioner

- (1) When the Health and Disability Commissioner refers a complaint to the responsible authority under section 34(1)(a) of the Health and Disability Commissioner Act 1994, the authority must promptly assess the complaint and consider, in light of the nature and circumstances of the complaint, the action or actions that the authority should take to respond to the complaint.
- (2) Without limiting the generality of subsection (1), the authority may decide to refer the complaint to a professional conduct committee.
- (3) If the authority decides to refer a complaint to a professional conduct committee, it must do so as soon as is reasonably practicable after it makes that decision.

Section 65(3): inserted, on 12 April 2019, by section 20 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

66 Health and Disability Commissioner must notify authority of pending complaint

The Health and Disability Commissioner must, under section 42(1) of the Health and Disability Commissioner Act 1994, notify the responsible authority of any investigation under that Act that directly concerns a health practitioner.

67 Notification of convictions

A registrar of a court in New Zealand who knows that a person convicted in the court is a health practitioner must send a notice of the conviction to the responsible authority if the conviction is for—

- (a) an offence punishable by imprisonment for a term of 3 months or longer;
or
- (b) an offence against—

- (i) the Births, Deaths, Marriages, and Relationships Registration Act 1995; or
- (ii) the Burial and Cremation Act 1964; or
- (iii) the Contraception, Sterilisation, and Abortion Act 1977; or
- (iv) the Coroners Act 2006; or
- (v) the Health Act 1956; or
- (vi) the Health and Disability Services (Safety) Act 2001; or
- (vii) the Human Tissue Act 2008; or
- (viii) the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
- (ix) the Medicines Act 1981; or
- (x) the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (xi) the Misuse of Drugs Act 1975; or
- (xii) the Radiation Safety Act 2016.

Compare: 1995 No 95 s 85

Section 67(b)(i): amended, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Section 67(b)(iv): amended, on 1 July 2007, by section 146 of the Coroners Act 2006 (2006 No 38).

Section 67(b)(vii): amended, on 1 November 2008, by section 92 of the Human Tissue Act 2008 (2008 No 28).

Section 67(b)(xii): replaced, on 7 March 2017, by section 99 of the Radiation Safety Act 2016 (2016 No 6).

67A Action to be taken by authority on receipt of notice of conviction

- (1) This section applies if a responsible authority receives a notice of conviction—
 - (a) given under section 67(a); or
 - (b) given under section 67(b) and the conviction to which the notice relates—
 - (i) is for an offence punishable by imprisonment or a fine of or exceeding \$1,000; or
 - (ii) is otherwise an offence that the authority considers raises concerns about the appropriateness of the conduct or about the safety of the practice of the health practitioner.
- (2) If this section applies, the responsible authority must, as soon as is reasonably practicable,—
 - (a) refer the notice of conviction to a professional conduct committee; or
 - (b) order the health practitioner to—
 - (i) undergo any specified medical examination and treatment; or

- (ii) undergo any specified psychological or psychiatric examination, counselling, or therapy; or
 - (iii) attend any specified course of treatment or therapy for alcohol or drug abuse.
- (3) The responsible authority may not make an order under subsection (2)(b) unless the health practitioner consents—
 - (a) to the examination, treatment, counselling, or therapy concerned; and
 - (b) to the provision to the responsible authority of a report on the outcome of the examination, treatment, counselling, or therapy.
- (4) An order made under subsection (2)(b) must specify—
 - (a) the date by which the examination, treatment, counselling, or therapy is to be conducted, being a date that is not earlier than the date on which the order is, under section 156, to be treated as having been received by the health practitioner concerned; and
 - (b) the date by which the person who has examined, treated, counselled, or provided therapy to the health practitioner must report to the responsible authority the outcome of that examination, treatment, counselling, or therapy.
- (5) After receiving a report referred to in subsection (4)(b), the responsible authority must promptly—
 - (a) arrange for a copy of the report to be sent to the health practitioner to whom the report relates; and
 - (b) consider the report.
- (6) After considering a report, the responsible authority may—
 - (a) take no further action in respect of the notice of conviction; or
 - (b) order that conditions be included in the health practitioner's scope of practice if the authority is satisfied that the practitioner is able to perform the functions required for the practice of his or her profession, but only if those conditions are observed; or
 - (c) refer the notice of conviction to a professional conduct committee.

Section 67A: inserted, on 12 April 2019, by section 21 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

68 Referral of information to professional conduct committee

- (1) If the responsible authority considers that information in its possession raises 1 or more questions about the appropriateness of the conduct or the safety of the practice of a health practitioner, it may refer the information and any or all of those questions to a professional conduct committee.
- (2) If at any time while a matter concerning a health practitioner is under consideration by a professional conduct committee the responsible authority thinks that

a further matter concerning that practitioner should form part of the committee's consideration, the authority may refer the further matter to the committee.

Section 68: replaced, on 12 April 2019, by section 22 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

69 Inclusion of conditions in health practitioner's scope of practice or interim suspension of practising certificate pending prosecution or investigation if appropriateness of practitioner's conduct in doubt

- (1) This section applies if a practitioner is alleged to have engaged in conduct that—
 - (a) is relevant to—
 - (i) a criminal proceeding that is pending against the practitioner; or
 - (ii) an investigation about the practitioner that is pending under the Health and Disability Commissioner Act 1994 or under this Act; and
 - (b) in the opinion of the responsible authority held on reasonable grounds, casts doubt on the appropriateness of the practitioner's conduct in his or her professional capacity.
- (2) If this section applies, the responsible authority may order that—
 - (a) the practising certificate of the health practitioner be suspended; or
 - (b) 1 or more conditions be included in the health practitioner's scope of practice.
- (3) The authority may not make an order under subsection (2) unless it has first—
 - (a) informed the health practitioner concerned why it may make an order under that subsection in respect of the health practitioner; and
 - (b) given the health practitioner a reasonable opportunity to make written submissions and be heard on the question, either personally or by his or her representative.
- (4) The authority must order the revocation of an order under subsection (2) as soon as practicable after—
 - (a) the authority is satisfied that the appropriateness of the practitioner's conduct in his or her professional capacity is no longer in doubt; or
 - (b) the criminal proceeding on which the practitioner's suspension is based is disposed of otherwise than by his or her conviction; or
 - (c) if the criminal proceeding on which the practitioner's suspension is based results in his or her conviction, the authority is satisfied that no disciplinary action is to be taken or continued in respect of that conviction under the Health and Disability Commissioner Act 1994 or under this Act; or

- (d) if the investigation on which the practitioner's suspension is based has been completed, the authority is satisfied that the practitioner will not be charged as a result of the investigation.
- (5) An order made under subsection (4) takes effect immediately.
Section 69 heading: replaced, on 12 April 2019, by section 23(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).
Section 69(4): amended, on 12 April 2019, by section 23(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).
Section 69(5): replaced, on 12 April 2019, by section 23(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

69A Interim suspension of practising certificate pending prosecution or investigation if risk of harm to public

- (1) This section applies if a practitioner is alleged to have engaged in conduct that—
 - (a) is relevant to—
 - (i) a criminal proceeding that is pending against the practitioner; or
 - (ii) an investigation about the practitioner that is pending under this Act or the Health and Disability Commissioner Act 1994; and
 - (b) in the opinion of the responsible authority held on reasonable grounds, poses a risk of serious harm to the public.
- (2) If this section applies, the responsible authority may order that the health practitioner's practising certificate be suspended.
- (3) The responsible authority is not obliged to give the health practitioner notice that the authority intends to make an order under this section.
- (4) The responsible authority must ensure that the health practitioner concerned is given the opportunity to—
 - (a) make written submissions on the matter; and
 - (b) be heard on the matter, either personally or by his or her representative, within 20 working days of the making of the order.
- (5) The responsible authority must revoke an order made under subsection (2) as soon as practicable after—
 - (a) the authority is satisfied that the conduct of the health practitioner does not pose a risk of serious harm to the public; or
 - (b) the criminal proceeding on which the practitioner's suspension is based is disposed of otherwise than by his or her conviction; or
 - (c) if the criminal proceeding on which the practitioner's suspension is based results in the health practitioner being convicted, the authority is satisfied that no disciplinary action in respect of that conviction is to be taken or continued under this Act or the Health and Disability Commissioner Act 1994; or

- (d) if the investigation on which the practitioner's suspension is based has been completed, the authority is satisfied that the practitioner will not be charged as a result of the investigation.
- (6) When revoking an order under subsection (5), the responsible authority may order that 1 or more conditions be included in the health practitioner's scope of practice.

Section 69A: inserted, on 12 April 2019, by section 24 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

70 No action to be taken while matter under investigation by Health and Disability Commissioner

- (1) When, in accordance with section 64, an authority notifies the Health and Disability Commissioner of a complaint or, in accordance with section 66, the Health and Disability Commissioner notifies an authority of an investigation, the authority may not take any action under this Part concerning the complaint or the subject matter of the investigation until—
 - (a) the Health and Disability Commissioner notifies the authority—
 - (i) that the matter is not to be investigated, or investigated further, under the Health and Disability Commissioner Act 1994; or
 - (ii) that the complaint or matter has been resolved; or
 - (iii) that the matter is not to be referred to the Director of Proceedings under section 45(2)(f) of that Act; or
 - (b) the Director of Proceedings notifies the authority of his or her decision under section 49 of that Act not to institute disciplinary proceedings in relation to the matter.
- (2) This section is subject to section 69.

Professional conduct committees

71 Professional conduct committees

- (1) Each authority may from time to time appoint, in relation to a particular case or cases of a particular class, a professional conduct committee consisting of—
 - (a) 2 health practitioners who are registered with the authority; and
 - (b) 1 layperson.
- (2) The authority may, if in any particular case it considers it appropriate to do so, appoint, under subsection (1), a health practitioner or, as the case requires, a layperson who is a member of the authority.
- (3) The authority must appoint one of the members of each professional conduct committee to preside at the meetings of the committee.

Compare: 1995 No 95 s 88

72 Committees may regulate own procedure

- (1) A professional conduct committee may regulate its procedure as it thinks fit.
- (2) A professional conduct committee must adopt and follow procedures that will ensure that, in relation to each matter referred to the committee, the health practitioner who is the subject of the reference, the responsible authority, and any complainant, are each kept informed about the progress of the reference.
- (3) Subsection (1) is subject to subsection (2) and the other provisions of this Act, to the rules of natural justice, and to any regulations made under this Act.

Compare: 1995 No 95 s 89(1)

73 Committees may appoint legal advisers and investigators

- (1) A professional conduct committee may appoint a legal adviser approved by the authority to advise the committee on matters of law, procedure, or evidence.
- (2) A professional conduct committee may appoint an investigator to collect information required by the committee and to investigate complaints.
- (3) A person appointed under this section must not be present during the deliberations of the committee.
- (4) The legal adviser may not, under section 91(5), represent the committee before the Tribunal at the hearing of a charge if the adviser assisted the committee in the investigation that led to the charge.

Compare: 1995 No 95 s 89(2), (3)

74 Information to be given to practitioner and complainant

- (1) Within 14 working days after a matter concerning a health practitioner is referred to a professional conduct committee, the authority must ensure—
 - (a) that the health practitioner is given written notice of—
 - (i) the particulars of the matter; and
 - (ii) the membership or intended membership of the professional conduct committee that is to consider the matter; and
 - (b) in the case of a complaint, that the complainant is given written notice of the membership or intended membership of the professional conduct committee that is to consider the matter.
- (2) As soon as reasonably practicable after a further matter concerning a health practitioner is referred to a professional conduct committee under section 68(4), the authority must ensure that the health practitioner is given written notice of the particulars of the further matter.
- (3) Subsection (1) is subject to section 154.

Compare: 1995 No 95 s 90

75 Practitioners and complainants may request changes in membership of professional conduct committee

- (1) Within 5 working days after being informed of the membership or intended membership of the professional conduct committee that is to consider a matter about a health practitioner, the practitioner or, in the case of a complaint, the complainant, may give the authority concerned notice—
 - (a) requesting that any or all of the members or intended members not be appointed as, or not act as, members of that committee; and
 - (b) stating the reasons for the request.
- (2) The authority—
 - (a) must have regard to the request; but
 - (b) need not comply with it.

Compare: 1995 No 95 s 91

76 Professional conduct committees may receive evidence

- (1) A professional conduct committee may receive as evidence any statement, document, information, or matter that, in its opinion, may assist it to deal effectively with the subject of its investigation, whether or not that statement, document, information, or matter would be admissible in a court of law.
- (2) In particular, a professional conduct committee may hear oral evidence and receive statements and submissions from any or all of the following persons:
 - (a) the health practitioner who is the subject of the committee's investigation;
 - (b) any employer of that health practitioner;
 - (c) any person in association with whom that health practitioner practises;
 - (d) if the matter referred to the committee is a complaint, the complainant;
 - (e) any clinical expert.
- (3) Despite subsections (1) and (2), a professional conduct committee must give the health practitioner who is the subject of the committee's investigation a reasonable opportunity to present evidence on each matter, including any further matter, that is referred to the committee under section 68 and forms part of the investigation.
- (4) Any complainant may be supported by a person nominated by the complainant; and that person may, with the leave of the committee, be heard at a hearing.
- (5) A professional conduct committee may require that any evidence it receives be supported by a statutory declaration in the manner provided for by section 9 of the Oaths and Declarations Act 1957.
- (6) Subsection (5) does not apply to a submission made by the health practitioner or a complainant under section 80(4).

- (7) No civil or disciplinary proceedings lie against any person in respect of any evidence given, or statements or submissions made, under this section by that person, unless the person has acted in bad faith.

77 Powers to call for information or documents

- (1) If the conditions stated in subsection (2) are satisfied, a professional conduct committee may, by notice in writing, require any person to produce to the committee any papers, documents, records, or things.
- (2) The conditions referred to in subsection (1) are that—
- (a) the members of the committee believe, on reasonable grounds, that the exercise of the powers conferred by that subsection is necessary to enable the committee to carry out its investigation; and
 - (b) the person to whom a notice under that subsection is to be given has failed to comply with a previous request to produce to the committee, within a reasonable time, the papers, documents, records, or things required by the notice; and
 - (c) the members of the committee believe, on reasonable grounds, that—
 - (i) it is not reasonably practicable to obtain the information required by the committee from another source; or
 - (ii) for the purposes of the investigation, it is necessary to obtain the papers, documents, records, or things to verify or refute information obtained from another source.

78 Compliance with requirement to provide information or document

- (1) A person who receives a notice under section 77 must, without charge, comply with the requirement stated in the notice in the manner and within the period (being not less than 10 working days after the notice is given to the person) specified in the notice.
- (2) Subsection (1) does not require a person to provide any information or produce any document that would be privileged in a court of law.
- (3) No person is required to produce to a committee any papers, records, documents, or things if compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on the person by an enactment (other than the Official Information Act 1982 or the Privacy Act 1993).
- (4) Every person commits an offence, and is liable on conviction to a fine not exceeding \$10,000, who, when required to comply with a notice given under section 77,—
- (a) refuses or fails without reasonable excuse to comply with the notice; or
 - (b) knowingly or recklessly provides information that is false or misleading in any material particular.

Section 78(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

79 Professional conduct committee may recommend suspension of practitioner's practising certificate if public at risk

If, at any time in the course of investigating a matter about a health practitioner, a professional conduct committee has reason to believe that the practitioner's practice poses a risk of serious harm to the public, the committee—

- (a) must immediately notify the responsible authority of that belief and the reasons for it; and
- (b) if, in the opinion of the committee, those reasons justify the suspension of the practitioner's practising certificate under section 39(2), section 48(2), or section 69(2), may recommend that the authority take appropriate action.

80 Recommendations and determinations of professional conduct committee

- (1) Within 14 working days after completing its investigation into a matter concerning a health practitioner, the committee must make—
 - (a) 1 or more of the recommendations specified in subsection (2); or
 - (b) one of the determinations specified in subsection (3); or
 - (c) both.
- (2) The recommendations referred to in subsection (1)(a) are—
 - (a) that the authority review the competence of the health practitioner to practise his or her profession;
 - (b) that the authority review the fitness of the health practitioner to practise his or her profession;
 - (c) that the authority review the practitioner's scope of practice;
 - (d) that the authority refer the subject matter of the investigation to the Police;
 - (e) that the authority counsel the practitioner.
- (3) The determinations referred to in subsection (1)(b) are—
 - (a) that no further steps be taken under this Act in relation to the subject matter of the investigation;
 - (b) that a charge be brought against the health practitioner before the Tribunal;
 - (c) in the case of a complaint, that the complaint be submitted to conciliation.
- (4) The committee may not make a recommendation or determination unless the health practitioner concerned and any complainant has each been given a reasonable opportunity to make written submissions and be heard on the matter

under investigation, either personally or by a representative; and for that purpose the committee must give the health practitioner and the complainant written notice of—

- (a) the latest date by which the committee will receive written submissions from the health practitioner and the complainant; and
- (b) the date on which the committee will hear persons who are entitled to be heard and wish to be heard.

Compare: 1995 No 95 s 92

81 Procedure after committee makes recommendation or determination

- (1) A professional conduct committee must give written notice of any recommendation or determination under section 80 in respect of a health practitioner, and the reasons for it, to—
 - (a) the Registrar of the responsible authority; and
 - (b) the health practitioner; and
 - (c) in the case of a complaint, the complainant.
- (2) If it decides to lay a charge against the health practitioner before the Tribunal, the professional conduct committee must—
 - (a) formulate an appropriate charge; and
 - (b) lay it before the Tribunal.
- (3) An authority that receives notice of a recommendation specified in section 80(2) must promptly consider the recommendation.

Compare: 1995 No 95 s 93

82 Settlement of complaint by conciliation

- (1) If a professional conduct committee has decided to submit a complaint to conciliation, it must appoint an independent person (the **conciliator**) to assist the health practitioner and complainant concerned to resolve the complaint by agreement.
- (2) The conciliator must, within a reasonable time after his or her appointment, provide the professional conduct committee and the responsible authority with a written report as to whether or not the complaint has been successfully resolved by agreement.
- (3) If, after consideration of the conciliator's report, the professional conduct committee thinks that the complaint has not been successfully resolved by agreement, it must promptly decide whether—
 - (a) the committee should lay a charge against the practitioner before the Tribunal; or
 - (b) the committee should make 1 or more of the recommendations specified in section 80(2) about the practitioner; or

- (c) no further steps be taken under this Act in relation to the complaint.
- (4) If the professional conduct committee decides to lay a charge before the Tribunal, it must—
 - (a) formulate an appropriate charge; and
 - (b) lay it before the Tribunal, together with a copy of the conciliator's report; and
 - (c) give a copy of the charge and the report to the practitioner, the responsible authority, and the complainant.
- (5) The costs of conciliation must be paid by the responsible authority.
- (6) If the committee makes a determination that no further steps be taken under this Act in relation to the complaint,—
 - (a) no further steps may be taken under this Act in relation to the complaint; and
 - (b) the committee must give the practitioner, the responsible authority, and complainant written notice of—
 - (i) the determination; and
 - (ii) the committee's reasons.

Compare: 1995 No 95 s 94

83 Restriction on information obtained by professional conduct committees

A professional conduct committee or a member or former member of the committee or a person who assists or has assisted the committee may use or disclose any information obtained in the course of the performance of the committee's functions only for the purposes of this Act.

Health Practitioners Disciplinary Tribunal

84 Establishment of Tribunal

This section establishes a Tribunal known as the Health Practitioners Disciplinary Tribunal.

Compare: 1995 No 95 s 96

85 Functions of Tribunal

The functions of the Tribunal are—

- (a) to hear and determine charges brought under section 91;
- (b) to exercise and perform any other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment.

Compare: 1995 No 95 s 97

86 Membership of Tribunal

- (1) The members of the Tribunal are—

- (a) a chairperson and 1 or more deputy chairpersons, each of whom must be a barrister or solicitor of the High Court of not less than 7 years' practice, whether or not he or she holds or has held judicial office; and
 - (b) the members of the panel maintained by the Minister under section 87.
- (2) The chairperson and each deputy chairperson are appointed by the Minister by notice in the *Gazette*, after consultation by the Minister with any persons that the Minister thinks fit.
- (3) No person who is a member of an authority is eligible for appointment as chairperson or as a deputy chairperson or as a member of the panel.

Compare: 1995 No 95 s 98

87 Panel

- (1) The Minister must maintain a panel of—
 - (a) practitioners of each profession, each of whom must hold a current practising certificate; and
 - (b) laypersons.
- (2) The numbers of persons appointed under subsection (1)(a) and (b) must be sufficient to enable the Tribunal to be constituted in accordance with section 88.
- (3) In considering the suitability of any person for inclusion on the panel, the Minister must have regard not only to the person's personal attributes but also to the person's knowledge and experience of matters likely to come before the Tribunal.
- (4) The name of a person must be removed from the panel if—
 - (a) the person is convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer; or
 - (b) the person dies or is, under the Insolvency Act 2006, adjudged bankrupt; or
 - (c) the Minister directs that the name of the person be removed from the panel on the grounds of inability to perform the functions of the office, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister; or
 - (d) the person becomes a member of an authority; or
 - (e) a period of 5 years has elapsed since the date on which the Minister last approved the entry of the person's name; or
 - (f) the person requests by writing addressed to the Minister that his or her name be removed.
- (5) If subsection (4)(d) or (e) applies, the name of the person must not be removed from the panel until any hearings in respect of which that person was appointed to the Tribunal have concluded.

Compare: 1995 No 95 s 99

Section 87(4)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

88 Constitution of Tribunal for hearings

For the purposes of each hearing, the Tribunal consists of—

- (a) the chairperson of the Tribunal or a deputy chairperson of the Tribunal; and
- (b) 4 persons selected by the chairperson or the deputy chairperson from the panel maintained by the Minister under section 87, of whom—
 - (i) 3 must be professional peers of the health practitioner who is the subject of the hearing; and
 - (ii) 1 must be a layperson.

89 Hearings of Tribunal

- (1) The Tribunal may from time to time, as the chairperson directs, sit in 2 or more divisions, each of which—
 - (a) has and may exercise or perform all the powers and functions of the Tribunal; and
 - (b) may exercise or perform any power or function of the Tribunal, even though another division of the Tribunal is exercising or performing a power or function of the same kind at the same time.
- (2) Hearings of the Tribunal must be held at the times and places appointed by the Tribunal or the presiding officer for the purpose.
- (3) Any hearing of the Tribunal may be adjourned by the Tribunal or the presiding officer.
- (4) No hearing may take place unless all members of the Tribunal for that hearing are present, but a decision of a majority of those members is, for the purposes of the hearing, the decision of the Tribunal.

Compare: 1995 No 95 s 100(2)–(5)

90 Further provisions relating to Tribunal in Schedule 1

The provisions set out in Schedule 1 apply to the Tribunal and its proceedings.

Procedure and decisions of Tribunal

91 Laying of charge before Tribunal

- (1) A charge against a health practitioner may be laid before the Tribunal by—
 - (a) the Director of Proceedings, in any case where the Director of Proceedings decides, under section 49 of the Health and Disability Commissioner Act 1994, that proceedings should be taken under this Part against that health practitioner; or
 - (b) a professional conduct committee, under section 81 or section 82.

- (2) Every charge laid under subsection (1) must include a statement to the effect that the Director of Proceedings or the professional conduct committee, as the case may be, has reason to believe that a ground exists entitling the Tribunal to exercise its powers under section 100.
- (3) If the charge was laid by the Director of Proceedings, it must be prosecuted at the hearing by the Director of Proceedings.
- (4) If the charge was laid by a professional conduct committee, it must be prosecuted at the hearing by that committee.
- (5) The Director of Proceedings or the professional conduct committee may be represented by counsel or otherwise.
- (6) The chairperson of the Tribunal must, as soon as reasonably practicable after the laying of the charge, convene a hearing of the Tribunal to consider the charge.

Compare: 1995 No 95 s 102

92 Notice of disciplinary proceedings to be given to practitioner

- (1) Before convening a hearing of the Tribunal to consider a charge against a health practitioner, the chairperson of the Tribunal must ensure that the practitioner is given a written notice that—
 - (a) states that the Director of Proceedings, or a professional conduct committee, as the case may be, has reason to believe that a ground exists entitling the Tribunal to exercise its powers under section 100; and
 - (b) contains sufficient particulars to inform the practitioner clearly of the substance of the ground believed to exist; and
 - (c) specifies the particulars of the charge; and
 - (d) specifies a date (being not less than 20 working days, and not more than 60 working days, after the date on which the notice is received by the practitioner) on which the Tribunal intends to hear the matter.
- (2) The appropriate executive officer of the Tribunal must also ensure that the responsible authority and any complainant are promptly given a copy of the notice.
- (3) Every notice given to a health practitioner must require the practitioner to notify the Tribunal in writing, not later than on a specified date (being not less than 10 working days after the date on which the notice is received by the practitioner), whether or not he or she wishes to be heard by the Tribunal, either personally or by his or her representative.
- (4) If a practitioner fails to notify the Tribunal as required by the notice, the practitioner is entitled to appear and be heard at the hearing only on any conditions as to payment of costs and expenses or otherwise that the Tribunal thinks fit to order.

Compare: 1995 No 95 s 103

92A Chairperson may prohibit publication of names pending hearing of charge

- (1) At any time after a notice has been given to a health practitioner under section 92(1), the parties to the proceedings may jointly apply to the chairperson of the Tribunal for an order prohibiting the publication of the name, or any particulars of the affairs, of—
 - (a) the health practitioner; or
 - (b) any other person; or
 - (c) the health practitioner and any other person.
- (2) If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the chairperson of the Tribunal is satisfied that it is desirable to do so, the chairperson may make the order sought.
- (3) An order continues in force until whichever of the following occurs first:
 - (a) the expiry of any period specified in the order;
 - (b) the order is revoked by the chairperson of the Tribunal;
 - (c) the charge against the health practitioner is heard by the Tribunal.
- (4) A person who contravenes an order without reasonable excuse commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Section 92A: inserted, on 12 April 2019, by section 25 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

93 Interim suspension of registration or imposition of restrictions on practice

- (1) Subsections (1A) and (1B) apply at any time after a notice has been given to a health practitioner under section 92(1).
 - (1A) If, in the opinion of the Tribunal held on reasonable grounds, the conduct in which the health practitioner is alleged to have engaged poses a risk of serious harm to the public, the Tribunal may order that, until the charge to which the notice relates has been disposed of, the registration of the practitioner be suspended.
 - (1B) If the Tribunal is satisfied that it is necessary or desirable to do so, having regard to the need to protect the health or safety of members of the public, the Tribunal may order that, until the charge to which the notice relates has been disposed of, the health practitioner may practise as a health practitioner only in accordance with conditions stated in the order.
- (2) The Tribunal may make an order under this section on the recommendation of the Director of Proceedings or a professional conduct committee, or on its own initiative.
- (3) The Tribunal does not have to give the health practitioner notice that it intends to make the order.
- (4) The order must—

- (a) be in writing; and
 - (b) state the reasons for it; and
 - (c) state clearly the health practitioner's right to apply to the Tribunal to have it revoked; and
 - (d) be signed by the chairperson or a deputy chairperson of the Tribunal.
- (5) The appropriate executive officer of the Tribunal must ensure that a copy of the order is promptly given to—
- (a) the health practitioner concerned; and
 - (b) the responsible authority; and
 - (c) any employer of the practitioner.
- (6) If so directed, the responsible authority must ensure that a copy of the order is promptly given to any other persons specified by the Tribunal.
- (7) On receiving a copy of an order under subsection (5)(b), the Registrar of the responsible authority must take all administrative steps necessary to give effect to the order.

Section 93(1): replaced, on 12 April 2019, by section 26(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 93(1A): inserted, on 12 April 2019, by section 26(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 93(1B): inserted, on 12 April 2019, by section 26(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 93(5): replaced, on 12 April 2019, by section 26(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 93(6): replaced, on 12 April 2019, by section 26(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 93(7): inserted, on 12 April 2019, by section 26(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

94 Health practitioner may apply for revocation of order

- (1) A health practitioner may at any time apply to the Tribunal for the variation or revocation of an order under section 93(1A) or (1B).
- (2) The application must be in writing and delivered to the appropriate executive officer of the Tribunal.
- (3) The Tribunal—
 - (a) must hear the application within 10 working days after it is received by the appropriate executive officer of the Tribunal; and
 - (b) may, as it thinks fit,—
 - (i) grant or refuse the application; or
 - (ii) in the case of conditions imposed under section 93(1B), amend or replace the conditions.

- (4) The Tribunal may also revoke or vary an order under section 93(1A) or (1B) on its own initiative.
- (5) The appropriate executive officer of the Tribunal must ensure that the health practitioner, any employer of the health practitioner, and the responsible authority are promptly given notice of the Tribunal's decision.
- (6) The Tribunal's decision takes effect immediately.

Compare: 1995 No 95 s 105

Section 94(1): amended, on 12 April 2019, by section 27(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 94(3)(b)(ii): amended, on 12 April 2019, by section 27(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 94(4): amended, on 12 April 2019, by section 27(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

95 Hearings to be public unless Tribunal orders otherwise

- (1) Every hearing of the Tribunal must be held in public unless the Tribunal orders otherwise under this section or unless section 97 applies.
- (2) If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by any of the parties or on its own initiative) make any 1 or more of the following orders:
 - (a) an order that the whole or any part of a hearing must be held in private:
 - (b) an order prohibiting the publication of any report or account of any part of a hearing, whether held in public or in private:
 - (c) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at a hearing:
 - (d) an order prohibiting the publication of the name, or any particulars of the affairs, of any person.
- (3) An application to the Tribunal for an order under subsection (2) must be heard in private, but the other parties to the proceedings and any complainant are entitled to be present and to make written or oral submissions on the application.
- (4) If the Tribunal proposes on its own initiative to make an order under subsection (2), it must give the parties to the proceedings and any complainant an opportunity to make written or oral submissions on the proposal; all parties and complainants (if any) are entitled to be present when any oral submissions are heard.
- (5) Even if a hearing of the Tribunal is otherwise held in private, the Tribunal may allow any particular person to attend it if satisfied that he or she has a particular interest in the matter to be heard.
- (6) An order made under this section continues in force—

- (a) until a time specified in it; or
 - (b) if no time is specified, until it is revoked under section 99.
- (7) Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 who, without reasonable excuse, contravenes an order made under subsection (2).

Compare: 1995 No 95 ss 106(1)–(5), 142(1)(d)

Section 95(7): amended, on 12 April 2019, by section 28 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 95(7): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

96 Clarifications concerning section 95

- (1) Section 95 does not prevent the Tribunal from deliberating in private as to its decision, or as to any question arising in the course of a hearing.
- (2) Section 95(1) is subject to section 97.
- (3) Orders cannot be made under section 95(2)(d) in respect of—
 - (a) any communication by or on behalf of the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994; or
 - (b) any communication between any of the Health and Disability Commissioner, the authority, and the Tribunal; or
 - (c) the publication, under section 157, of the effect of any order.

Compare: 1995 No 95 s 106(6), (7)

97 Special protection for certain witnesses

- (1) This section applies to evidence to be given by a witness at a hearing by the Tribunal that—
 - (a) relates to or involves a sexual matter; or
 - (b) in the Tribunal's opinion, relates to or involves some other matter that may require the witness to give intimate or distressing evidence.
- (2) Before a witness at a hearing by the Tribunal begins to give oral evidence to which this section applies, the presiding officer must—
 - (a) tell the witness that he or she has a right to give the evidence in private; and
 - (b) ask if the witness wishes to give the evidence in private.
- (3) If the witness wishes to give the evidence in private, the presiding officer must—
 - (a) ensure that only the people referred to in subsection (4) are present in the room in which the hearing is being held; and
 - (b) tell the witness that he or she has a right to request the presence of any person of his or her choice who agrees to be present; and

- (c) tell the health practitioner concerned that he or she has a right to request the presence of any person of his or her choice who agrees to be present.
- (4) If the witness wishes to give the evidence in private, only the following people may be present in the room while the witness is giving the evidence:
 - (a) the members of the Tribunal:
 - (b) the health practitioner concerned:
 - (c) the person prosecuting the charge:
 - (d) any barrister or solicitor engaged in the proceedings:
 - (e) if the health practitioner's representative is not a barrister or solicitor, the representative:
 - (f) any officer of the Tribunal:
 - (g) any person responsible to the Tribunal for recording the proceedings:
 - (h) any accredited news media reporter:
 - (i) any person of the witness's choice who agrees to be present:
 - (j) any person of the health practitioner's choice who agrees to be present:
 - (k) any other person expressly permitted by the Tribunal to be present.
- (5) The witness may object to the presence of a person of the health practitioner's choice; and, if the Tribunal upholds the objection, that person may not be present in the room while the witness is giving the evidence.

98 Prohibition of publication of names of complainants in sexual cases

- (1) In this section, **complainant** means a person whose complaint against a health practitioner (whether made by the person or on the person's behalf) relates to sexual acts—
 - (a) that are alleged to have been performed on, or in respect of, the person; or
 - (b) that the person is alleged to have been compelled or induced to perform.
- (2) No person may in any report or account of a hearing of the Tribunal publish the name of the complainant or any particulars likely to lead to the identification of the complainant unless—
 - (a) the complainant is 16 years or older; and
 - (b) the Tribunal makes an order permitting the publication.
- (3) However, the Tribunal must make an order under subsection (2)(b) if—
 - (a) the complainant—
 - (i) is 16 years or older (whether or not he or she was under 16 years when the acts referred to in subsection (1) were alleged to have been performed); and
 - (ii) applies to the Tribunal for the order; and

- (b) the Tribunal is satisfied that the complainant understands the nature and effect of the application.
- (4) If it thinks that the interests of the complainant require it to do so, the Tribunal may make an order under section 95(2)(b) forbidding publication of any report or account of any part of the evidence relating to the particulars of the acts referred to in subsection (1).
- (5) Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 who contravenes subsection (2).
- (6) Except for subsection (3), nothing in this section nor in section 97 limits the Tribunal's power to make an order under section 95.

Compare: 1995 No 95 s 107

Section 98(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

99 Application for revocation of order under section 95 or for making of order under section 98

- (1) Any person may apply to the Tribunal for the revocation of an order under section 95 or for the making of an order under section 98(2)(b).
- (2) The application may be made by a person who was a party to the proceedings in which the order was made, or any other person.
- (3) The Tribunal may grant or refuse the application as it thinks fit.

Compare: 1995 No 95 s 108

100 Grounds on which health practitioner may be disciplined

- (1) The Tribunal may make any 1 or more of the orders authorised by section 101 if, after conducting a hearing on a charge laid under section 91 against a health practitioner, it makes 1 or more findings that—
 - (a) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, amounts to malpractice or negligence in relation to the scope of practice in respect of which the practitioner was registered at the time that the conduct occurred; or
 - (b) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, has brought or was likely to bring discredit to the profession that the health practitioner practised at the time that the conduct occurred; or
 - (c) the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise; or
 - (d) the practitioner has practised his or her profession while not holding a current practising certificate; or
 - (e) the practitioner has performed a health service that forms part of a scope of practice of the profession in respect of which he or she is or was

- registered without being permitted to perform that service by his or her scope of practice; or
- (f) the practitioner has failed to observe any conditions included in the practitioner's scope of practice; or
 - (g) the practitioner has breached an order of the Tribunal under section 101.
- (2) The Tribunal may make a finding under subsection (1)(c) only if the conviction concerned—
- (a) is for an offence against—
 - (i) the Births, Deaths, Marriages, and Relationships Registration Act 1995; or
 - (ii) the Burial and Cremation Act 1964; or
 - (iii) the Contraception, Sterilisation, and Abortion Act 1977; or
 - (iv) the Coroners Act 2006; or
 - (v) the Health Act 1956; or
 - (vi) the Health and Disability Services (Safety) Act 2001; or
 - (vii) the Human Tissue Act 2008; or
 - (viii) the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
 - (ix) the Medicines Act 1981; or
 - (x) the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (xi) the Misuse of Drugs Act 1975; or
 - (xii) the Radiation Safety Act 2016; or
 - (xiii) this Act; or
 - (b) has been entered by any court in New Zealand or elsewhere for an offence punishable by imprisonment for a term of 3 months or longer.
- (3) The Tribunal may not make an order under section 101 on the basis of a finding under subsection (1)(c) if the responsible authority was aware of the conviction concerned at the date of the practitioner's registration.
- (4) No person may be found guilty of a disciplinary offence under this Part merely because that person has adopted and practised any theory of medicine or healing if, in doing so, the person has acted honestly and in good faith.

Compare: 1995 No 95 s 109

Section 100(2)(a)(i): amended, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Section 100(2)(a)(iv): amended, on 1 July 2007, by section 146 of the Coroners Act 2006 (2006 No 38).

Section 100(2)(a)(vii): amended, on 1 November 2008, pursuant to section 92 of the Human Tissue Act 2008 (2008 No 28).

Section 100(2)(a)(xii): replaced, on 7 March 2017, by section 99 of the Radiation Safety Act 2016 (2016 No 6).

101 Penalties

- (1) In any case to which section 100 applies, the Tribunal may—
 - (a) order that the registration of the health practitioner be cancelled:
 - (b) order that the registration of the health practitioner be suspended for a period not exceeding 3 years:
 - (c) order that the health practitioner may, after commencing practice following the date of the order, for a period not exceeding 3 years, practise his or her profession only in accordance with any conditions as to employment, supervision, or otherwise that are specified in the order:
 - (d) order that the health practitioner be censured:
 - (e) subject to subsections (2) and (3), order that the health practitioner pay a fine not exceeding \$30,000:
 - (f) order that the health practitioner pay part or all of the costs and expenses of and incidental to any or all of the following:
 - (i) any investigation made by the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject matter of the charge:
 - (ii) any inquiry made by a professional conduct committee in relation to the subject matter of the charge:
 - (iii) the prosecution of the charge by the Director of Proceedings or a professional conduct committee, as the case may be:
 - (iv) the hearing by the Tribunal.
- (2) In dealing with a matter that constitutes an offence for which the health practitioner has been convicted by a court, the Tribunal must not impose a fine.
- (3) The Tribunal must have regard to the amount of any award of damages against the health practitioner under section 57 of the Health and Disability Commissioner Act 1994 in respect of the conduct concerned when determining—
 - (a) whether to make an order that he or she pay a fine; or
 - (b) the amount of any fine.

Compare: 1995 No 95 s 110

102 Orders limiting restoration of registration

- (1) When making an order that the registration of a health practitioner be cancelled, the Tribunal may do either or both of the following:
 - (a) fix a date before which the person may not apply for registration again:
 - (b) impose 1 or more conditions that the person must satisfy before the person may apply for registration again.

- (2) The conditions imposed under subsection (1)(b) may include any or all of the following:
 - (a) a condition that the person undertake a specified course of education or training;
 - (b) a condition that the person undergo—
 - (i) any specified medical examination and treatment; or
 - (ii) any specified psychological or psychiatric examination, counselling, or therapy;
 - (c) a condition that the person attend any specified course of treatment or therapy for alcohol or drug abuse;
 - (d) any other condition designed to address the matter that gave rise to the cancellation of the person's registration.
- (3) The Tribunal must not impose a condition of the kind specified in subsection (2)(b) or (c) unless the person consents to the examination, treatment, counselling, or therapy concerned.
- (3A) If the Tribunal fixes a date before which the person may not apply for registration again, no application for registration may be made by the person before that date.
- (4) Subsection (2) does not limit subsection (1).

Compare: 1995 No 95 s 111

Section 102(1): replaced, on 12 April 2019, by section 29(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 102(2): amended, on 12 April 2019, by section 29(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 102(3): amended, on 12 April 2019, by section 29(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 102(3A): inserted, on 12 April 2019, by section 29(4) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

103 Orders of Tribunal

- (1) An order of the Tribunal must—
 - (a) be in writing; and
 - (b) contain a statement of the reasons for the order; and
 - (c) be signed by the chairperson or a deputy chairperson of the Tribunal.
- (1A) The appropriate executive officer of the Tribunal must ensure that a copy of an order made under section 92(4) is given to the health practitioner concerned.
- (2) The appropriate executive officer of the Tribunal must ensure that a copy of an order under section 95 or section 98 or section 101 is given to—
 - (a) the Director of Proceedings or the professional conduct committee that laid the charge; and

- (b) the health practitioner concerned; and
 - (c) any complainant; and
 - (d) the responsible authority.
- (2A) If the Tribunal makes any 1 or more of the orders authorised by section 101(1)(a) to (d) against a health practitioner who is an employee, the appropriate executive officer must, if so directed by the Tribunal, ensure that a copy of each order is given to the health practitioner's employer.
- (3) *[Repealed]*
- (4) *[Repealed]*

Compare: 1995 No 95 s 112

Section 103(1A): inserted, on 12 April 2019, by section 30(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 103(2A): inserted, on 12 April 2019, by section 30(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 103(3): repealed, on 12 April 2019, by section 30(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 103(4): repealed, on 12 April 2019, by section 30(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Funding of Tribunal and recovery of costs and fines

103A Resourcing Tribunal's administration costs

- (1) The responsible authorities must pay the Tribunal's general administration costs.
- (2) Each responsible authority must pay to the Tribunal at the beginning of each financial year a proportion of the Tribunal's estimated general administration costs for that financial year, with the proportion being determined—
 - (a) by the Tribunal; and
 - (b) by reference to the number of health practitioners registered with the authority who at the beginning of the financial year hold a current practising certificate.
- (3) If the Tribunal's estimated general administration costs for any financial year exceed the Tribunal's actual general administration costs for that year, the Tribunal must—
 - (a) refund to the authorities, on a proportional basis, the amount of the excess; and
 - (b) determine the proportion payable to each authority by reference to the amount paid by the authority toward the estimated costs.
- (4) If the Tribunal's estimated general administration costs for any financial year are less than the Tribunal's actual general administration costs for that year, the Tribunal may at any time (whether or not the year has ended)—

- (a) require the authorities to pay, on a proportional basis, the shortfall in costs; and
 - (b) determine the proportion payable by each authority by reference to the amount paid by the authority toward the estimated costs.
- (5) The Tribunal must provide to each responsible authority at the end of each financial year a statement showing a full breakdown of its general administration costs for that financial year.
- (6) In this section, **general administration costs** means all expenses payable by or on behalf of the Tribunal in connection with the administration of the Tribunal that are not payable in respect of any proceeding under section 104(1)(a) or (b) (including, without limitation, insurance costs and member training costs).

Section 103A: inserted, on 12 April 2019, by section 31 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

104 Resourcing costs of proceedings and nomination of executive officers

- (1) For each proceeding against a health practitioner, the responsible authority must—
- (a) pay the fees payable in respect of the proceeding to the members of the Tribunal; and
 - (b) pay any actual and reasonable expenses incurred by or on behalf of the Tribunal in respect of the proceeding; and
 - (c) make available to the Tribunal for the purpose of the proceeding, at the authority's expense, suitable premises, the person nominated under subsection (2), and secretarial support.
- (2) Each authority appointed in respect of a profession must nominate 1 person who is to be the Tribunal's executive officer for the purpose of proceedings brought against health practitioners of that profession.
- (3) An authority may at any time revoke its nomination under subsection (2) by nominating another person under that subsection.
- (4) Before an authority nominates a person under subsection (2), the authority must consult the chairperson of the Tribunal.
- (5) An authority is not entitled to direct a person whom it has nominated under subsection (2) as to the discharge of the person's duties as executive officer.

Section 104 heading: replaced, on 12 April 2019, by section 32(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 104(1)(c): amended, on 12 April 2019, by section 32(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

104A Recovery of costs, fees, and expenses

The following are recoverable in any court of competent jurisdiction by the Tribunal from an authority as a debt due to the Tribunal:

- (a) all costs payable by an authority under section 103A; and

- (b) all fees and expenses payable by an authority under section 104(1)(a) and (b).

Section 104A: inserted, on 12 April 2019, by section 33 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

105 Recovery of costs and expenses of Health and Disability Commissioner or Director of Proceedings

- (1) All costs and expenses of the Health and Disability Commissioner or Director of Proceedings ordered to be paid, under section 101(1)(f)(i) or (iii), by a health practitioner are recoverable in any court of competent jurisdiction from the health practitioner by the Health and Disability Commissioner as a debt due to the Health and Disability Commissioner.
- (2) All other fines, costs, and expenses ordered to be paid, under section 101(1), are recoverable in any court of competent jurisdiction by the responsible authority as a debt due to the authority.

Compare: 1995 No 95 s 114

Section 105 heading: replaced, on 12 April 2019, by section 34 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Part 5 Appeals

106 Rights of appeal

- (1) A person may appeal to the District Court against any decision or direction of an authority to—
- (a) decline to register the person as a health practitioner with the authority; or
 - (b) decline to authorise a change to the existing scope of practice of the person; or
 - (c) decline to issue a practising certificate to the person; or
 - (d) suspend his or her practising certificate or registration; or
 - (e) cancel his or her registration with the authority; or
 - (f) include conditions in the person's scope of practice or the person's proposed scope of practice; or
 - (g) vary any conditions in the person's scope of practice.
- (2) A person may appeal to the High Court against the whole or any part of—
- (a) a finding under section 100 in respect of the person; or
 - (b) an order made by the Tribunal under section 92(4) or section 101 in respect of the person; or
 - (c) a decision made by the Tribunal on an application by the person under section 94; or

- (d) any order made by the Tribunal under section 95 in respect of the person or any decision to refuse to make such an order; or
 - (e) a decision of the Tribunal on an application under section 99.
- (3) A person (being the Director of Proceedings or a professional conduct committee) who has laid a charge against a health practitioner may appeal to the High Court against a finding or decision or order of the Tribunal that relates to the charge.
- (4) An appeal—
- (a) must be brought to the appropriate court by way of notice of appeal in accordance with rules of court; and
 - (b) must be lodged within 20 working days after notice of the decision or order is communicated to the appellant, or within any further time a District Court Judge or, as the case requires, a High Court Judge allows on application made before or after the period expires.

Compare: 1995 No 95 s 116

Section 106(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

107 Notice of right of appeal

When notifying a person under this Act of any decision or order against which section 106 gives him or her a right of appeal, the Registrar or, as the case requires, the appropriate executive officer of the Tribunal must also notify him or her in writing of the right of appeal and the time within which an appeal must be lodged.

Compare: 1995 No 95 s 115

108 Orders to have effect pending determination of appeal

A decision or order against which an appeal is lodged under this Part continues in force unless the District Court or the High Court orders otherwise.

Compare: 1995 No 95 s 117

109 Procedure on appeal

- (1) An appeal under this Part must be heard as soon as is reasonably practicable after it is lodged.
- (2) An appeal under this Part is by way of rehearing.
- (3) On hearing the appeal, the appropriate court—
 - (a) may confirm, reverse, or modify the decision or order appealed against; and
 - (b) may make any other decision or order that the person or body that made the decision or order appealed against could have made.
- (4) The court must not review—

- (a) any part of a decision or order not appealed against; or
- (b) any decision or order not appealed against at all.

Compare: 1995 No 95 s 118(1)–(3)

110 Court's decision final

Except as provided in section 113, the decision of a court on an appeal under this Part is final.

Compare: 1995 No 95 s 118(4)

111 Court may refer matter back for reconsideration

- (1) Instead of determining an appeal under this Part, the appropriate court may direct the authority or Tribunal whose decision or order is appealed against to reconsider, either generally or in respect of any specified aspect, the whole or any part of the decision or order.
- (2) In giving a direction under subsection (1), the court—
 - (a) must state its reasons for the direction; and
 - (b) may give any other directions it thinks just as to the matter referred back for reconsideration.
- (3) The person or body whose decision or order is appealed against—
 - (a) must reconsider the matter; and
 - (b) in doing so, must—
 - (i) take the court's reasons into account; and
 - (ii) give effect to the court's directions.

Compare: 1995 No 95 s 119

112 Orders as to publication of names or particulars

- (1) On any appeal under this Part, the appropriate court may, if, in its opinion, it is proper to do so, prohibit the publication of the name or particulars of the affairs of a health practitioner or any other person.
- (2) In deciding whether to make an order under subsection (1), the court must have regard to—
 - (a) the interests of any person (including, without limitation, the privacy of any complainant); and
 - (b) the public interest.

Compare: 1995 No 95 s 120(2)

113 Appeal on question of law

- (1) A party to an appeal under this Part may appeal against any determination of law arising in the appeal.
- (2) If the appeal is—

- (a) from the District Court, it must be made to the High Court:
- (b) from the High Court, it must be made to the Court of Appeal.
- (3) The appeal must be heard and determined in accordance with the appropriate rules of court.
- (4) Part 6 of the Criminal Procedure Act 2011 applies to the appeal—
 - (a) so far as it is applicable and with all necessary modifications; but
 - (b) only so far as it relates to appeals on questions of law.
- (5) Subsection (4) overrides subsection (3).

Compare: 1995 No 95 s 121

Section 113(2)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 113(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Part 6

Structures and administration

Continuation and establishment of authorities

114 Authorities appointed

- (1) Each body named in column 1 of Schedule 2—
 - (a) continues in existence and is appointed as an authority under this Act in respect of the profession specified opposite to it in column 2 of that schedule; and
 - (b) is to be known by the name by which it is identified in column 1 of that schedule.
- (2) This subsection establishes a body corporate as the authority appointed in respect of the professions of dentistry, dental hygiene, clinical dental technology, dental technology, and dental therapy; that authority is to be known as the Dental Council.
- (3) This subsection establishes a body corporate as the authority appointed in respect of the profession of midwifery; that authority is to be known as the Midwifery Council.
- (4) This subsection establishes a body corporate as the authority appointed in respect of the profession of osteopathy; that authority is to be known as the Osteopathic Council.
- (5) This subsection establishes a body corporate as the authority appointed in respect of the profession of pharmacy; that authority is to be known as the Pharmacy Council.

115 Authorities may be appointed in respect of additional professions

- (1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister,—
 - (a) designate health services of a particular kind as a health profession; and
 - (b) either—
 - (i) establish a body corporate, to be known by a name stated in the order, as the authority appointed in respect of the profession designated under paragraph (a); or
 - (ii) provide that the profession designated under paragraph (a) is to be added to the profession or professions in respect of which an existing authority is appointed.
- (2) If an Order in Council contains a provision of the kind authorised by subsection (1)(b)(ii), the order may also—
 - (a) change the name of the authority concerned to reflect the change made by the order; and
 - (b) amend any enactment (for example, this Act) to reflect the name change effected by the order.
- (3) The Minister may recommend that an Order in Council be made under subsection (1) only if satisfied of the matters stated in section 116.
- (4) An Order in Council under subsection (1) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 115(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

116 Conditions for designating health services as health profession

Before making a recommendation under section 115(1), the Minister must, after consultation with any organisation that, in the Minister's opinion, has an interest in the recommendation, be satisfied of the following matters:

- (a) either—
 - (i) that the provision of the health services concerned poses a risk of harm to the public; or
 - (ii) that it is otherwise in the public interest that the provision of health services be regulated as a profession under this Act:
- (b) that providers of the health services concerned are generally agreed on—
 - (i) the qualifications for any class or classes of providers of those health services; and
 - (ii) the standards that any class or classes of providers of those health services are expected to meet; and
 - (iii) the competencies for scopes of practice for those health services.

Amalgamation of authorities

Heading: inserted, on 12 April 2019, by section 35 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

116A Authorities may be amalgamated

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
 - (a) amalgamate an existing authority with 1 or more other existing authorities; and
 - (b) either—
 - (i) continue the existing authorities as one of the existing authorities; or
 - (ii) continue the existing authorities as a new authority; and
 - (c) provide for any arrangement to complete the amalgamation and provide for the subsequent management and operation of the amalgamated authority; and
 - (d) amend any enactment (for example, this Act) to reflect and give effect to the amalgamation effected by the order.
- (2) The Minister may recommend that an Order in Council be made only if—
 - (a) the Minister has consulted—
 - (i) the authorities concerned; and
 - (ii) any other organisations that the Minister considers will be affected by the amalgamation; and
 - (b) the Minister is satisfied that it is in the public interest that the order be made.
- (3) An Order in Council is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 116A: inserted, on 12 April 2019, by section 35 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

116B Effect of amalgamation

On the date on which existing authorities amalgamate,—

- (a) the amalgamated authority succeeds to all the property, rights, powers, and privileges of each of the amalgamating authorities; and
- (b) the amalgamated authority succeeds to all the liabilities and obligations of each of the amalgamating authorities; and
- (c) proceedings pending by, or against, an amalgamating authority may be continued by, or against, the amalgamated authority; and

- (d) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating authority may be enforced by, or against, the amalgamated authority.

Section 116B: inserted, on 12 April 2019, by section 35 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

116C Final report of authority

- (1) As soon as practicable after an authority (A) has been amalgamated under section 116A, the amalgamated authority must prepare and forward to the Minister a final report on A's operations.
- (2) The final report must be for the period (the **report period**)—
 - (a) commencing at the start of the financial year in which A was amalgamated; and
 - (b) ending with the close of the day immediately preceding the date on which A was amalgamated.
- (3) The final report must include audited financial statements for the report period.
- (4) The Minister must present a copy of the final report to the House of Representatives within 16 sitting days after receiving it.
- (5) In this section, **financial year** has the same meaning as in section 134.

Section 116C: inserted, on 12 April 2019, by section 35 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

116D Members not entitled to compensation for loss of office

No member of an authority is entitled to any compensation for loss of office resulting from an Order in Council made under section 116A.

Section 116D: inserted, on 12 April 2019, by section 35 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

List of authorities

Heading: inserted, on 12 April 2019, by section 36 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

116E Director-General of Health to publish list of responsible authorities

- (1) The Director-General of Health must—
 - (a) maintain a list of responsible authorities appointed by or under this Act and the health professions in respect of which each of those authorities is appointed; and
 - (b) publish that list in the *Gazette*.
- (2) The Director-General of Health must republish the list if an Order in Council is made under—
 - (a) section 115; or
 - (b) section 116A.

Section 116E: inserted, on 12 April 2019, by section 36 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Status and functions of authorities

117 Status and capacity of authorities

- (1) Every authority appointed by or under this Act is a body corporate with perpetual succession, and has and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.
- (2) Each authority may exercise its rights and powers, and may incur liabilities or obligations, only for the purpose of performing its functions.
- (3) For the purposes of the exercise or performance of the powers, duties, and functions of an authority, the persons who for the time being are the members of the authority are to be taken to be the authority.
- (4) All decisions relating to the powers, duties, and functions of an authority are to be made—
 - (a) by the authority in accordance with Schedule 3; or
 - (b) by a committee or person authorised to make the decision concerned under a delegation given under clause 17 or clause 19 of Schedule 3.

118 Functions of authorities

The functions of each authority appointed in respect of a health profession are as follows:

- (a) to prescribe the qualifications required for scopes of practice within the profession, and, for that purpose, to accredit and monitor educational institutions and degrees, courses of studies, or programmes:
- (b) to authorise the registration of health practitioners under this Act, and to maintain registers:
- (c) to consider applications for annual practising certificates:
- (d) to review and promote the competence of health practitioners:
- (e) to recognise, accredit, and set programmes to ensure the ongoing competence of health practitioners:
- (f) to receive information from any person about the practice, conduct, or competence of health practitioners and, if it is appropriate to do so, act on that information:
- (g) to notify employers, the Accident Compensation Corporation, the Director-General of Health, and the Health and Disability Commissioner that the practice of a health practitioner may pose a risk of harm to the public:

- (h) to consider the cases of health practitioners who may be unable to perform the functions required for the practice of the profession:
- (i) to set standards of clinical competence, cultural competence (including competencies that will enable effective and respectful interaction with Māori), and ethical conduct to be observed by health practitioners of the profession:
- (j) to liaise with other authorities appointed under this Act about matters of common interest:
- (ja) to promote and facilitate inter-disciplinary collaboration and co-operation in the delivery of health services:
- (k) to promote education and training in the profession:
- (l) to promote public awareness of the responsibilities of the authority:
- (m) to exercise and perform any other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment.

Section 118(f): replaced, on 12 April 2019, by section 37(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 118(i): amended, on 12 April 2019, by section 37(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 118(ja): inserted, on 12 April 2019, by section 37(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

119 Exclusion of liability

- (1) Neither an authority nor a member, employee, agent, or committee of an authority nor a member of such a committee is under any criminal or civil liability in respect of—
 - (a) any act done or omitted in the course of the performance or exercise or intended performance or exercise of any of its functions, duties, or powers under this Act; or
 - (b) any words spoken or written at, or for the purposes of, a meeting, conference, hearing, inquiry or proceeding under this Act; or
 - (c) anything contained in any notice given under this Act.
- (2) No person is under any civil liability in respect of anything done or omitted, or for any words spoken or written, in the course of making an assessment or a report under section 23.
- (3) No person is under any civil liability in respect of anything done or omitted, or for any words spoken or written, in the course of conducting or assisting in conducting any competence review, competence programme, or recertification programme.
- (4) This section does not exclude the liability of any person for anything done or omitted in bad faith or without reasonable care.

Compare: 1995 No 95 s 135

Members of authorities

120 Membership of authorities

- (1) The Minister—
 - (a) may, by notice in the *Gazette*, appoint up to 14 members for each authority; and
 - (b) must ensure that each authority has at any time at least 5 members.
- (2) The membership of an authority must include,—
 - (a) a majority of members who are health practitioners; and
 - (b) 2 laypersons, if the authority has at any time 8 or fewer members; and
 - (c) 3 laypersons, if the authority has at any time 9 or more members.
- (3) Before the Minister appoints a member for an authority, the Minister must—
 - (a) publish a notice that—
 - (i) invites organisations and individuals to nominate persons for appointment as members of the authority; and
 - (ii) states an address or addresses to which nominations may be sent by a stated date; and
 - (b) consider every nomination received by the stated date in response to the notice.
- (4) Regulations made under this Act may provide that 1 or more health practitioners appointed, under subsection (1), as members of an authority must be practitioners (in this section referred to as **elected practitioners**) who have been elected in an election conducted by the authority in accordance with those regulations.
- (5) If an elected practitioner ceases to hold office before the expiry of his or her term, the Minister may, by notice in the *Gazette*, appoint a person who has not been elected as a member of the authority for the remainder of the term of that elected practitioner.
- (6) If an authority is established by Order in Council under section 115(1)(b)(i), then, for a period not exceeding 3 months commencing on the day the order is made, subsection (2)(a) must be read as if the reference in that subsection to health practitioners were a reference to persons who are proposing to apply for registration as health practitioners with that authority.

Section 120(6): inserted, on 12 April 2019, by section 38 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

121 Term of office

- (1) Each member of an authority takes office from a date specified for that purpose in the notice appointing the member or, if no date is specified in the notice, from the date on which the notice is published in the *Gazette*.

- (2) Each member—
- (a) is appointed for a term of 3 years or any shorter term that is specified in the notice of appointment; and
 - (b) may be reappointed from time to time, but is not eligible to be a member for more than 9 consecutive years; and
 - (c) continues in office after the expiry of his or her term of office (unless the member resigns or is removed from office) until—
 - (i) the member is reappointed; or
 - (ii) the member's successor is appointed; or
 - (iii) the member is informed in writing by the Minister that the member is not to be reappointed.
- (3) Despite subsection (2), a member of the authority whose term of office has expired or who has resigned from office continues in office for the purpose of completing any matter heard by the authority before the expiry of the member's term of office or the member's resignation, whether or not that member's successor has come into office.

Compare: 1981 No 5 s 3A

122 Vacation of office

- (1) Any member of an authority may at any time resign his or her office by giving notice to that effect to the Minister.
- (2) A member of an authority must be considered to have vacated his or her office if—
 - (a) he or she dies; or
 - (b) he or she is adjudged bankrupt under the Insolvency Act 2006.
- (3) Any member of an authority may be removed from office by the Minister, by notice given to the member, on the grounds of inability to perform the duties of the office, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- (4) A member of an authority may be removed from office by the Minister, with the concurrence of the authority, by notice given to the member, on the ground that the member's performance on the authority is inadequate.
- (5) The powers of an authority are not affected by any vacancy in its membership.

Compare: 1981 No 5 s 3B

Section 122(2)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Performance reviews of authorities

Heading: inserted, on 12 April 2019, by section 39 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

122A Performance reviews

- (1) From time to time, there must be conducted in respect of each authority a review of how effectively and efficiently the authority is performing its functions (a **performance review**).
- (2) The first performance review must be conducted within 3 years after the commencement of this section.
- (3) Subsequent performance reviews must be conducted at intervals that are no more than 5 years apart.
- (4) For each performance review to be conducted in respect of an authority, the Ministry of Health must, in consultation with the authority,—
 - (a) appoint an independent person to conduct the review (a **reviewer**); and
 - (b) set the terms of reference for the review.
- (5) Before setting the terms of reference for a review, the Ministry of Health may, but is not obliged to, consult any other person, organisation, or group about the terms of reference.
- (6) A reviewer must, as soon as practicable after conducting a review,—
 - (a) prepare a written report on the conclusions reached and of any recommendations; and
 - (b) give a copy of the report to—
 - (i) the Minister; and
 - (ii) the authority.
- (7) On receipt of a report under subsection (6)(b)(ii), an authority must, as soon as practicable, publish the report on its Internet site.
- (8) The costs of conducting a performance review in respect of an authority must be met by the authority.

Section 122A: inserted, on 12 April 2019, by section 39 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

122B Information about implementation of recommendations to be included in annual report

- (1) If a performance review has been completed in respect of any authority during the first 6 months of the authority's financial year and the report prepared under section 122A(6)(a) in respect of that review contains recommendations, the authority must include in its annual report for that financial year delivered to the Minister under section 134 the information specified in subsection (3).
- (2) If a performance review has been completed in respect of any authority during the last 6 months of the authority's financial year and the report prepared under

section 122A(6)(a) in respect of that review contains recommendations, the authority must include in its annual report for the following financial year delivered to the Minister under section 134 the information specified in subsection (3).

- (3) The information referred to in subsections (1) and (2) is—
 - (a) which of the recommendations the authority—
 - (i) proposes to implement; and
 - (ii) does not propose to implement; and
 - (b) the time frame for implementing the recommendations identified under paragraph (a)(i); and
 - (c) the reason for not implementing the recommendations identified under paragraph (a)(ii).

Section 122B: inserted, on 12 April 2019, by section 39 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Powers of Minister

123 Minister may ask for statistical information

- (1) In this section, **statistical information** does not include information about an identifiable individual.
- (2) The Minister may from time to time, by written notice to an authority, require the authority to supply him or her with any statistical information specified in the notice relating to the discharge of the functions of the authority or of any of its committees, or to any matters connected with those functions.
- (3) Any statistical information required by the Minister under this section must be supplied within the time specified in the notice or within any extended time the Minister allows, and must be supplied in the manner and form notified to the authority concerned by the Minister.
- (4) The authority is not required by this section to supply information that is not already in its possession.
- (5) If the Minister is satisfied that compliance with a requirement under this section would involve an authority in monetary expense, the Minister must, out of money appropriated by Parliament, make a grant to the authority to enable it to meet that expense.

Compare: 1995 No 95 s 131

124 Minister may audit authorities

- (1) For the purpose of ascertaining whether an authority is complying, or has complied, with the provisions of this Act, including, without limitation, the principles set out in section 13, the Minister may appoint an auditor to audit the records of the authority.

- (2) The auditor must report to the Minister on the matters, stated in subsection (1), that are to be ascertained by the audit.
- (3) The auditor—
 - (a) must be given access at all reasonable times to all records of the authority; and
 - (b) may require the Registrar of the authority to provide any information and explanations that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report.
- (4) Within 12 sitting days of receiving the auditor's report, the Minister must—
 - (a) present a copy of the report to the House of Representatives; and
 - (b) give a copy to the authority.

125 Minister may require authority to respond to concerns following audit

- (1) If, after consideration of an auditor's report completed under section 124 about an authority, the Minister has concerns about any of the authority's policies or practices, the Minister may, by written notice to the authority,—
 - (a) set out the concerns and the reasons for them; and
 - (b) require the authority to provide the Minister with a written response within the time specified in the notice or within any extended time the Minister allows.
- (2) The response must state, in respect of each concern set out in the Minister's notice, whether the authority considers that the concern—
 - (a) is justified; or
 - (b) is justified in part; or
 - (c) is not justified.
- (3) If the response states, in respect of any concern, that the authority accepts that the concern is justified or is justified in part, the response must also provide information on—
 - (a) the steps that the authority has taken or is taking or proposes to take to address the concern or, as the case may require, the part of the concern; and
 - (b) the time in which those steps have been, or are to be, taken.
- (4) If the response states, in respect of any concern, that the authority does not consider that the concern is justified or is justified only in part, the response must set out the authority's reasons for that statement.

126 Conciliation conference

- (1) If it appears from a response provided, under section 125, by an authority that there is a significant difference of opinion between the Minister and the author-

- ity on any matter, the Minister may, by written notice to the authority, convene a conciliation conference.
- (2) Before the Minister gives an authority a written notice under subsection (1), the Minister must consult with the authority about the proposed notice.
 - (3) A notice under subsection (1) must—
 - (a) appoint a time and place for the conference; and
 - (b) invite the chairperson of the authority to participate in the conference; and
 - (c) invite the chairperson to nominate 2 other members of the authority to participate in the conference.
 - (4) The conference is attended—
 - (a) by a person (the **conciliator**) appointed by the Attorney-General to preside over the conference; and
 - (b) by either—
 - (i) the Minister with up to 2 assistants; or
 - (ii) up to 3 representatives of the Minister; and
 - (c) by the chairperson of the authority and the members nominated under subsection (3)(c).
 - (5) The aim of the conference is to—
 - (a) clarify the nature of the difference in respect of which the conference has been convened; and
 - (b) resolve that difference.
 - (6) As soon as practicable after the conclusion of the conference, the conciliator must report to the Minister and to all the members of the authority on the matters that the parties to the conference resolved and on the matters that are still in dispute.

127 Disputes about overlapping scopes of practice

- (1) This section applies if, after the publication of a notice under section 11(1), it appears that there is a dispute (in this section and in section 128 referred to as the **dispute**) between 2 or more authorities as to whether a scope of practice or any part of a scope of practice should form part of an authority's profession.
- (2) Each authority that is a party to the dispute must—
 - (a) use its best endeavours to resolve the dispute; and
 - (b) inform the Minister in writing of the nature and circumstances of the dispute; and
 - (c) for every month that the dispute continues, provide the Minister with a written report on the progress being made to resolve the dispute.

- (3) The Minister may assist the authorities to resolve their dispute in any way the Minister sees fit, including, without limitation, by advising each authority in writing of 1 or more options for resolving the dispute that the Minister considers to be desirable.
- (4) Each authority that is party to the dispute must, in endeavouring to resolve the dispute, take into account any advice that the Minister gives to the authority under subsection (3).

128 Minister may give directions to resolve dispute

- (1) This section applies if—
 - (a) the Minister has, under section 127(3), attempted to assist the authorities to resolve their dispute; but
 - (b) it appears to the Minister to be unlikely that the dispute will be resolved.
- (2) If this section applies, the Minister may, by written notice to any authority that is a party to the dispute, direct the authority to effect or contribute to the resolution of the dispute by doing or omitting anything that the Minister states in the notice.
- (3) A direction under subsection (2) may, without limitation, require each authority to co-operate with a panel of experts appointed by the Minister, and may also require each authority to be guided by or (as the notice may state) to implement any recommendations of the panel concerning the dispute.
- (4) A direction under subsection (2) may, without limitation, require an authority to amend or replace a notice that the authority has published under section 11 or section 12.
- (5) Every authority must comply with any directions given.
- (6) Before giving any direction under subsection (2), the Minister must consult each authority affected by the direction.

129 Other provisions relating to directions

- (1) Promptly after directing an authority under section 128, the Minister must publish the direction in the *Gazette*.
- (2) Within 12 sitting days after directing an authority under section 128, the Minister must present a copy of the direction to the House of Representatives.

Financial matters and annual report

130 Authorities may prescribe fees

- (1) Each authority may from time to time, by notice in the *Gazette*, prescribe the fees payable in respect of the following matters:
 - (a) an application for registration with the authority;
 - (b) an addition or alteration to the register maintained by the authority;

- (c) the issue of a practising certificate:
 - (d) the issue of any other certificate, or a copy of any certificate:
 - (e) the supply of a copy of any entry in the register:
 - (f) inspection of the register, or of any other documents kept by the authority that are open for inspection:
 - (g) the supply to any health practitioner of any documents, other than certificates of registration, required by him or her for the purpose of seeking registration overseas:
 - (h) examinations set or approved by the authority:
 - (i) any other matter that relates to anything the authority is required to do in order to carry out its functions.
- (2) Different fees may be prescribed under this section for different classes of health practitioner.
- (3) Any notice prescribing any fee under this section may exempt any class or classes of person from liability to pay any such fee, and may provide for the waiver or refund of any such fee.

Compare: 1995 No 95 s 126

131 Disciplinary levy

- (1) Each authority may from time to time, by notice in the *Gazette*, impose on every health practitioner registered with the authority a disciplinary levy of any amount that it thinks fit for the purpose of funding the costs arising out of—
- (a) the appointment of, and any investigation by, any professional conduct committee; and
 - (b) proceedings of the Tribunal.
- (2) Any notice imposing any levy under this section may exempt from liability to pay that levy any class or classes of health practitioner registered with the authority, and may provide for the waiver or refund of the whole or part of that levy.

Compare: 1995 No 95 s 127

132 Further provisions relating to fees and levy

- (1) Any notice under section 130 or section 131 may at any time, by notice in the *Gazette*, be amended or revoked by the authority that issued the notice.
- (2) Every notice under section 130 or section 131 comes into force on a date specified in the notice, being not less than 28 days after the date of publication of the notice in the *Gazette*.
- (3) A notice under section 130 or 131 is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

- (4) Each authority must ensure that an up-to-date version of each notice that the authority has published under section 130 or section 131 is—
 - (a) available on the Internet; and
 - (b) available at the office of the authority during business hours, so that members of the public may—
 - (i) inspect the notice free of charge; or
 - (ii) obtain a photocopy of the notice for a reasonable fee.
- (5) Every fee set by an authority under section 130, and every levy imposed by an authority under section 131, is payable, and recoverable as a debt due, to the authority.
- (6) If any fee is payable to an authority under this Act, the Registrar of the authority may decline to do any act, or to permit any act to be done, or to receive any document in respect of which that fee is payable, until the fee is paid.

Compare: 1995 No 95 s 128

Section 132(3): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

133 Application of fees, etc

- (1) All fees, fines, levies, and other money required to be paid under this Act are payable to the relevant authority, and must be paid to the Registrar of the authority.
- (2) All fees, fines, levies, and other money received by an authority must be applied by the authority as it considers appropriate in the performance of its functions and duties and the exercise of its powers.
- (3) There may be paid to members of each authority, any committee appointed by the authority under clause 16 of Schedule 3, and any employees or contractors of the authority, out of the funds of the authority, any remuneration (by way of fees, salary, or otherwise) and allowances and expenses that the authority from time to time determines.
- (4) This section is subject to section 105.
- (5) For the purposes of this section, **fine** does not include a fine imposed in respect of the commission of an offence against a provision of this Act.

134 Annual report

- (1) As soon as is reasonably practicable after the end of each financial year, each authority must deliver to the Minister a report on the operation of the authority during that financial year, and every report to the Minister must include—
 - (a) the audited financial statements of the authority for that financial year; and
 - (b) any information that section 122B may require to be included in the report.

- (2) In subsection (1), **financial year**, in relation to an authority, means a period ending in each calendar year on a balance date adopted by the authority.
- (3) An authority that is established by this Act need not adopt a balance date in the calendar year in which it is established as long as its first balance date is not later than 15 months after the date on which it is established.
- (4) Within 16 sitting days of receiving the annual report from an authority, the Minister must present a copy of the report to the House of Representatives.

Section 134(1): replaced, on 12 April 2019, by section 40 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Information about health practitioners

Heading: inserted, on 12 April 2019, by section 41 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

134A Authority to provide to Director-General of Health information about health practitioners

- (1) Each authority must provide to the Director-General of Health (the **Director-General**) information held by the authority that—
 - (a) relates to health practitioners who are registered with the authority and who hold current practising certificates; and
 - (b) is of a kind specified for the purpose of this section by the Director-General after consultation with the authority (including, without limitation, a health practitioner's name, date of birth, ethnicity, gender, employer, place or places of work, and the average weekly number of hours worked by the health practitioner at each place of work).
- (2) The Director-General may use the information only for the purpose of supporting the Ministry of Health's responsibilities for workplace planning and development.
- (3) The information must be provided—
 - (a) annually, on a date set by the Director-General after consultation with the authority; and
 - (b) in a form or manner set by the Director-General.
- (4) Information that is provided to the Director-General under this section and that is not publicly available must not be published or disclosed by the Director-General in a manner that—
 - (a) identifies any health practitioner to whom the information relates; or
 - (b) could reasonably be expected to identify any health practitioner to whom the information relates.
- (5) This section overrides provisions in contracts, deeds, documents, and other enactments that are inconsistent with this section.

Section 134A: inserted, on 12 April 2019, by section 41 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Corporate and administrative matters governed by Schedule 3

135 Further provisions relating to authorities in Schedule 3

The provisions set out in Schedule 3 apply to each authority.

Authorities to keep registers

136 Register

Each authority must maintain a register of the health practitioners registered with the authority.

137 Register may be kept in parts

Each authority may keep the register in separate parts and may, without limitation, have separate parts that identify health practitioners who—

- (a) are required to practise subject to supervision; or
- (b) are, by their scopes of practice, permitted to practise within any scope of practice; or
- (c) hold current annual practising certificates; or
- (d) do not hold current annual practising certificates.

138 Information to be registered

- (1) The information to be entered in the register of each authority in respect of a health practitioner is—
 - (a) the health practitioner's name;
 - (b) particulars of the qualifications by virtue of which the health practitioner is registered;
 - (c) the scope of practice in respect of which the health practitioner is registered;
 - (d) any change to the scope of practice in respect of which the health practitioner is registered;
 - (e) whether the health practitioner holds an annual practising certificate or an interim practising certificate;
 - (f) any other matters (for example, any address of the health practitioner) the authority thinks appropriate.
- (2) Information entered in the register under subsection (1)(f) does not form part of the register for the purposes of section 139 or section 149.
- (3) If the registration of a health practitioner is suspended, the fact that it is suspended and any current conditions relating to its suspension must be entered on the relevant register.
- (4) The Registrar must make all amendments to the register necessary to reflect—

- (a) any changes in the information referred to in subsection (3);
- (b) any changes notified to the Registrar in any other information referred to in subsection (1).

139 Certificates of registered information

On payment of the fee (if any) set by the Registrar's authority, the Registrar must give a person who asks for it a certificate—

- (a) stating all the current information then entered in the register in relation to a particular person; and
- (b) stating that it is all the current information then entered in the register in relation to the person; and
- (c) that is signed and dated by the Registrar.

140 Health practitioners must notify Registrar of addresses for service

- (1) A health practitioner must provide to the Registrar of the authority the health practitioner is registered with—
 - (a) a postal address for service; and
 - (b) an electronic address for service.
- (2) A health practitioner may change any address for service by notifying the Registrar of the change.

Section 140: replaced, on 12 April 2019, by section 42 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

141 Changes of name

- (1) If satisfied that a health practitioner has changed his or her name, or that it is wrongly entered in the register, the Registrar of the responsible authority must correct the entry in the register relating to the health practitioner.
- (2) Within 1 month after a health practitioner changes his or her name, the practitioner must give the Registrar of the responsible authority written notice of the practitioner's new name.

142 Health practitioner may ask for registration to be cancelled

- (1) On the written application of a health practitioner, the responsible authority may direct the Registrar to cancel the entry in the register relating to the health practitioner.
- (2) The authority must not direct the Registrar to cancel the entry in the register relating to a health practitioner if there are criminal or disciplinary actions pending against the practitioner.

143 Entry to be cancelled on death of health practitioner

- (1) Promptly after registering the death of a person who appears to have been a health practitioner, a Registrar (within the meaning of section 2 of the Births,

Deaths, Marriages, and Relationships Registration Act 1995) must give the Registrar of the responsible authority written notice of the death, with particulars of its date and place.

- (2) If there is an entry in the register relating to the health practitioner, the Registrar must, as soon as is practicable after receiving the notice, cancel it.
- (3) An authority may direct its Registrar to cancel the entry in the register relating to a health practitioner if it believes on reasonable grounds (other than having received written notice under subsection (1)) that a registered health practitioner has died.
- (4) *[Repealed]*

Section 143(1): substituted, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Section 143(3): amended, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Section 143(4): repealed, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

144 Revision of register

- (1) The Registrar of the responsible authority may at any time, and must if the authority directs, ask whether a health practitioner wishes to have the entry in the register relating to him or her cancelled.
- (2) The Registrar must ask by letter addressed to the health practitioner at his or her last known address.
- (3) If the health practitioner tells the Registrar in writing that he or she wishes to have the entry in the register relating to him or her cancelled, the Registrar may cancel the entry in the register relating to the health practitioner.
- (4) If the Registrar does not receive a reply to the letter within 6 months after it was posted, or if the letter is returned to the Registrar undelivered, the Registrar may give the health practitioner notice in writing at his or her last known address that the entry in the register relating to the health practitioner may be cancelled if the health practitioner does not respond within 10 working days after the date of the notice.
- (5) If the Registrar does not receive a reply within 10 working days after the date of the notice, the authority may direct the Registrar to cancel the entry relating to the health practitioner.

145 Restoration of entries

- (1) This section applies to a person if the entry in a register relating to him or her has been cancelled under section 143(3) or section 144(3) or (5).
- (2) On the written application of a person to whom this section applies, the Registrar of the responsible authority must restore the entry in the register relating to the person unless the person could not be registered in accordance

with section 16 or is subject to pending disciplinary proceedings under Part 4 or to an order under section 101(1)(a).

146 Cancellation of registration on authority's direction

- (1) The responsible authority may direct the Registrar of the authority to cancel the entry in the register relating to a health practitioner, and give him or her notice of the cancellation, if it is satisfied that he or she—
 - (a) obtained registration by making a false or misleading representation or declaration (whether oral or written); or
 - (b) was not entitled to be registered.
- (2) The authority may not give a direction under subsection (1) unless it has first—
 - (a) informed the health practitioner concerned why it may give a direction under that subsection in respect of the health practitioner; and
 - (b) given the health practitioner a reasonable opportunity to make written submissions and be heard on the question, either personally or by his or her representative.
- (3) If no appeal against a direction under subsection (1) has been made within the time provided by this Act, the authority may direct the Registrar to notify the cancellation in any publications the authority directs.

147 Removal of qualifications, or cancellation of registration, overseas

- (1) The responsible authority may review the registration of a health practitioner if the authority is satisfied that—
 - (a) the health practitioner is registered by virtue of an overseas qualification and the educational establishment that gave the practitioner the qualification has cancelled or suspended it (or taken action equivalent to cancelling or suspending it); or
 - (b) an overseas authority that maintains a register of people registered or licensed as health professionals has, as a result of disciplinary action taken against the health practitioner,—
 - (i) removed the practitioner's name from the register; or
 - (ii) suspended the practitioner's registration; or
 - (iii) taken action equivalent to removing the practitioner's name from the register or suspending the practitioner's registration.
- (2) The authority must take all reasonably practicable steps to ensure that the health practitioner is given—
 - (a) written notice containing sufficient detail to inform him or her clearly of the substance of the grounds on which the authority has decided to carry out the review; and

- (b) any information in the authority's possession relating to the cancellation, suspension, or removal concerned; and
 - (c) a reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative.
- (3) Subsection (2)(b) is subject to section 154.
 - (4) Except as provided in subsection (2), the form of the review is at the authority's discretion.
 - (5) After the review, the authority, if it thinks it appropriate to do so,—
 - (a) may direct the Registrar to note in the register the cancellation, suspension, or removal concerned; and
 - (b) may either—
 - (i) suspend the health practitioner's registration for any period it thinks fit and direct the Registrar to note the suspension in the register; or
 - (ii) direct the Registrar to cancel the entry in the register relating to the health practitioner.
 - (6) The Registrar must take all reasonably practicable steps to ensure that the health practitioner is given a copy of any direction under subsection (5).

Section 147(1): replaced, on 12 April 2019, by section 43 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

148 Cancellation or suspension not to affect existing liabilities

- (1) The cancellation of the entry in a register relating to a health practitioner does not affect his or her liability for any act or default occurring before the cancellation.
- (2) The suspension of a registered health practitioner's registration does not affect his or her liability for any act or default occurring before the suspension.

149 Authorities to publish register

- (1) Each authority must from time to time publish the register that it keeps, in any form it thinks fit.
- (2) A publication under subsection (1) may include address information about a health practitioner who has not objected to the authority in writing to the inclusion of that information, or who has withdrawn a previous objection to that inclusion.
- (3) Publication may be in printed or electronic form.
- (4) The authority may publish the register with some of the information it contains abbreviated, so long as all abbreviations are explained or easily understandable by members of the public.
- (5) Subsections (2) and (3) do not limit the generality of subsection (1).

150 Inspection of register

- (1) The Registrar of each authority must keep the published form of the register open for public inspection at the offices of the authority during its ordinary office hours.
- (2) Each Registrar of an authority must ensure that there are available at the offices of the authority during its ordinary office hours—
 - (a) copies of the published form of the register; or
 - (b) suitable facilities for obtaining print-outs of the published form of the register.
- (3) Each Registrar of an authority—
 - (a) may refuse to allow a person to inspect the published form of the register if the person does not pay the fee (if any) set by the authority for inspecting it; and
 - (b) may refuse to give a copy or print-out of the published form of the register or any part of it to any person who does not pay the fee (if any) set by the authority for such a copy or print-out.
- (4) This section does not limit any discretion conferred by section 149.

*Registrars***151 Authorities must appoint Registrars**

- (1) Each authority must appoint a Registrar and may appoint 1 or more Deputy Registrars.
- (2) A Deputy Registrar appointed by an authority has and may, subject to the control of the Registrar of the authority, exercise the powers, duties, and functions of the Registrar.

152 Registrar must carry out authority's decisions and comply with directions of authority and Tribunal

- (1) Every Registrar must make the appropriate entry in the register if—
 - (a) the authority—
 - (i) cancels or suspends a health practitioner's registration; or
 - (ii) revokes the suspension of a health practitioner's registration; or
 - (iii) includes conditions in a health practitioner's scope of practice; or
 - (iv) cancels or varies any conditions included in a health practitioner's scope of practice; or
 - (b) the Tribunal makes an order that—
 - (i) a health practitioner's registration be cancelled or suspended; or
 - (ii) for a stated period, he or she may practise as a health practitioner only in accordance with stated conditions.

- (2) If an authority gives the Registrar a direction under this Act, he or she must promptly comply with it.

Part 7

Miscellaneous provisions, consequential amendments and repeals, and transitional provisions

Subpart 1—Miscellaneous provisions, consequential amendments, and repeals

Miscellaneous provisions

153 Certificate of Registrars to be evidence

- (1) In the absence of proof to the contrary, a certificate purporting to be signed by the Registrar of an authority is for all purposes sufficient evidence of—
- (a) whether any person was or was not registered, or was or was not the holder of a practising certificate, at a time or during a period stated in the certificate;
 - (b) any entry in a register maintained by an authority;
 - (c) any act, order, determination, or proceeding of an authority, a committee of an authority, or a professional conduct committee.
- (2) In the absence of proof to the contrary, a certificate purporting to be signed by an executive officer of the Tribunal is for all purposes sufficient evidence of any matter stated in the certificate relating to the proceedings of the Tribunal.

Compare: 1995 No 95 s 133

154 Authorities may withhold information in certain circumstances

Nothing in this Act requires an authority to make available to an individual information that could be withheld,—

- (a) in the case of personal information about the individual, under the Privacy Act 1993; and
- (b) in any other case, under the Official Information Act 1982 (as if it were official information).

Compare: 1995 No 95 s 134

155 Proceedings not invalid because of defect in appointment

- (1) This section applies to every authority, every professional conduct committee, and the Tribunal.
- (2) No act or proceeding of a body to which this section applies, or of a person acting as a member of a body to which this section applies, is invalid merely because—

- (a) there was a defect in the appointment of a person acting as a member of the body; or
- (b) a person acting as a member of the body was incapable of being, or had ceased to be, a member of the body.

Compare: 1995 No 95 s 136

156 Notice and service of documents

- (1) Unless this Act provides otherwise, if a provision of this Act requires or authorises any notice or other document, or any notification, to be given to a person, the notice, document, or notification must be given in writing to the person—
 - (a) by delivering it personally or by an agent (such as a courier) to the person; or
 - (b) by sending it by pre-paid post addressed to the person at the person's usual or last known place of residence or business; or
 - (c) by sending it to the electronic address provided by the person as an address for service.
- (2) In the absence of proof to the contrary, a notice, document, or notification sent by post to a person in accordance with subsection (1)(b) must be treated as having been received by the person when it would have been delivered in the ordinary course of the post; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted.
- (2A) A notice, document, or notification sent to a person's electronic address must be treated as having been received by the person on the working day after the date on which it was sent, and in proving service it is sufficient to prove that the notice, document, or notification was properly sent.
- (3) If a person is absent from New Zealand, a notice, document, or notification given to the person's agent in New Zealand in accordance with subsection (1) must be treated as having been given to him or her.
- (4) If a person has died, the notice, document, or notification may be given, in accordance with subsection (1), to his or her personal representative.

Compare: 1995 No 95 s 137

Section 156(1)(c): replaced, on 12 April 2019, by section 44(1) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 156(2): amended, on 12 April 2019, by section 44(2) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Section 156(2A): inserted, on 12 April 2019, by section 44(3) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

156A Orders of authority

- (1) An order made by a responsible authority must—
 - (a) be in writing; and

- (b) state the reasons why it was made; and
 - (c) state clearly the health practitioner's right to appeal to the District Court against the order; and
 - (d) be signed by the Registrar of the authority.
- (2) The Registrar of a responsible authority must, as soon as practicable after an order is made by the authority,—
- (a) ensure that a copy of the order is given to—
 - (i) the health practitioner concerned; and
 - (ii) any employer of the health practitioner; and
 - (iii) any person who works in partnership or association with the practitioner; and
 - (b) take all administrative steps necessary to give effect to the order.

Section 156A: inserted, on 12 April 2019, by section 45 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

156B When orders of authority or Tribunal take effect

Unless otherwise provided in this Act, an order made by an authority or the Tribunal takes effect on the day on which, under section 156, the order is to be treated as having been received by the health practitioner concerned, or any later date specified in the order.

Section 156B: inserted, on 12 April 2019, by section 45 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

157 Publication of orders

- (1) An authority may publish in any publication a notice setting out—
- (a) the effect of any order or direction it has made under this Act in respect of a health practitioner; and
 - (b) a summary of any finding it has made under this Act in respect of the health practitioner; and
 - (c) the name of the health practitioner.
- (2) If the Tribunal makes an order under this Act in respect of a health practitioner, the appropriate executive officer of the Tribunal must publish, in any publication the Tribunal directs, a notice stating—
- (a) the effect of the order; and
 - (b) the name of the health practitioner; and
 - (c) a summary of the proceedings in which the order was made.
- (3) If a court makes an order under this Act in respect of a health practitioner, the authority with which the health practitioner is or was registered must publish, in any publication the court directs, a notice stating—
- (a) the effect of the order; and

- (b) the name of the health practitioner; and
 - (c) a summary of the proceedings in which the order was made.
- (4) Subsections (2) and (3) apply subject to—
- (a) any order of the Tribunal under section 95; and
 - (b) any order of the court.
- (5) In this section, the term **health practitioner** includes a former health practitioner.

Compare: 1995 No 95 s 138

157A Meaning of naming policy

In sections 157B to 157I, **naming policy** means a policy issued by an authority relating to the naming of a health practitioner in a notice published by the authority under section 157(1).

Section 157A: inserted, on 12 April 2019, by section 46 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

157B Authorities to issue naming policies

- (1) Each authority must issue a naming policy not later than 12 months after this section comes into force.
- (2) The purpose of the naming policy is to—
- (a) enhance public confidence in the health professions for which the authority is responsible and their disciplinary procedures by providing transparency about their decision-making processes; and
 - (b) ensure that health practitioners whose conduct has not met expected standards may be named where it is in the public interest to do so; and
 - (c) improve the safety and quality of health care.
- (3) A naming policy must set out—
- (a) the class or classes of health practitioners in respect of whom the naming policy applies; and
 - (b) the circumstances in which a health practitioner may be named; and
 - (c) the general principles that will guide the authority's naming decisions; and
 - (d) the criteria that the authority must apply when making a naming decision; and
 - (e) the requirement to have regard to the consequences for the health practitioner of being named, including the likely harm to the health practitioner's reputation; and
 - (f) the procedures that the authority must follow when making a naming decision; and

- (g) the information the authority may disclose when naming a health practitioner; and
- (h) the means by which a health practitioner may be named.

Section 157B: inserted, on 12 April 2019, by section 46 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

157C Consultation on naming policies

Before issuing its naming policy, an authority must consult, and take into account any comments received from, the following persons:

- (a) the health practitioners registered with the authority; and
- (b) the Privacy Commissioner; and
- (c) the Director-General of Health; and
- (d) the Health and Disability Commissioner.

Section 157C: inserted, on 12 April 2019, by section 46 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

157D Naming policies to be available on Internet

Immediately after issuing a naming policy, an authority must make its naming policy available on an Internet site maintained by or on behalf of the authority.

Section 157D: inserted, on 12 April 2019, by section 46 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

157E When naming policies come into force

A naming policy comes into force on the day after the date on which it is issued.

Section 157E: inserted, on 12 April 2019, by section 46 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

157F Review of naming policies

- (1) An authority must review its naming policy within 3 years after the policy comes into force, and then at intervals of not more than 3 years.
- (2) Sections 157B to 157E apply with all necessary modifications to the review of a naming policy.

Section 157F: inserted, on 12 April 2019, by section 46 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

157G Naming policies to be consistent with law

A naming policy must be consistent with—

- (a) this Act; and
- (b) the information privacy principles in section 6 of the Privacy Act 1993; and
- (c) the general law (including natural justice rights).

Section 157G: inserted, on 12 April 2019, by section 46 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

157H Status of naming policies

A naming policy is—

- (a) not—
 - (i) a legislative instrument for the purposes of the Legislation Act 2012; or
 - (ii) a disallowable instrument for the purposes of the Legislation Act 2012; and
- (b) not required to be presented to the House of Representatives under section 41 of the Legislation Act 2012.

Section 157H: inserted, on 12 April 2019, by section 46 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

157I Authority naming health practitioner in accordance with naming policy protected by qualified privilege

For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any notice published by an authority under section 157(1) that names a health practitioner in accordance with a naming policy issued by the authority must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Section 157I: inserted, on 12 April 2019, by section 46 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

158 Application of Trans-Tasman Mutual Recognition Act 1997

Except as otherwise provided in Schedule 4 of the Trans-Tasman Mutual Recognition Act 1997, that Act prevails over this Act.

159 Reference to medical practitioners in other enactments

Every reference in any enactment to a medical practitioner or registered medical practitioner or duly qualified medical practitioner must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Medical Council of New Zealand and who is practising medicine in accordance with his or her scope of practice.

Compare: 1995 No 95 s 139

160 Reference to chiropractors in other enactments

Every reference in any enactment to a chiropractor or registered chiropractor must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Chiropractic Board and who is practising chiropractic in accordance with his or her scope of practice.

161 Reference to dentists, etc, in other enactments

- (1) Every reference in any enactment to a dentist or registered dentist must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Dental Council established by section 114(2) and who is practising dentistry in accordance with his or her scope of practice.
- (2) Every reference in any enactment to a clinical dental technician or registered clinical dental technician must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Dental Council established by section 114(2) and who is practising clinical dental technology in accordance with his or her scope of practice.
- (3) Every reference in any enactment to a dental technician or registered dental technician must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Dental Council established by section 114(2) and who is practising dental technology in accordance with his or her scope of practice.

162 Reference to dietitians in other enactments

Every reference in any enactment to a dietitian or registered dietitian must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Dietitians Board and who is practising dietetics in accordance with his or her scope of practice.

163 Reference to medical laboratory technologists, etc, in other enactments

- (1) Every reference in any enactment to a medical laboratory technologist or registered medical laboratory technologist must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Medical Sciences Council of New Zealand and who is practising medical laboratory science in accordance with his or her scope of practice.
- (2) Every reference in any enactment to a medical radiation technologist or registered medical radiation technologist must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Medical Radiation Technologists Board and who is practising medical radiation technology in accordance with his or her scope of practice.
- (3) Every reference in any enactment to a podiatrist or registered podiatrist must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Podiatrists Board and who is practising podiatry in accordance with his or her scope of practice.

Section 163(1): amended, on 1 August 2011, by clause 7(2) of the Health Practitioners Competence Assurance (Designation of Anaesthetic Technology Services as Health Profession) Order 2011 (SR 2011/227).

164 Reference to nurses and midwives in other enactments

- (1) Every reference in any enactment to a nurse or registered nurse must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Nursing Council and who is practising nursing in accordance with his or her scope of practice.
- (2) However, a reference in an enactment of the kind described in subsection (1) does not include a reference to a nurse whose scope of practice does not permit him or her to perform a function to which the reference in that enactment relates.
- (3) Every reference in any enactment to a midwife or registered midwife must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Midwifery Council and who is practising midwifery in accordance with his or her scope of practice.

165 Reference to occupational therapists in other enactments

Every reference in any enactment to an occupational therapist or registered occupational therapist must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Occupational Therapy Board and who is practising occupational therapy in accordance with his or her scope of practice.

166 Reference to optometrists and opticians in other enactments

Every reference in any enactment to an optometrist or to a registered optometrist or a dispensing optician or a registered dispensing optician must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Optometrists and Dispensing Opticians Board and who is practising optometry or, as the case requires, optical dispensing in accordance with his or her scope of practice.

167 Reference to pharmacists in other enactments

Every reference in any enactment to a pharmacist or registered pharmacist must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Pharmacy Council and who is practising pharmacy in accordance with his or her scope of practice.

168 Reference to physiotherapists in other enactments

Every reference in any enactment to a physiotherapist or registered physiotherapist must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Physiotherapy Board and who is practising physiotherapy in accordance with his or her scope of practice.

169 Reference to psychologists in other enactments

Every reference in any enactment to a psychologist or registered psychologist must, unless a different intention appears, be taken to be a reference to a person who is, or is deemed to be, registered under this Act with the Psychologists Board and who is practising psychology in accordance with his or her scope of practice.

170 Regulations

The Governor-General may, by Order in Council made on the advice of the Minister given after consultation by the Minister with any authority affected by that advice, make regulations for any or all of the following purposes:

- (a) regulating the procedure of—
 - (i) all or any authorities:
 - (ii) all professional conduct committees or any class of professional conduct committee:
 - (iii) the Tribunal:
- (b) specifying in respect of any particular authority the number of members of the authority to be appointed by the Minister in accordance with the results of elections conducted by or on behalf of the authority:
- (c) providing in respect of elections required by paragraph (b), in relation to all authorities or any authority,—
 - (i) for all health practitioners or any class of health practitioner registered, or deemed to be registered, with the authority to be eligible to vote at the elections:
 - (ii) for the times (expressed by 1 or more dates or periods) and intervals at which the elections are to be conducted:
 - (iii) for the manner in which the elections are to be conducted:
 - (iv) for the method and procedures for determining the results of the election:
- (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

171 Review of operation of Act

- (1) As soon as practicable after the expiry of the period of 3 years beginning on the commencement of this section, the Director-General of Health must—
 - (a) review the operation of this Act since the date of the commencement of this section; and
 - (b) consider whether any amendments to this Act are necessary or desirable; and
 - (c) report the findings of the Director-General of Health to the Minister.

- (2) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

172 False declarations and representations

Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 who, for any purpose relating to this Act, either on his or her own behalf or on behalf of any other person,—

- (a) either orally or in writing, makes any declaration or representation that, to his or her knowledge, is false or misleading in any material particular; or
- (b) produces to an authority, the Tribunal, or a professional conduct committee, or makes use of, any document knowing it to contain any declaration or representation of that kind; or
- (c) produces to an authority, the Tribunal, or a professional conduct committee, or makes use of, a document knowing that it is not genuine.

Compare: 1995 No 95 s 141

Section 172: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

173 Time for filing charging document

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act ends on the date that is 3 years after the date on which the offence was committed.

Section 173: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

174 Duty of health practitioners in respect of reproductive health services

- (1) This section applies whenever—
- (a) a person requests a health practitioner to provide a service (including, without limitation, advice) with respect to contraception, sterilisation, or other reproductive health services; and
 - (b) the health practitioner objects on the ground of conscience to providing the service.
- (2) When this section applies, the health practitioner must inform the person who requests the service that he or she can obtain the service from another health practitioner or from a family planning clinic.

Compare: 1995 No 95 s 11

Consequential amendments, repeals, and revocations

175 Consequential amendments, repeals, and revocations

- (1) The Acts specified in Schedule 4 are amended in the manner indicated in that schedule.

- (2) The Accident Insurance Act 1998 continues to apply for the purposes of Part 10 or Part 11 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 as if it were amended in the manner indicated in Schedule 5.
- (3) The regulations and orders specified in Schedule 6 are amended in the manner indicated in that schedule.
- (4) The Acts specified in Schedule 7 are repealed.
- (5) The regulations and orders specified in Schedule 8 are revoked.

Savings for exemptions under Medical Auxiliaries Act 1966

176 Continuation of exemptions under Medical Auxiliaries Act 1966

- (1) In this section, **exempted person** means a person who, immediately before the commencement of this section, was entitled to rely on an exemption granted by or under regulations made under the Medical Auxiliaries Act 1966.
- (2) For the purposes of subsection (3), the exempted person may continue to rely on the exemption until the expiry of the period (if any) for which it was granted.
- (3) For so long as the exempted person may under subsection (2) continue to rely on the exemption, the person is not to be regarded as contravening a provision of this Act merely because he or she performs an act in reliance on, and in accordance with any conditions imposed by, the exemption.

Repeal of Part 6 of Medical Practitioners Act 1995 and savings

177 Repeal of Part 6 of Medical Practitioners Act 1995 and savings for existing quality assurance notices

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Despite subsection (1), every notice under section 68 of the Medical Practitioners Act 1995 that is in force immediately before the commencement of this section continues in force, and may be revoked, as if this Act had not been enacted.
- (3) Part 6 of the Medical Practitioners Act 1995, so far as applicable, continues to apply to—
 - (a) any information that became known solely as a result of an activity that, at the relevant time, was a declared quality assurance activity (within the meaning of section 66(1) of that Act); and
 - (b) any document brought into existence solely for the purpose of such an activity.

Subpart 2—Transitional provisions

*Interpretation of terms used in this subpart***178 Interpretation**

(1) In this subpart, unless the context otherwise requires,—

continuing authority means each authority specified in column 1 of Schedule 2

Dental Technicians Board means the board continued by section 72(1) of the Dental Act 1988

former registration Act means each of the following Acts:

- (a) Chiropractors Act 1982:
- (b) Dental Act 1988:
- (c) Dietitians Act 1950:
- (d) Medical Auxiliaries Act 1966:
- (e) Medical Practitioners Act 1995:
- (f) Nurses Act 1977:
- (g) Occupational Therapy Act 1949:
- (h) Optometrists and Dispensing Opticians Act 1976:
- (i) Pharmacy Act 1970:
- (j) Physiotherapy Act 1949:
- (k) Psychologists Act 1981

new Dental Council means the Dental Council established by section 114(2)

old Dental Council means the Dental Council of New Zealand continued by section 69(1) of the Dental Act 1988

Pharmaceutical Society means the Pharmaceutical Society of New Zealand continued by section 3 of the Pharmacy Act 1970, and **Pharmaceutical Council** means the Council of that Society

registered, in relation to a person, includes a person whose registration was conditional or unconditional or who has held a certificate of registration

successor authority, in relation to any person who was at any time registered under a former registration Act, means,—

- (a) if the person was at that time registered with a continuing authority, the continuing authority:
- (b) if the person was at that time registered with the Dental Technicians Board, the new Dental Council:

- (c) if the person was at that time registered in his or her capacity as a midwife with the Nursing Council, the Midwifery Council established by section 114(3):
 - (d) if the person was at that time registered with the old Dental Council, the new Dental Council:
 - (e) if the person was at that time registered with the Pharmaceutical Council, the Pharmacy Council established by section 114(5).
- (2) Wherever an authority is, in this subpart, referred to by a name that is specified in column 1 of Schedule 2, the reference is to the authority of that name specified in that schedule.

Persons registered under former registration Acts deemed to be registered under this Act

179 Persons registered under Chiropractors Act 1982 deemed to be registered under this Act

Every person who, immediately before the commencement of this section, was registered as a chiropractor under the Chiropractors Act 1982 (including a person who, immediately before that commencement, was so registered by virtue of a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Chiropractic Board as a practitioner of the profession of chiropractic.

180 Persons registered under Dental Act 1988 deemed to be registered under this Act

- (1) Every person who, immediately before the commencement of this section, was registered as a dentist under the Dental Act 1988 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the new Dental Council as a practitioner of the profession of dentistry.
- (2) Every person who, immediately before the commencement of this section, was registered as a clinical dental technician under the Dental Act 1988 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the new Dental Council as a practitioner of the profession of clinical dental technology.
- (3) Every person who, immediately before the commencement of this section, was registered as a dental technician under the Dental Act 1988 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration

under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the new Dental Council as a practitioner of the profession of dental technology.

181 Persons registered under Dietitians Act 1950 deemed to be registered under this Act

Every person who, immediately before the commencement of this section, was registered as a dietitian under the Dietitians Act 1950 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Dietitians Board as a practitioner of the profession of dietetics.

182 Persons registered under Medical Auxiliaries Act 1966 deemed to be registered under this Act

- (1) Every person who, immediately before the commencement of this section, was registered as a medical laboratory technologist under the Medical Auxiliaries Act 1966 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Medical Sciences Council of New Zealand as a practitioner of the profession of medical laboratory science.
- (2) Every person who, immediately before the commencement of this section, was registered as a medical radiation technologist under the Medical Auxiliaries Act 1966 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Medical Radiation Technologists Board as a practitioner of the profession of medical radiation technology.
- (3) Every person who, immediately before the commencement of this section, was registered as a podiatrist under the Medical Auxiliaries Act 1966 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Podiatrists Board as a practitioner of the profession of podiatry.

Section 182(1): amended, on 1 August 2011, by clause 7(3) of the Health Practitioners Competence Assurance (Designation of Anaesthetic Technology Services as Health Profession) Order 2011 (SR 2011/227).

183 Persons registered under Medical Practitioners Act 1995 deemed to be registered under this Act

Every person who, immediately before the commencement of this section, was registered as a medical practitioner under the Medical Practitioners Act 1995 (including a person who, immediately before that commencement, was so registered by virtue of interim, probationary, or temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Medical Council of New Zealand as a practitioner of the profession of medicine.

184 Persons registered under Nurses Act 1977 deemed to be registered under this Act

- (1) Every person who, immediately before the commencement of this section, was registered or enrolled as a nurse under the Nurses Act 1977 (including a person who, immediately before that commencement, was so registered or enrolled by virtue of a provisional certificate of registration or enrolment or a certificate of temporary registration or enrolment under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Nursing Council as a practitioner of the profession of nursing.
- (2) Subsection (1) does not apply to a person so far as the person was, immediately before the commencement of this section, registered under the Nurses Act 1977 in his or her capacity as a midwife.
- (3) Every person who, immediately before the commencement of this section, was registered under the Nurses Act 1977 in his or her capacity as a midwife (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Midwifery Council established by section 114(3) as a practitioner of the profession of midwifery.

185 Persons registered under Occupational Therapy Act 1949 deemed to be registered under this Act

Every person who, immediately before the commencement of this section, was registered as an occupational therapist under the Occupational Therapy Act 1949 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Occupational Therapy Board as a practitioner of the profession of occupational therapy.

186 Persons registered under Optometrists and Dispensing Opticians Act 1976 deemed to be registered under this Act

- (1) Every person who, immediately before the commencement of this section, was registered as an optometrist under the Optometrists and Dispensing Opticians

Act 1976 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Optometrists and Dispensing Opticians Board as a practitioner of the profession of optometry.

- (2) Every person who, immediately before the commencement of this section, was registered as a dispensing optician under the Optometrists and Dispensing Opticians Act 1976 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Optometrists and Dispensing Opticians Board as a practitioner of the profession of optical dispensing.

187 Persons registered under Pharmacy Act 1970 deemed to be registered under this Act

Every person who, immediately before the commencement of this section, was registered as a pharmacist under the Pharmacy Act 1970 is, on the commencement of this section, deemed to be registered, under this Act, with the Pharmacy Council established by section 114(5) of this Act as a practitioner of the profession of pharmacy.

188 Persons registered under Physiotherapy Act 1949 deemed to be registered under this Act

Every person who, immediately before the commencement of this section, was registered as a physiotherapist under the Physiotherapy Act 1949 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Physiotherapy Board as a practitioner of the profession of physiotherapy.

189 Persons registered under Psychologists Act 1981 deemed to be registered under this Act

Every person who, immediately before the commencement of this section, was registered as a psychologist under the Psychologists Act 1981 (including a person who, immediately before that commencement, was so registered by virtue of a provisional certificate of registration or a certificate of temporary registration under that Act) is, on the commencement of this section, deemed to be registered, under this Act, with the Psychologists Board as a practitioner of the profession of psychology.

Persons deemed registered under this Act deemed to have authorised scope of practice

190 Practitioners whose registration continued deemed to have authorised scope of practice

- (1) This section applies to a practitioner (the **practitioner**) who, because of the person's former registration under a former registration Act (the **relevant former Act**), is by this subpart deemed to be registered with an authority.
- (2) On the commencement of this section, the authority is deemed to have authorised the practitioner's scope of practice, which is deemed to consist of—
 - (a) health services of the kind that the practitioner was, immediately before that commencement, permitted to perform by virtue of his or her registration under the relevant former Act; and
 - (b) any conditions that, immediately before that commencement, were imposed by or under that Act on the practitioner's registration or annual practising certificate or annual licence.
- (3) The authority may, in accordance with this Act, vary, or include conditions in, a scope of practice that it is deemed to have been authorised under subsection (2).

Unexpired annual practising certificates and licences and continuation of exemptions

191 Continuation of annual practising certificates and licences issued under former registration Acts

- (1) This section applies to every annual practising certificate and to every annual licence that—
 - (a) had been issued under a former registration Act to a person who, by this subpart, is deemed to be registered with an authority; and
 - (b) was in force immediately before the commencement of this section.
- (2) Every such certificate and every such licence is deemed to be an annual practising certificate issued by the authority and continues in effect until the expiry of the period for which it had been issued under the former registration Act.
- (3) To avoid doubt, subsection (2) is subject to section 33.

192 Continuation of exemptions from holding annual practising certificates or licences

- (1) This section applies to every practitioner who,—
 - (a) because of the practitioner's former registration under a former registration Act, is, under this subpart, deemed to be registered with an authority; and

- (b) whose registration with that authority is to expire in accordance with a provision of this subpart; and
 - (c) who, immediately before the commencement of this section, was not required by that former registration Act to hold an annual practising certificate or an annual licence.
- (2) So long as the practitioner is, by this subpart, deemed to be registered with the authority, the practitioner is not required to have an annual practising certificate to practise the profession in respect of which the authority is appointed.

Registrations subject to time limits under former registration Acts

193 Persons holding certificates of temporary registration under Chiropractors Act 1982

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Chiropractic Board because the person held a certificate of temporary registration under the Chiropractors Act 1982.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.
- (3) The provisions of section 23(2) and (4) of the Chiropractors Act 1982 continue to apply with all necessary modifications to the registration of such a person, and the Chiropractic Board may, in accordance with those provisions as so modified, extend or cancel that registration.

194 Persons holding certificates of temporary registration under Dental Act 1988

- (1) This section applies to a person who, by this subpart, is deemed to be registered with the new Dental Council because the person held a certificate of temporary registration under the Dental Act 1988.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.
- (3) The provisions of section 35(2) and (5) of the Dental Act 1988 continue to apply with all necessary modifications to the registration of such a person under this subpart, and the new Dental Council may, in accordance with those provisions as so modified, extend or cancel that registration.

195 Persons holding provisional certificates under Dental Act 1988

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the new Dental Council because the person held a provisional certificate under the Dental Act 1988.

- (2) Unless sooner renewed or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the provisional certificate had been granted.
- (3) The provisions of sections 34(4) and (7) of the Dental Act 1988 continue to apply with all necessary modifications to the registration of such a person, and the new Dental Council may, in accordance with those provisions as so modified, renew or cancel that registration.

196 Persons holding certificates of temporary registration under Dietitians Act 1950

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Dietitians Board because the person held a certificate of temporary registration under the Dietitians Act 1950.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.
- (3) The provisions of section 18B(5) and (7) of the Dietitians Act 1950 continue to apply with all necessary modifications to the registration of such a person, and the Dietitians Board may, in accordance with those provisions as so modified, extend or cancel that registration.

197 Persons holding provisional certificates under Dietitians Act 1950

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Dietitians Board because the person held a provisional certificate under the Dietitians Act 1950.
- (2) Unless sooner renewed or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the provisional certificate had been granted.
- (3) The provisions of sections 18A(2) and (4) of the Dietitians Act 1950 continue to apply with all necessary modifications to the registration of such a person, and the Dietitians Board may, in accordance with those provisions as so modified, renew or cancel that registration.

198 Persons holding certificates of temporary registration as medical laboratory technologists under Medical Auxiliaries Act 1966

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Medical Sciences Council of New Zealand because the person held a certificate of temporary registration under the Medical Auxiliaries Act 1966.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.

- (3) Regulation 8(3) and (5) of the Medical Laboratory Technologists Regulations 1989 (SR 1989/282) continues to apply with all necessary modifications to the registration of such a person, and the Medical Sciences Council of New Zealand may, in accordance with those provisions as so modified, extend or direct the cancellation of that registration.

Section 198(1): amended, on 1 August 2011, by clause 7(4) of the Health Practitioners Competence Assurance (Designation of Anaesthetic Technology Services as Health Profession) Order 2011 (SR 2011/227).

Section 198(3): amended, on 1 August 2011, by clause 7(5) of the Health Practitioners Competence Assurance (Designation of Anaesthetic Technology Services as Health Profession) Order 2011 (SR 2011/227).

199 Persons holding certificates of temporary registration as medical radiation technologists under Medical Auxiliaries Act 1966

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Medical Radiation Technologists Board because the person held a certificate of temporary registration under the Medical Auxiliaries Act 1966.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.
- (3) The provisions of regulation 9(1) and (3) of the Medical Radiation Technologists Regulations 1995 (SR 1995/32) continue to apply, with all necessary modifications, to the registration of such a person, and the Medical Radiation Technologists Board may, in accordance with those provisions as so modified, extend or direct the cancellation of that registration.

200 Persons holding certificates of temporary registration as podiatrists under Medical Auxiliaries Act 1966

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Podiatrists Board because the person held a certificate of temporary registration under the Medical Auxiliaries Act 1966.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.
- (3) The provisions of regulation 5(5) and (7) of the Podiatrists Regulations 1982 (SR 1982/53) continue to apply, with all necessary modifications, to the registration of such a person, and the Podiatrists Board may, in accordance with those provisions as so modified, extend or direct the cancellation of that registration.

201 Persons holding provisional certificates under Medical Auxiliaries Act 1966

- (1) This section applies to a person who is, by this subpart, deemed to be registered under this Act because the person held a provisional certificate under the Medical Auxiliaries Act 1966.
- (2) Unless sooner renewed or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the provisional certificate had been granted.
- (3) The provisions of section 23(2) and (4) of the Medical Auxiliaries Act 1966 continue to apply with all necessary modifications to the registration of such a person, and the authority with which that person is, by this subpart, deemed to be registered may, in accordance with those provisions as so modified, renew or cancel that registration.

202 Medical practitioners holding probationary registration

- (1) In this section, **probationer** means a person who, immediately before the commencement of this section, held probationary registration under the Medical Practitioners Act 1995.
- (2) On the commencement of this section, the scope of practice of the probationer is deemed to be subject to conditions of the kind stated in sections 22(3)(a) and 23 of this Act, and continues to be subject to those conditions until they are cancelled by the Medical Council.
- (3) Every person who, immediately before the commencement of this section, is, in relation to the probationer, an approved person for the purposes of section 15 of the Medical Practitioners Act 1995 is deemed to be a person nominated by the Medical Council for the purposes of section 22(3)(d) or, as the case requires, section 22(3)(e) of this Act.
- (4) Every person who, immediately before the commencement of this section, is, in relation to the probationer, an approved person, or a person of a kind approved, for the purposes of section 16 of the Medical Practitioners Act 1995 is deemed to be a health practitioner nominated by the Medical Council for the purposes of section 22(3)(a) of this Act.
- (5) Section 16 of the Medical Practitioners Act 1995 continues, so far as applicable, to apply with all necessary modifications to every person appointed under that section as a supervisor of the probationer as if for the words in subsection (4)(b) “the probationer should be granted general registration” there were substituted the words “the condition requiring the practitioner to practise subject to supervision should continue to apply”.
- (6) The provisions of section 18(1) and (3) of the Medical Practitioners Act 1995 continue to apply with all necessary modifications to the registration of the probationer so long as the conditions referred to in subsection (2) continue to

apply to the probationer, and the Medical Council may, in accordance with those provisions as so modified, cancel the registration of the probationer.

203 Medical practitioners holding temporary registration

- (1) This section applies to a person who, by this subpart, is deemed to be registered with the Medical Council of New Zealand because of the person's temporary registration under the Medical Practitioners Act 1995.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the person's temporary registration had been granted.
- (3) The provisions of sections 26 and 27 of the Medical Practitioners Act 1995 continue to apply with all necessary modifications to the registration of such a person under this subpart, and the Medical Council of New Zealand may, in accordance with those provisions as so modified, vary or cancel that registration.

204 Medical practitioners holding interim registration

- (1) This section applies to a person who, by this subpart, is deemed to be registered with the Medical Council of New Zealand because of the person's interim registration under the Medical Practitioners Act 1995.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the person's interim registration had been granted.
- (3) The provisions of sections 31 and 32 of the Medical Practitioners Act 1995 continue to apply with all necessary modifications to the registration of such a person under this subpart, and the Medical Council of New Zealand may, in accordance with those provisions as so modified, vary or cancel that registration.

205 Persons holding certificates of temporary registration under Nurses Act 1977

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Nursing Council because the person held a certificate of temporary registration under the Nurses Act 1977.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.
- (3) The provisions of section 31(5) and (8) of the Nurses Act 1977 continue to apply with all necessary modifications to the registration of such a person, and the Nursing Council may, in accordance with those provisions as so modified, extend or cancel that registration.

206 Persons holding provisional certificates under Nurses Act 1977

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Nursing Council because the person held a provisional certificate under the Nurses Act 1977.
- (2) Unless sooner renewed or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the provisional certificate had been granted.
- (3) The provisions of section 30(2) and (4) of the Nurses Act 1977 continue to apply with all necessary modifications to the registration of such a person, and the Nursing Council may, in accordance with those provisions as so modified, renew or cancel that registration.

207 Persons holding provisional certificates under Occupational Therapy Act 1949

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Occupational Therapy Board because the person held a provisional certificate under the Occupational Therapy Act 1949.
- (2) Unless sooner renewed or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the provisional certificate had been granted.
- (3) The provisions of section 18A(2) and (4) of the Occupational Therapy Act 1949 continue to apply with all necessary modifications to the registration of such a person, and the Occupational Therapy Board may, in accordance with those provisions as so modified, renew or cancel that registration.

208 Persons holding certificates of temporary registration under Optometrists and Dispensing Opticians Act 1976

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Optometrists and Dispensing Opticians Board because the person held a certificate of temporary registration under the Optometrists and Dispensing Opticians Act 1976.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.
- (3) The provisions of section 28(5) and (7) of the Optometrists and Dispensing Opticians Act 1976 continue to apply with all necessary modifications to the registration of such a person, and the Optometrists and Dispensing Opticians Board may, in accordance with those provisions as so modified, extend or cancel that registration.

209 Persons holding provisional certificates of registration under Optometrists and Dispensing Opticians Act 1976

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Optometrists and Dispensing Opticians Board because the person held a provisional certificate under the Optometrists and Dispensing Opticians Act 1976.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the provisional certificate had been granted.
- (3) The provisions of section 27(2) and (4) of the Optometrists and Dispensing Opticians Act 1976 continue to apply with all necessary modifications to the registration of such a person, and the Optometrists and Dispensing Opticians Board may, in accordance with those provisions as so modified, extend or cancel that registration.

210 Persons holding certificates of temporary registration under Physiotherapy Act 1949

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Physiotherapy Board because the person held a certificate of temporary registration under the Physiotherapy Act 1949.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.
- (3) The provisions of section 18B(2) and (3) of the Physiotherapy Act 1949 continue to apply with all necessary modifications to the registration of such a person, and the Physiotherapy Board may, in accordance with those provisions as so modified, extend or cancel that registration.

211 Persons holding provisional certificates of registration under Physiotherapy Act 1949

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Physiotherapy Board because the person held a provisional certificate under the Physiotherapy Act 1949.
- (2) Unless sooner renewed or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the provisional certificate had been granted.
- (3) The provisions of section 18A(2) and (4) of the Physiotherapy Act 1949 continue to apply with all necessary modifications to the registration of such a person, and the Physiotherapy Board may, in accordance with those provisions as so modified, renew or cancel that registration.

212 Persons holding certificates of temporary registration under Psychologists Act 1981

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Psychologists Board because the person held a certificate of temporary registration under the Psychologists Act 1981.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the certificate of temporary registration had been granted.
- (3) The provisions of section 23(2) and (4) of the Psychologists Act 1981 continue to apply with all necessary modifications to the registration of such a person, and the Psychologists Board may, in accordance with those provisions as so modified, extend or cancel that registration.

213 Persons holding provisional certificates of registration under Psychologists Act 1981

- (1) This section applies to a person who is, by this subpart, deemed to be registered with the Psychologists Board because the person held a provisional certificate under the Psychologists Act 1981.
- (2) Unless sooner extended or cancelled, the registration of such a person under this subpart expires on the expiry of the period for which the provisional certificate had been granted.
- (3) The provisions of section 22(2) and (3) of the Psychologists Act 1981 continue to apply with all necessary modifications to the registration of such a person, and the Psychologists Board may, in accordance with those provisions as so modified, extend or cancel that registration.

Pending applications for registration

214 Applications pending at commencement of this section to be dealt with under former registration Act

- (1) Every application for, or concerning, registration under a former registration Act that is, immediately before the commencement of this section, pending before a continuing authority or before the Pharmaceutical Council or before the old Dental Council or the Dental Technicians Board must be considered and determined as if this Act had not been enacted.
- (2) After determining an application of the kind referred to in subsection (1), the Pharmaceutical Council must promptly advise the Pharmacy Council of the determination.
- (3) After determining an application of the kind referred to in subsection (1), the old Dental Council must promptly advise the new Dental Council of the determination.

- (4) After determining an application of the kind referred to in subsection (1), the Dental Technicians Board must promptly advise the new Dental Council of the determination.
- (5) After determining an application of the kind referred to in subsection (1), being an application relating to registration as a midwife, the Nursing Council must promptly advise the Midwifery Council of the determination.
- (6) When a determination of an application of the kind referred to in subsection (1) results in the registration, or in a change in the registration, of a person, that registration or change is deemed to have taken effect immediately before the commencement of this section.
- (7) The Pharmaceutical Council, the old Dental Council, and the Dental Technicians Board each—
 - (a) continues in existence for the purpose of giving effect to this section; and
 - (b) has all the powers necessary for that purpose.

Suspended practitioners

215 Provisions relating to persons whose registration is suspended

- (1) The application of any of the sections of this subpart that deem a person to be registered with an authority is not precluded merely by the fact that the person was, immediately before the commencement of the relevant section, suspended from practising under a former registration Act.
- (2) However, the registration that the person is deemed, by virtue of any of the sections of this subpart, to hold at the commencement of the relevant section is deemed to be suspended until that person's suspension from practising under the former registration Act would have expired if this Act had not been enacted.

Complaints and disciplinary proceedings

216 Continuation of pending investigations, inquiries, and disciplinary proceedings

- (1) All investigations, inquiries, and disciplinary proceedings under a former registration Act that have been commenced before the commencement of this section and that have not been completed before that commencement are to be continued and completed as if the former registration Act had not been repealed.
- (2) Every committee and tribunal constituted under a former registration Act in respect of complaints and disciplinary proceedings continues to have and may exercise all its powers, functions, and duties under that Act for the purpose of giving effect to subsection (1).

- (3) For the purpose of continuing, under subsection (1), any investigation, inquiry, or proceeding concerning a health practitioner or former health practitioner, any reference in a former registration Act to a board or council with which the health practitioner or former health practitioner was previously registered must be read as a reference to the successor authority.
- (4) For the purpose of continuing, under subsection (1), any investigation, inquiry, or proceeding concerning a health practitioner or former health practitioner, the successor authority may impose a disciplinary levy.
- (5) Sections 131 and 132 apply, with the necessary modifications, to a levy imposed under subsection (4).

217 Complaints about conduct before commencement of this section

- (1) An authority and the Health and Disability Commissioner may each deal with a complaint about the conduct of a health practitioner or former health practitioner under Part 4, even though the conduct is alleged to have occurred before the commencement of this section.
- (2) If the Health and Disability Commissioner deals with a complaint to which subsection (1) applies, he or she must deal with it under the Health and Disability Commissioner Act 1994.
- (3) Subsection (1) does not apply if an inquiry or investigation into the conduct concerned has been commenced under a former registration Act or under the Health and Disability Commissioner Act 1994.
- (4) In dealing with a complaint to which subsection (1) applies, neither an authority nor the Health and Disability Commissioner may have regard to any duty or obligation that was not binding on the health practitioner or former health practitioner at the time that the conduct complained about is alleged to have occurred.

218 Charges about conduct before commencement of this section

- (1) The Tribunal may consider a charge against a health practitioner or a former health practitioner in respect of conduct alleged to have occurred before the commencement of this section, but only if the Tribunal is satisfied that,—
 - (a) at the time of the occurrence of the conduct, the health practitioner or former health practitioner was registered under a former registration Act and could have been charged under that Act in respect of that conduct; and
 - (b) the health practitioner or former health practitioner has not been charged under a former registration Act in respect of that conduct.
- (2) If, after conducting a hearing on a charge of the kind referred to in subsection (1), the Tribunal finds the health practitioner or former health practitioner guilty of a disciplinary offence under section 100 in respect of conduct that occurred before the commencement of this section, the Tribunal may not

impose on that person, in respect of that conduct, any order in the nature of a penalty that could not have been made against that person at the time when the conduct occurred.

- (3) In this section and in sections 216 and 217, **former health practitioner** includes a person who was registered under a former registration Act and who would have been deemed to have been registered with an authority had the person still been registered under that former registration Act on the commencement of the relevant section of this subpart.

Period of transition for membership of continuing authorities

219 Meaning of period of transition

In sections 220 and 221, **period of transition**, in relation to a continuing authority, means the period that commences on the commencement of this section and ends on the earlier of—

- (a) a date notified in writing by the Minister to the members of the authority;
- (b) the expiry of the term of the person holding the office of chairperson or President, as the case may be, of the authority.

220 Membership of continuing authorities during period of transition

- (1) During the period of transition, the persons who, immediately before the commencement of this section, held office as members of a continuing authority are the members of the authority.
- (2) Unless sooner vacating office or removed from office under section 122, the persons referred to in subsection (1) cease to be members at the end of the period of transition, and no compensation may be paid in respect of that cessation of office.
- (3) Subsection (1) does not affect the application to the continuing authority of the provisions of this Act concerning the functions and powers of an authority, including the provisions governing the requirements for a quorum.

221 Vacancies may be filled by Minister

- (1) During the period of transition, the Minister may, by notice in the *Gazette*, appoint any person to fill any vacancy that occurs during that period in the membership of a continuing authority.
- (2) Section 220 applies to a person appointed under subsection (1).

Following enactment of this Act no elections to be held for registration bodies

222 Extension of office of elected members of registration bodies

- (1) In this section,—

period of transition means the period that commences on the commencement of this section and ends on the day that is 1 year after the date on which this Act receives the Royal assent

relevant enactment means—

- (a) the Dental Act 1988; or
- (b) the Medical Practitioners Act 1995; or
- (c) the Pharmacy Act 1970; or
- (d) any regulation or rule made under an Act specified in any of paragraphs (a) to (c)

relevant registration body means—

- (a) the old Dental Council; or
 - (b) the Medical Council of New Zealand (being the Council continued by section 122(1) of the Medical Practitioners Act 1995); or
 - (c) the Pharmaceutical Council.
- (2) At no time in the period of transition may an election under a relevant enactment be held to elect 1 or more members of a relevant registration body.
 - (3) If the term for which an elected member of a relevant registration body was elected expires during the period of transition, the member, unless sooner vacating office under the relevant enactment, continues to hold office throughout the period of transition as a member of that body.
 - (4) If at any time during the period of transition a vacancy occurs in the membership of an elected member of a relevant registration body, the Minister may, by notice in the *Gazette*, appoint any person to fill that vacancy, and that person holds office under subsection (3) as if he or she were the elected member who is replaced by the appointment.
 - (5) This section overrides any relevant enactment.

Registrars to make necessary entries

223 Registrars to give effect to transitional provisions

The Registrar of every continuing authority and the Registrars of the new Dental Council, the Pharmacy Council, and the Midwifery Council must each, as soon as practicable after the commencement of this section, and without further authority than this section, make all necessary entries in the register of the authority to give effect to this subpart.

Continuation of status of educational institutions

224 Approved educational institutions deemed to be institutions accredited by authorities

- (1) Every educational institution that, immediately before the commencement of this section, is approved or accredited or endorsed for the purposes of a former registration Act is deemed to be an educational institution accredited by the relevant authority for the purposes of section 12(2)(a).
- (2) To avoid doubt, an authority may at any time, by notice under section 12, revoke the status conferred on an institution by subsection (1).

225 Continuation of competence reviews, competence programmes, and recertification programmes under Medical Practitioners Act 1995

Any competence review, competence programme, or recertification programme commenced or completed under the Medical Practitioners Act 1995 must, for all purposes, be regarded as having been commenced or, as the case may be, completed under this Act.

Provisions relating to dissolution of Pharmaceutical Society, old Dental Council, and Dental Technicians Board

226 Vesting of assets of Pharmaceutical Society, old Dental Council, and Dental Technicians Board

- (1) On the date that this section comes into force, the assets and liabilities of the Pharmaceutical Society vest in the Pharmacy Council.
- (2) On the date that this section comes into force, the assets and liabilities of the old Dental Council vest in the new Dental Council.
- (3) On the date that this section comes into force, the assets and liabilities of the Dental Technicians Board vest in the new Dental Council.
- (4) Sections 6, 8, and 9, and Schedule 1 of the Health Sector (Transfers) Act 1993 apply in respect of the vesting of assets and liabilities by this section as if those assets and liabilities were transferred under section 5 of that Act.
- (5) For the purposes of applying the Health Sector (Transfers) Act 1993 in accordance with subsection (4),—
 - (a) in relation to the assets and liabilities vested by subsection (1), the Pharmaceutical Society is the transferor and the Pharmacy Council is the transferee; and
 - (b) in relation to the assets and liabilities vested by subsection (2), the old Dental Council is the transferor and the new Dental Council is the transferee; and

- (c) in relation to the assets and liabilities vested by subsection (2), the Dental Technicians Board is the transferor and the new Dental Council is the transferee.
- (6) In this section, unless the context otherwise requires, **assets**, **liabilities**, and **transfer** have the same meaning as in section 2(1) of the Health Sector (Transfers) Act 1993.

227 Dissolution of Pharmaceutical Society, old Dental Council, and Dental Technicians Board

On the date that this section comes into force, the Pharmaceutical Society, the old Dental Council, and the Dental Technicians Board are each dissolved.

Schedule 1AA

Transitional, savings, and related provisions

s 5A

Schedule 1AA: inserted, on 12 April 2019, by section 47 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Part 1

Provisions relating to Health Practitioners Competence Assurance Amendment Act 2019

1 Interim suspension of registration or imposition of restrictions on practice

- (1) Section 93(1), as in force immediately before the commencement date, continues to apply as if the amendment Act had not been enacted in any case where the alleged conduct that is the subject of the charge against a health practitioner occurred—
- (a) before the commencement date; or
 - (b) before the commencement date and continued after the commencement date.

- (2) In this clause,—

amendment Act means the Health Practitioners Competence Assurance Amendment Act 2019

commencement date means the date on which the amendment Act comes into force.

Schedule 1AA clause 1: inserted, on 12 April 2019, by section 47 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

2 Effect of amalgamation on registration and practice

- (1) A health practitioner who is, or is deemed to be, registered with an amalgamating authority is to be treated, from the date of the amalgamation, as being registered with the amalgamated authority.
- (2) An annual practising certificate issued by the Registrar of an amalgamating authority must be treated, from the date of the amalgamation, as being issued by the Registrar of the amalgamated authority.
- (3) In this clause,—

amalgamated authority means the authority under which the amalgamating authorities are continued from the date of the amalgamation

amalgamating authority means an authority that, under section 116A, is amalgamating with 1 or more other authorities.

Schedule 1AA clause 2: inserted, on 12 April 2019, by section 47 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Schedule 1

Provisions applying to Health Practitioners Disciplinary Tribunal

s 90

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1 Deputy chairperson

- (1) If—
 - (a) the chairperson of the Tribunal becomes incapable of acting as chairperson because of illness, absence, or any other reason; or
 - (b) there is a vacancy in the office of chairperson,—
any deputy chairperson of the Tribunal has and may exercise or perform all the functions, duties, and powers of the chairperson.
- (2) A deputy chairperson is, while acting for the chairperson, to be regarded as the chairperson of the Tribunal.
- (3) No act done by a deputy chairperson while acting for the chairperson, and no act done by the Tribunal while the deputy chairperson is acting for the chairperson, may in any proceedings be questioned on the ground that the occasion for the deputy chairperson so acting had not arisen or had ceased.
- (4) If there are 2 or more deputy chairpersons of the Tribunal,—
 - (a) the Minister may from time to time, by written notice, nominate which of those deputy chairpersons is, in the circumstances specified in sub-

clause (1), to exercise or perform the functions, duties, and powers of the chairperson; and

- (b) references in this clause to the deputy chairperson are to be read as references to the deputy chairperson for the time being so nominated.

Compare: 1995 No 95 Schedule 1 cl 1

2 Term of office

- (1) The chairperson and each deputy chairperson of the Tribunal—
- (a) is appointed for a term not exceeding 3 years; and
- (b) takes office from the date of the notice of appointment or any later date specified in the notice; and
- (c) is, subject to subclause (2), eligible for reappointment from time to time.
- (2) No person may hold office as the chairperson or as a deputy chairperson of the Tribunal for more than 9 consecutive years.
- (3) Despite subclauses (1) and (2), any person whose term of office as the chairperson or as a deputy chairperson of the Tribunal has expired or who has resigned from office as chairperson or as a deputy chairperson of the Tribunal continues in office for the purpose of completing any proceedings heard by the Tribunal before the expiry of the person's term of office or the person's resignation, whether or not that person's successor has come into office.

Compare: 1995 No 95 Schedule 1 cl 2

3 Vacation of office

- (1) Any person who holds office as the chairperson or as a deputy chairperson of the Tribunal may resign his or her office by giving notice to that effect to the Minister.
- (2) A person who holds office as the chairperson or as a deputy chairperson of the Tribunal is to be taken to have vacated his or her office if—
- (a) he or she dies; or
- (b) he or she is adjudged bankrupt under the Insolvency Act 2006; or
- (c) he or she becomes a member of an authority; or
- (d) he or she has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer.
- (3) Any person who holds office as the chairperson or as a deputy chairperson of the Tribunal may at any time be removed from office by the Minister, by notice given to the person, on the grounds of inability to perform the functions of the office, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister.

Compare: 1995 No 95 Schedule 1 cl 3

Schedule 1 clause 3(2)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

4 Chairpersons of authorities to determine fees for certain Tribunal members

- (1) The chairperson and every deputy chairperson must be paid fees at a rate that is for the time being fixed by a majority of chairpersons of all authorities under this Act.
- (2) The chairpersons of authorities may agree on the principles that are to govern the determination of fees payable by each authority to any member of the Tribunal who is neither a chairperson nor a deputy chairperson.

5 Procedure of Tribunal

- (1) Subject to this Act and to any regulations made under this Act, the Tribunal may—
 - (a) regulate its procedure in any manner it thinks fit; and
 - (b) prescribe or approve forms for the purposes of hearings.
- (2) The Tribunal must publish any rules of procedure it makes.
- (3) The Tribunal must observe the rules of natural justice at each hearing.

Compare: 1995 No 95 Schedule 1 cl 5

6 Evidence

- (1) The Tribunal may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not that statement, document, information, or matter would be admissible in a court of law.
- (2) Subclause (1) is subject to clause 5(3).
- (3) The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.
- (4) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.
- (5) The Evidence Act 2006 applies to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.
- (6) Subclause (5) is subject to subclauses (1) to (3).

Compare: 1995 No 95 Schedule 1 cl 6

Schedule 1 clause 6(5): amended, on 12 April 2019, by section 48 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

7 Powers of investigation

- (1) For the purposes of dealing with the matters before it, the Tribunal or any person authorised by it in writing to do so may—

- (a) inspect and examine any papers, documents, records, or things:
 - (b) require any person to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made:
 - (c) require any person to furnish, in a form approved by or acceptable to the Tribunal, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents, or records.
- (2) The Tribunal may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this clause be verified by statutory declaration or otherwise as the Tribunal may require.
- (3) For the purposes of its proceedings, the Tribunal may, on its own initiative or on the application of any party to the proceedings, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Tribunal, and in the order impose any terms and conditions that it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.

Compare: 1995 No 95 Schedule 1 cl 7

8 Witness summons

- (1) The Tribunal may, on its own initiative or on the application of any party to the proceedings, issue a witness summons to any person requiring that person to attend before the Tribunal to give evidence at the hearing of the proceedings.
- (2) The witness summons must state—
- (a) the place where the person is to attend; and
 - (b) the date and time when the person is to attend; and
 - (c) the papers, documents, records, or things that that person is required to bring and produce to the Tribunal; and
 - (d) the entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and
 - (e) the penalty for failing to attend.
- (3) The power to issue a witness summons may be exercised by the Tribunal, the chairperson, a deputy chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal, the chairperson, or a deputy chairperson.

Compare: 1995 No 95 Schedule 1 cl 8

9 Service of summons

- (1) A witness summons may be served—
- (a) by delivering it personally to the person summoned; or

- (b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence or business.
- (2) The summons must,—
 - (a) if it is served under subclause (1)(a), be served at least 24 hours before the attendance of the witness is required; or
 - (b) if it is served under subclause (1)(b), be served at least 10 days before the date on which the attendance of the witness is required.
- (3) If the summons is posted by registered letter, it must be regarded for the purposes of subclause (2)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

Compare: 1995 No 95 Schedule 1 cl 9

10 Witnesses' allowances

- (1) Every witness attending before the Tribunal to give evidence under a summons is entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations apply accordingly.
- (2) On each occasion on which the Tribunal issues a summons under clause 8(1), the Tribunal, or the person exercising the power of the Tribunal under clause 8(3), must fix an amount that, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, must be paid or tendered to the witness.
- (3) The amount fixed under subclause (2) must be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal or person, the witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons.
- (4) If a party to the proceedings has requested the issue of the witness summons, the fees, allowances, and travelling expenses payable to the witness must be paid by that party.
- (5) If the Tribunal has on its own initiative issued the witness summons, the Tribunal may direct that the amount of those fees, allowances, and travelling expenses—
 - (a) form part of the costs of the proceedings; or
 - (b) be paid out of the funds of the authority with which the health practitioner or former health practitioner to whom the proceedings relate is or was registered.

Compare: 1995 No 95 Schedule 1 cl 10

Schedule 1 clause 10(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

11 Privileges and immunities

- (1) Every person has the same privileges in relation to the giving of information to the Tribunal, the answering of questions put by the Tribunal, and the production of papers, documents, records, and things to the Tribunal that witnesses have in courts of law.
- (2) Witnesses and counsel appearing before the Tribunal have the same privileges and immunities that witnesses and counsel have in proceedings in the District Court.

Compare: 1995 No 95 Schedule 1 cl 11

Schedule 1 clause 11(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

12 Non-attendance or refusal to co-operate

- (1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without sufficient cause,—
 - (a) fails to attend in accordance with the summons; or
 - (b) refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings; or
 - (c) fails to produce any such paper, document, record, or thing.
- (2) Every person commits an offence who—
 - (a) wilfully obstructs or hinders the Tribunal or any member of it or any authorised person in any inspection or examination of papers, documents, records, or things under clause 7(1)(a); or
 - (b) without sufficient cause, fails to comply with any requirement of the Tribunal or any authorised person made under clause 7(1)(b) or (c); or
 - (c) without sufficient cause, acts in contravention of, or fails to comply with, any order made by the Tribunal under clause 7(3) or any term or condition of the order.
- (3) Every person who commits an offence against subclause (1) or subclause (2) is liable on conviction to a fine not exceeding \$1,500.
- (4) No person summoned to attend before the Tribunal may be convicted of an offence against subclause (1) unless there was tendered or paid to that person travelling expenses in accordance with clause 10.

Compare: 1995 No 95 Schedule 1 cl 12

Schedule 1 clause 12(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

13 Contempt of Tribunal

- (1) Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 who—
 - (a) assaults, threatens, or intimidates, or intentionally insults, the Tribunal or any member of it or any adviser to, or officer of, the Tribunal, during a sitting of the Tribunal, or in going to, or returning from, any sitting; or
 - (b) intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or
 - (c) intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of any proceedings before the Tribunal.
- (2) A member of the Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in that member's opinion, constitutes an offence against subclause (1), whether or not that person is charged with the offence; and any constable may take any steps that are reasonably necessary to enforce such an exclusion.

Compare: 1995 No 95 Schedule 1 cl 13

Schedule 1 clause 13(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Schedule 1 clause 13(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

14 Exclusion of liability

- (1) Neither the Tribunal nor any member, employee, or agent of the Tribunal is under any civil liability in respect of—
 - (a) any act done or omitted in the course of the performance or exercise or intended performance or exercise of any of their functions, duties, or powers under this Act; or
 - (b) any words spoken or written at, or for the purposes of, a hearing or an inquiry or other proceedings under this Act; or
 - (c) anything contained in any notice given under this Act.
- (2) Subsection (1) does not exclude the liability of any person for anything done or omitted in bad faith.

Compare: 1995 No 95 s 135(1), (2)

15 Power to amend charges

- (1) The Tribunal may, at any time during the hearing of any charge laid under section 91, amend the charge in any way.
- (2) The Tribunal may, at the request of the health practitioner concerned, if the Tribunal is of the opinion that the practitioner would be embarrassed in his or her

defence by reason of an amendment made or proposed to be made under this clause, adjourn the hearing.

Compare: 1995 No 95 Schedule 1 cl 14

16 Technical advisers

- (1) The Tribunal may from time to time appoint technical advisers to advise the Tribunal on any legal or procedural questions or on any clinical or scientific questions.
- (2) The Tribunal may authorise a technical adviser to be present at any hearing of the Tribunal.
- (3) A technical adviser may not be present during the deliberations of the Tribunal.

Compare: 1995 No 95 Schedule 1 cl 15

Schedule 2

Bodies continued in existence and appointed as authorities in respect of health professions

s 114(1)

Authorities	Professions
Chiropractic Board (being the Board continued by section 3(1) of the Chiropractors Act 1982)	Practice of chiropractic
Dietitians Board (being the Board continued by section 4(1) of the Dietitians Act 1950)	Practice of dietetics
Medical Radiation Technologists Board (being the Board continued by section 4A(1) of the Medical Auxiliaries Act 1966)	Practice of medical radiation technology
Medical Council of New Zealand (being the Council continued by section 122(1) of the Medical Practitioners Act 1995)	Practice of medicine
Medical Sciences Council of New Zealand (formerly known as the Medical Laboratory Science Board, being the Board continued by section 4(1) of the Medical Auxiliaries Act 1966, which Board was formerly known as the Medical Laboratory Technologists Board)	Practice of medical laboratory science
Nursing Council of New Zealand (being the Council continued by section 3 of the Nurses Act 1977)	Practice of nursing
Occupational Therapy Board (being the Board continued by section 4(1) of the Occupational Therapy Act 1949)	Practice of occupational therapy
Optometrists and Dispensing Opticians Board (being the Board continued by section 3(1) of the Optometrists and Dispensing Opticians Act 1976, which Board was formerly known as the Opticians Board)	Practice of optometry Practice of optical dispensing
Physiotherapy Board (being the Board continued by section 4(1) of the Physiotherapy Act 1949)	Practice of physiotherapy
Podiatrists Board (being the Board continued by section 4B(1) of the Medical Auxiliaries Act 1966)	Practice of podiatry
Psychologists Board (being the Board continued by section 3(1) of the Psychologists Act 1981)	Practice of psychology

Schedule 2: amended, on 1 August 2011, by clause 7(6) of the Health Practitioners Competence Assurance (Designation of Anaesthetic Technology Services as Health Profession) Order 2011 (SR 2011/227).

Schedule 3

Provisions applying to authorities

s 135

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Proceedings generally

1 Procedure

- (1) Each authority may regulate its procedure in any manner that it thinks fit.

- (2) Subclause (1) is subject to this Act and any regulations made under this Act.
Compare: 1995 No 95 Schedule 2 cl 13(2)

2 Information authorities may act on

Each authority must observe the rules of natural justice but, subject to that requirement, may receive as evidence any statement, document, information, or matter, whether or not it would be admissible in a court of law.

Compare: 1995 No 95 Schedule 2 cl 13(1)

Chairperson and deputy chairperson

3 Chairperson and deputy chairperson

- (1) At its first meeting in each year, each authority must elect one of its members to be the chairperson of the authority, and another to be the deputy chairperson of the authority.
- (2) A member who holds the office of chairperson or deputy chairperson continues in office until his or her successor is elected, and is eligible for re-election (subject to section 122).
- (3) A member who holds the office of chairperson or deputy chairperson may—
- (a) at any time be removed from the office of chairperson or deputy chairperson by the authority; or
 - (b) at any time resign his or her office by giving notice to that effect to the Registrar of the authority.
- (4) If a person who holds the office of chairperson or deputy chairperson ceases to be a member of the authority, the authority must elect one of its members to fill that vacancy in the office of chairperson or deputy chairperson as soon as reasonably practicable.

Compare: 1995 No 95 Schedule 2 cl 1

4 Deputy chairperson may act for chairperson

- (1) The deputy chairperson of an authority has and may exercise or perform all the functions, duties, and powers of the chairperson if—
- (a) the chairperson of the authority is at any time incapable of acting as chairperson because of illness, absence, or any other reason; or
 - (b) there is a vacancy in the office of chairperson.
- (2) The deputy chairperson is, while acting for the chairperson, to be regarded as the chairperson of the authority.
- (3) No act done by the deputy chairperson while acting for the chairperson and no act done by the authority while the deputy chairperson is acting for the chairperson, may in any proceedings be questioned on the ground that the occasion entitling the deputy chairperson to act had not arisen or had ceased.

Compare: 1995 No 95 Schedule 2 cl 2

Conduct of meetings, conflict of interest, and resolutions passed without meetings

5 Meetings

- (1) Meetings of every authority are held at—
 - (a) times appointed by each authority; and
 - (b) subject to clause 9, places appointed by the authority.
- (2) The Registrar of each authority must give each member of the authority notice of a meeting of the authority, but the Registrar is not required to give notice to a member who is absent from New Zealand.
- (3) At meetings of authorities, the quorum necessary for the transaction of business is,—
 - (a) 3 members, in the case of an authority that at any time has 5 or 6 members; and
 - (b) 4 members, in the case of an authority that at any time has 7 or 8 members; and
 - (c) 5 members, in the case of an authority that at any time has 9 or 10 members; and
 - (d) 6 members, in the case of an authority that at any time has 11 or more members.
- (4) Each quorum must include at least 1 member who is a layperson.
- (5) For the purposes of determining the quorum, a member who is a representative under clause 6 may be counted only once.
- (6) A meeting of an authority at which the quorum is present is competent to perform or exercise any of the functions, duties, and powers exercisable by the authority.

Compare: 1995 No 95 Schedule 2 cl 8

6 Members representing other members

- (1) A member of an authority may be represented by another member of the authority (that other member is in this clause referred to as a **representative**).
- (2) A member may, by written notice to the appropriate Registrar, appoint a representative to represent the member on the authority, for 1 or more specific meetings that have been called or are proposed to be called, whenever the member is absent or unable to act as a member of the authority.
- (3) The appointment of a representative ceases if—
 - (a) the person who appointed the representative revokes, by written notice, the appointment; or
 - (b) the person who appointed the representative ceases to be a member of the authority; or

- (c) the representative ceases to be a member of the authority.
- (4) A notice referred to in subclause (2) or subclause (3) may be sent by electronic transmission.
- (5) Subject to subclause (6), a representative may vote on behalf of the member whom he or she represents, and has and may exercise all the powers, rights, privileges, and duties of that member.
- (6) A representative may not, in his or her capacity as representative,—
 - (a) act as chairperson or deputy chairperson of the authority; or
 - (b) vote on any matter arising under Part 4.
- (7) The voting and other powers that a person has as a representative are in addition to the powers that the person has as a member of the authority.

Compare: 1995 No 95 Schedule 2 cl 7

7 Chairperson to preside at meetings

- (1) The chairperson of each authority presides at each meeting of the authority if he or she is present and willing to preside.
- (2) If the chairperson is not present or willing to preside at a meeting of the authority, the deputy chairperson, if present and willing to preside, presides.
- (3) If neither the chairperson nor the deputy chairperson is present and willing to preside at a meeting of the authority, the members present must elect a member who is present and willing to preside at that meeting.

Compare: 1995 No 95 Schedule 2 cl 9

8 Voting at meetings

- (1) All questions arising at any meeting of an authority are decided by a majority of the votes cast by the members present.
- (2) The person presiding at the meeting has a deliberative vote, and, in the case of an equality of votes, also has a casting vote.

Compare: 1995 No 95 Schedule 2 cl 10(1), (2)

9 Teleconference meetings

- (1) The contemporaneous linking together by telephone or videolink or other means of communication of a number of members of an authority, being not less than the appropriate quorum stated in clause 5(3), whether or not 1 or more of those members are out of New Zealand, is to be taken as constituting a meeting of the authority to which the provisions of this Act apply if the following conditions are met:
 - (a) notice must have been given, by letter or telephone or electronic transmission, to every member of the authority entitled to receive notice of a meeting of the authority; and
 - (b) each member taking part in the meeting must—

- (i) be linked by telephone or videolink or other means of communication for the purposes of the meeting; and
 - (ii) at the commencement of the meeting acknowledge, to all the other members taking part, the member's presence for the purpose of a meeting of the authority; and
 - (iii) be able throughout the meeting to hear each of the other members taking part; and
 - (iv) on any vote, individually express his or her vote to the meeting.
- (2) A member may not stop participating in a meeting held under this clause by disconnecting the member's telephone or videolink or other means of communication without the express consent of the person presiding at the meeting.
- (3) A minute of the proceedings at a meeting held under this clause is sufficient evidence of those proceedings, and the observance of all necessary formalities, if certified as a correct minute by the person presiding at the meeting.

Compare: 1995 No 95 Schedule 2 cl 12

10 Member may not be present if subject of authority consideration

No member of an authority is entitled to be present or vote or otherwise participate in the capacity of a member of the authority at any part of a meeting of the authority where any matter relating to the member's registration, suspension, competence, fitness to practise, or discipline under this Act is being considered.

Compare: 1995 No 95 Schedule 2 cl 10(3)

11 Meaning of interested

- (1) For the purposes of clauses 12 to 14, a member of an authority is **interested** in a transaction of, or other matter relating to, the authority only if the member—
- (a) is a party to, or will or may derive a material financial benefit from, the transaction or matter; or
 - (b) has a material financial interest in another party to the transaction or a person to whom the matter relates; or
 - (c) is a director, officer, member, or trustee of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
 - (d) is the parent, child, spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, the transaction or matter; or
 - (e) is otherwise directly or indirectly materially interested in the transaction or matter.
- (2) However, a member of an authority is not interested in a transaction or other matter merely because he or she is a member of the authority.

Schedule 3 clause 11(1)(d): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

12 Obligation to disclose interest

A member of an authority who is interested in a transaction or proposed transaction of, or other matter relating to, the authority must disclose the nature of the interest in accordance with clause 13 as soon as practicable after the member becomes aware that he or she is interested.

13 Method of disclosure of interest

- (1) If clause 12 applies, the member must ensure that the details listed in subclause (2) are entered in an interests register and disclosed to—
 - (a) the chairperson; or
 - (b) if neither the chairperson nor the deputy chairperson is able to act or the positions of the chairperson and deputy chairperson are vacant, the Minister.
- (2) The details are—
 - (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

14 Consequences of interest

A member of an authority who is interested in a transaction or proposed transaction of, or other matter relating to, the authority—

- (a) must not vote or take part in any deliberation or decision that relates to the matter; and
- (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the authority during which a deliberation or decision relating to the matter occurs or is made.

15 Resolution assented to by members

- (1) The chairperson of an authority may circulate, by letter or electronic transmission, to each member of the authority a document setting out a draft resolution and requesting each member to assent to the resolution within a specified period of at least 3 clear days.
- (2) If a majority of the members of the authority, by letter or electronic transmission, signs or assents to a resolution circulated under subclause (1), the resolution is as valid and effective as if it had been passed at a meeting of the authority duly called and constituted.
- (3) Any such resolution may consist of several documents that are similar in form, each signed or appearing to have been sent by 1 or more members.

- (4) Every such resolution must be tabled at the next meeting of the authority held after the date on which the resolution takes effect.

Compare: 1995 No 95 Schedule 2 cl 11

Matters of administration

16 Appointment of committees

Each authority may from time to time appoint 1 or more committees of the authority, and—

- (a) any such committee may include or consist of persons who are not members of the authority; and
- (b) each authority must regulate the procedure of each committee that it appoints in any manner that it thinks fit; and
- (c) each authority may at any time discharge, alter, or reconstitute any committee that it has appointed.

Compare: 1995 No 95 Schedule 2 cl 14

17 Delegation by authorities

- (1) An authority may from time to time, by written notice, delegate any of its functions, duties, or powers to a committee appointed under clause 16 or to its Registrar.
- (1A) However, an authority may not delegate—
 - (a) any power under section 69 to a committee appointed under clause 16;
 - (b) any power under section 69 or 71 to its Registrar.
- (2) A delegation under this clause may be subject to any conditions stated in the delegation.
- (3) The Registrar of an authority may not under a delegation under this clause—
 - (a) exercise a power of decision in respect of any matter that the Registrar is required to submit or refer to the authority; or
 - (b) review a decision made by the Registrar or by a Deputy Registrar; or
 - (c) order or direct the Registrar or a Deputy Registrar to take any action.
- (4) Unless otherwise provided by this clause or in the delegation, a delegate may perform or exercise a function, duty, or power of the authority delegated to the delegate under this clause in the same manner and with the same effect as if the delegate were the authority, but may not further delegate the function, duty, or power.
- (5) Any delegation under this clause may be revoked at any time, and the delegation of a function, duty, or power does not prevent the authority from exercising the function, duty, or power itself.

- (6) Every delegate purporting to act under a delegation under this clause is, until the contrary is proved, presumed to be acting in accordance with the terms of the delegation.

Compare: 1995 No 95 Schedule 2 cl 14

Schedule 3 clause 17(1): replaced, on 12 April 2019, by section 49 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

Schedule 3 clause 17(1A): inserted, on 12 April 2019, by section 49 of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

18 Review of decisions of delegate

- (1) A person who is adversely affected by a decision made by a person under a delegation given under clause 17 may, within 20 working days after the communication of the decision to the person, by application in writing to the authority concerned, request the authority to review the delegate's decision, and, on any such application the authority must, as soon as practicable, review the delegate's decision, and must either confirm or revoke that decision.
- (2) A person may not apply under subclause (1) for a review of a decision if the person has brought an appeal against the decision.
- (3) An application under subclause (1) for a review of a decision lapses if the applicant brings an appeal against the decision.

19 Delegation by Registrars

- (1) Each Registrar of an authority may, by written notice, delegate any of his or her functions, duties, or powers, either generally or specifically, to a person employed, engaged, or authorised by the authority.
- (2) A delegation under this clause may be subject to any conditions stated in the delegation.
- (3) Unless otherwise provided in the delegation, the delegate may perform or exercise a function, duty, or power of the Registrar delegated to him or her under this clause in the same manner and with the same effect as if the delegate were the Registrar, but may not further delegate the function, duty, or power.
- (4) Any delegation under this clause may be revoked at any time, and the delegation of a function, duty, or power does not prevent the Registrar from personally performing or exercising the function, duty, or power.
- (5) Every delegate purporting to act under a delegation under this clause is, until the contrary is proved, presumed to be acting in accordance with the terms of the delegation.
- (6) A delegation under this clause does not cease to have effect merely because the Registrar by whom it was made ceases to hold office.

*Dealings with third parties by authorities***20 Method of contracting**

- (1) A contract or other enforceable obligation may be entered into by an authority as provided in subclauses (2) to (4).
- (2) An obligation that, if entered into by an individual, is required to be by deed may be entered into on behalf of an authority in writing, signed under the name of the authority by—
 - (a) 2 or more of its members; or
 - (b) 1 or more attorneys appointed by the authority in accordance with clause 21.
- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of an authority in writing by a person acting under the authority's express or implied authorisation.
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of an authority in writing or orally by a person acting under the authority's express or implied authorisation.

21 Attorneys

An authority may, by an instrument in writing executed as a deed, appoint a person as its attorney authorised to sign on its behalf, either generally or in relation to a specified matter, documents of a contractual nature.

22 Presumptions and savings of certain transactions

- (1) The validity or enforceability of any deed, agreement, right, or obligation entered into, conferred on, or incurred by an authority is not affected by a failure of the authority to comply with any provision of this Act.
- (2) A person purporting to execute any documentation on behalf of an authority in accordance with a direction of, or a delegation given by, the authority is, in the absence of proof to the contrary, presumed to be acting in accordance with that direction or delegation.

Schedule 4 Acts amended

s 175(1)

Adult Adoption Information Act 1985 (1985 No 127)

Amendment(s) incorporated in the Act(s).

Alcoholism and Drug Addiction Act 1966 (1966 No 97)

Amendment(s) incorporated in the Act(s).

Armed Forces Discipline Act 1971 (1971 No 53)

Amendment(s) incorporated in the Act(s).

Births, Deaths, and Marriages Registration Act 1995 (1995 No 16)

Amendment(s) incorporated in the Act(s).

Boilers, Lifts, and Cranes Act 1950 (1950 No 53)

Amendment(s) incorporated in the Act(s).

Burial and Cremation Act 1964 (1964 No 75)

Amendment(s) incorporated in the Act(s).

Cancer Registry Act 1993 (1993 No 102)

Amendment(s) incorporated in the Act(s).

Children, Young Persons, and their Families Act 1989 (1989 No 24)

Amendment(s) incorporated in the Act(s).

Civil Aviation Act 1990 (1990 No 98)

Amendment(s) incorporated in the Act(s).

Contraception, Sterilisation, and Abortion Act 1977 (1977 No 112)

Amendment(s) incorporated in the Act(s).

Coroners Act 1988 (1988 No 111)

Amendment(s) incorporated in the Act(s).

Courts Martial Appeals Act 1953 (1953 No 100)

Amendment(s) incorporated in the Act(s).

Crimes Act 1961 (1961 No 43)

Amendment(s) incorporated in the Act(s).

Criminal Investigations (Blood Samples) Act 1995 (1995 No 55)

Amendment(s) incorporated in the Act(s).

Criminal Justice Act 1985 (1985 No 120)

Amendment(s) incorporated in the Act(s).

Disabled Persons Community Welfare Act 1975 (1975 No 122)

Amendment(s) incorporated in the Act(s).

Domestic Violence Act 1995 (1995 No 86)

Amendment(s) incorporated in the Act(s).

Education Act 1989 (1989 No 80)

Amendment(s) incorporated in the Act(s).

Electoral Act 1993 (1993 No 87)

Amendment(s) incorporated in the Act(s).

Electricity Act 1992 (1992 No 122)

Amendment(s) incorporated in the Act(s).

Evidence Act 1908 (1908 No 56)

Amendment(s) incorporated in the Act(s).

Evidence Amendment Act (No 2) 1980 (1980 No 27)

Amendment(s) incorporated in the Act(s).

Family Proceedings Act 1980 (1980 No 94)

Amendment(s) incorporated in the Act(s).

Fire Service Act 1975 (1975 No 42)

Amendment(s) incorporated in the Act(s).

Government Superannuation Fund Act 1956 (1956 No 47)

Amendment(s) incorporated in the Act(s).

Guardianship Act 1968 (1968 No 63)

Amendment(s) incorporated in the Act(s).

Hazardous Substances and New Organisms Act 1996 (1996 No 30)

Amendment(s) incorporated in the Act(s).

Health Act 1956 (1956 No 65)

Amendment(s) incorporated in the Act(s).

Health and Disability Commissioner Act 1994 (1994 No 88)

Amendment(s) incorporated in the Act(s).

Health and Safety in Employment Act 1992 (1992 No 96)

Amendment(s) incorporated in the Act(s).

Hospitals Act 1957 (1957 No 40)

Amendment(s) incorporated in the Act(s).

Human Tissue Act 1964 (1964 No 19)

Amendment(s) incorporated in the Act(s).

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

Amendment(s) incorporated in the Act(s).

Judicature Act 1908 (1908 No 89)

Amendment(s) incorporated in the Act(s).

Judicature Amendment Act 1991 (1991 No 60)

Amendment(s) incorporated in the Act(s).

Justices of the Peace Act 1957 (1957 No 89)

Amendment(s) incorporated in the Act(s).

Land Transport Act 1998 (1998 No 110)

Amendment(s) incorporated in the Act(s).

Law Practitioners Act 1982 (1982 No 123)

Amendment(s) incorporated in the Act(s).

Local Government Act 1974 (1974 No 66)

Amendment(s) incorporated in the Act(s).

Local Government Official Information and Meetings Act 1987 (1987 No 174)

Amendment(s) incorporated in the Act(s).

Maori Community Development Act 1962 (1962 No 133)

Amendment(s) incorporated in the Act(s).

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)

Amendment(s) incorporated in the Act(s).

Misuse of Drugs Act 1975 (1975 No 116)

Amendment(s) incorporated in the Act(s).

Misuse of Drugs Amendment Act 1978 (1978 No 65)

Amendment(s) incorporated in the Act(s).

New Zealand Public Health and Disability Act 2000 (2000 No 91)

Amendment(s) incorporated in the Act(s).

Official Information Act 1982 (1982 No 156)

Amendment(s) incorporated in the Act(s).

Parental Leave and Employment Protection Act 1987 (1987 No 129)

Amendment(s) incorporated in the Act(s).

Penal Institutions Act 1954 (1954 No 51)

Amendment(s) incorporated in the Act(s).

Police Act 1958 (1958 No 109)

Amendment(s) incorporated in the Act(s).

Privacy Act 1993 (1993 No 28)

Amendment(s) incorporated in the Act(s).

Protection of Personal and Property Rights Act 1988 (1988 No 4)

Amendment(s) incorporated in the Act(s).

Radiation Protection Act 1965 (1965 No 23)

Amendment(s) incorporated in the Act(s).

Sale of Liquor Act 1989 (1989 No 63)

Amendment(s) incorporated in the Act(s).

Securities Act 1978 (1978 No 103)

Amendment(s) incorporated in the Act(s).

Sentencing Act 2002 (2002 No 9)

Amendment(s) incorporated in the Act(s).

Social Security Act 1964 (1964 No 136)

Amendment(s) incorporated in the Act(s).

Social Workers Registration Act 2003 (2003 No 17)

Amendment(s) incorporated in the Act(s).

State Sector Act 1988 (1988 No 20)

Amendment(s) incorporated in the Act(s).

Summary Offences Act 1981 (1981 No 113)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Act 1957 (1957 No 87)

Amendment(s) incorporated in the Act(s).

Trans-Tasman Mutual Recognition Act 1997 (1997 No 60)

Amendment(s) incorporated in the Act(s).

Tuberculosis Act 1948 (1948 No 36)

Amendment(s) incorporated in the Act(s).

Veterinarians Act 1994 (1994 No 107)

Amendment(s) incorporated in the Act(s).

War Pensions Act 1954 (1954 No 54)

Amendment(s) incorporated in the Act(s).

Schedule 5
Amendments to Accident Insurance Act 1998 for transitional
purposes

s 175(2)

Accident Insurance Act 1998 (1998 No 114)

Amendment(s) incorporated in the Act(s).

Schedule 6 Regulations amended

s 175(3)

Abortion Regulations 1978 (SR 1978/50)

Amendment(s) incorporated in the regulations.

Accident Insurance (Insurer Returns) Regulations 1999 (SR 1999/163)

Amendment(s) incorporated in the regulations.

Accident Insurance (Insurer's Liability to Pay Cost of Treatment) Regulations 1999 (SR 1999/104)

Amendment(s) incorporated in the regulations.

Accident Insurance (Occupational Hearing Assessment Procedures) Regulations 1999 (SR 1999/167)

Amendment(s) incorporated in the regulations.

Boxing and Wrestling Regulations 1958 (SR 1958/72)

Amendment(s) incorporated in the regulations.

Children, Young Persons, and their Families (Forms) Regulations 1989 (SR 1989/296)

Amendment(s) incorporated in the regulations.

Children, Young Persons, and their Families (Residential Care) Regulations 1996 (SR 1996/354)

Amendment(s) incorporated in the regulations.

Coroners Regulations 1989 (SR 1989/110)

Amendment(s) incorporated in the regulations.

Cremation Regulations 1973 (SR 1973/154)

Amendment(s) incorporated in the regulations.

Criminal Investigations (Blood Samples) Regulations 1996 (SR 1996/190)

Amendment(s) incorporated in the regulations.

Education (Home-Based Care) Order 1992 (SR 1992/238)

Amendment(s) incorporated in the order(s).

Electoral Regulations 1996 (SR 1996/93)

Amendment(s) incorporated in the regulations.

Electroplating Regulations 1950 (SR 1950/173)

Amendment(s) incorporated in the regulations.

Engine Drivers' Examination Regulations 1952 (SR 1952/149)

Amendment(s) incorporated in the regulations.

Factories and Commercial Premises (First Aid) Regulations 1985 (SR 1985/108)

Amendment(s) incorporated in the regulations.

Fish Export Processing Regulations 1995 (SR 1995/54)

Amendment(s) incorporated in the regulations.

Game Regulations 1975 (SR 1975/174)

Amendment(s) incorporated in the regulations.

General Harbour (Ship, Cargo, and Dock Safety) Regulations 1968 (SR 1968/240)

Amendment(s) incorporated in the regulations.

Health (Bursaries) Regulations 1965 (SR 1965/141)

Amendment(s) incorporated in the regulations.

Health Entitlement Cards Regulations 1993 (SR 1993/169)

Amendment(s) incorporated in the regulations.

Health (Needles and Syringes) Regulations 1998 (SR 1998/254)

Amendment(s) incorporated in the regulations.

Health (Quarantine) Regulations 1983 (SR 1983/52)

Amendment(s) incorporated in the regulations.

Health (Retention of Health Information) Regulations 1996 (SR 1996/343)

Amendment(s) incorporated in the regulations.

Hospitals Regulations 1993 (SR 1993/156)

Amendment(s) incorporated in the regulations.

Injury Prevention, Rehabilitation, and Compensation (Public Health Acute Services) Regulations 2002 (SR 2002/71)

Amendment(s) incorporated in the regulations.

Injury Prevention, Rehabilitation, and Compensation (Review Costs and Appeals) Regulations 2002 (SR 2002/81)

Amendment(s) incorporated in the regulations.

Intellectually Handicapped Persons Homes Regulations 1955 (SR 1955/98)

Amendment(s) incorporated in the regulations.

Land Transport (Driver Licensing) Rule 1999 (SR 1999/100)

Amendment(s) incorporated in the rule(s).

Lead Process Regulations 1950 (SR 1950/172)

Amendment(s) incorporated in the regulations.

Meat Regulations 1969 (SR 1969/192)

Amendment(s) incorporated in the regulations.

Medicines (Designated Prescriber: Nurses Practising in Aged Care and Child Family Health) Regulations 2001 (SR 2001/230)

Amendment(s) incorporated in the regulations.

Medicines Regulations 1984 (SR 1984/143)

Amendment(s) incorporated in the regulations.

Misuse of Drugs Regulations 1977 (SR 1977/37)

Amendment(s) incorporated in the regulations.

Obstetric Regulations 1986 (SR 1986/75)

Amendment(s) incorporated in the regulations.

Old People's Homes Regulations 1987 (SR 1987/336)

Amendment(s) incorporated in the regulations.

Penal Institutions Regulations 2000 (SR 2000/81)

Amendment(s) incorporated in the regulations.

Toxic Substances Regulations 1983 (SR 1983/130)

Amendment(s) incorporated in the regulations.

Traffic Regulations 1976 (SR 1976/227)

Amendment(s) incorporated in the regulations.

Venereal Diseases Regulations 1982 (SR 1982/215)

Amendment(s) incorporated in the regulations.

Schedule 7

Acts repealed

s 175(4)

Births, Deaths, and Marriages Registration Amendment Act 1997 (1997 No 35)*Amendment(s) incorporated in the Act(s).***Chiropractors Act 1982 (1982 No 32)****Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16)***Amendment(s) incorporated in the Act(s).***Dental Act 1988 (1988 No 150)****District Courts Amendment Act 1998 (1998 No 76)***Amendment(s) incorporated in the Act(s).***Dietitians Act 1950 (1950 No 44)****Education Amendment Act 1990 (1990 No 60)***Amendment(s) incorporated in the Act(s).***Fees and Travelling Allowances Act 1951 (1951 No 79)***Amendment(s) incorporated in the Act(s).***Health and Disability Services (Safety) Act 2001 (2001 No 93)***Amendment(s) incorporated in the Act(s).***Health Sector (Transfers) Act 1993 (1993 No 23)***Amendment(s) incorporated in the Act(s).***Human Rights Amendment Act 2001 (2001 No 96)***Amendment(s) incorporated in the Act(s).***Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)***Amendment(s) incorporated in the Act(s).***Medical Auxiliaries Act 1966 (1966 No 42)****Medical Practitioners Act 1995 (1995 No 95)****New Zealand Register of Osteopaths Incorporated Act 1978 (1978 No 19)****Nurses Act 1977 (1977 No 53)****Occupational Therapy Act 1949 (1949 No 9)**

Optometrists and Dispensing Opticians Act 1976 (1976 No 61)

Pharmacy Act 1970 (1970 No 143)

Physiotherapy Act 1949 (1949 No 8)

Psychologists Act 1981 (1981 No 5)

Public Audit Act 2001 (2001 No 10)

Amendment(s) incorporated in the Act(s).

Public Bodies Contracts Act 1959 (1959 No 98)

Amendment(s) incorporated in the Act(s).

Public Finance Act 1989 (1989 No 44)

Amendment(s) incorporated in the Act(s).

State Sector Act 1988 (1988 No 20)

Amendment(s) incorporated in the Act(s).

Schedule 8 Regulations revoked

s 175(5)

- Chiropractors Amendment Act Commencement Order 1996 (SR 1996/111)**
- Chiropractors Order 1984 (SR 1984/82)**
- Chiropractors Order 1988 (SR 1988/163)**
- Chiropractors Order 1993 (SR 1993/277)**
- Chiropractors Order 1995 (SR 1995/218)**
- Chiropractors Order 1997 (SR 1997/344)**
- Chiropractors Order 1999 (SR 1999/234)**
- Dental Amendment Act Commencement Order 1996 (SR 1996/112)**
- Dental Regulations 1988 (SR 1988/289)**
- Dietitians Amendment Act Commencement Order 1996 (SR 1996/113)**
- Dietitians Regulations 1987 (SR 1987/63)**
- Medical Auxiliaries Act Commencement Order 1967 (SR 1967/278)**
- Medical Auxiliaries Act Commencement Order 1968 (SR 1968/247)**
- Medical Auxiliaries Act Commencement Order 1982 (SR 1982/50)**
- Medical Auxiliaries Amendment Act Commencement Order 1996 (SR 1996/114)**
- Medical Laboratory Technologists Regulations 1989 (SR 1989/282)**
- Medical Practitioners Act Commencement Order 1996 (SR 1996/162)**
- Medical Practitioners (Vocational Registration) Order 1999 (SR 1999/339)**
- Medical Radiation Technologists Regulations 1995 (SR 1995/32)**
- Nurses Amendment Act Commencement Order 1996 (SR 1996/116)**
- Nurses Regulations 1986 (SR 1986/159)**
- Occupational Therapy Amendment Act Commencement Order 1996 (SR 1996/117)**
- Occupational Therapy Regulations 1964 (SR 1964/81)**

Optometrists And Dispensing Opticians Amendment Act Commencement Order 1996 (SR 1996/118)

Optometrists And Dispensing Opticians Amendment Act Commencement Order 1996 (SR 1996/344)

Optometrists and Dispensing Opticians Regulations 1997 (SR 1997/345)

Pharmacy Amendment Act Commencement Order 1996 (SR 1996/119)

Pharmacy Registration Regulations 1972 (SR 1972/94)

Pharmacy Regulations 1975 (SR 1975/269)

Physiotherapy Amendment Act Commencement Order 1996 (SR 1996/120)

Physiotherapy Regulations 1979 (SR 1979/190)

Podiatrists Regulations 1982 (SR 1982/53)

Psychologists Act Commencement Order 1984 (SR 1984/234)

Psychologists Amendment Act Commencement Order 1996 (SR 1996/121)

Reprints notes

1 *General*

This is a reprint of the Health Practitioners Competence Assurance Act 2003 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11)

Statutes Amendment Act 2016 (2016 No 104): Part 15

District Court Act 2016 (2016 No 49): section 261

Radiation Safety Act 2016 (2016 No 6): section 99

Inquiries Act 2013 (2013 No 60): section 39

Legislation Act 2012 (2012 No 119): section 77(3)

Search and Surveillance Act 2012 (2012 No 24): section 256

Criminal Procedure Act 2011 (2011 No 81): section 413

Health Practitioners Competence Assurance (Designation of Anaesthetic Technology Services as Health Profession) Order 2011 (SR 2011/227): clause 7

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48): section 47

Human Tissue Act 2008 (2008 No 28): section 92

Insolvency Act 2006 (2006 No 55): section 445

Coroners Act 2006 (2006 No 38): section 146

Relationships (Statutory References) Act 2005 (2005 No 3): section 7