

**Reprint  
as at 1 December 2014**



## **Health and Disability Commissioner Act 1994**

Public Act      1994 No 88  
Date of assent      20 October 1994  
Commencement      see section 1

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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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**An Act to promote and protect the rights of health consumers and disability services consumers, and, in particular,—**

- (a) to secure the fair, simple, speedy, and efficient resolution of complaints relating to infringements of those rights; and
- (b) to provide for the appointment of a Health and Disability Commissioner to investigate complaints against persons or bodies who provide health care or disability services; and to define the Commissioner's functions and powers; and
- (c) to provide for the establishment of a Health and Disability Services Consumer Advocacy Service; and
- (d) to provide for the promulgation of a Code of Health and Disability Services Consumers' Rights; and
- (e) to provide for matters incidental thereto

**1 Short Title and commencement**

- (1) This Act may be cited as the Health and Disability Commissioner Act 1994.
- (2) Except as provided in subsection (3), this Act shall come into force on the day after the date on which it receives the Royal assent.

- (3) Part 4 and sections 76(1), 76(2), 81(1), and 81(3) shall come into force on a date to be appointed by the Governor-General by Order in Council.

Section 1(3): Part 4 and sections 76(1), (2), 81(1), and (3) brought into force, on 1 July 1996, by the Health and Disability Commissioner Act Commencement Order 1996 (SR 1996/79).

## 2 Interpretation

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

**action**, in relation to a health care provider or a disability services provider, includes failure to act; and also includes any policy or practice

**advocacy services** means the provision of health and disability services consumer advocates; and also includes the provision of such administrative services as may be necessary to enable those advocates to exercise and perform their functions and powers

**advocacy services agreement** means an agreement under which the Crown agrees to provide money to a person in return for the person providing, or arranging for the provision of, advocacy services

**advocate** means a health and disability services consumer advocate provided pursuant to an advocacy services agreement

**appropriate authority** includes, for the purposes of any assessment or investigation of any action on the part of a health practitioner that was taken when the health practitioner was registered under a former health registration enactment, the authority that, under section 178(1) of the Health Practitioners Competence Assurance Act 2003, is, in relation to that health practitioner, the successor authority

**authority** has the same meaning as in section 5 of the Health Practitioners Competence Assurance Act 2003; and includes the Social Workers Registration Board established by section 97 of the Social Workers Registration Act 2003

**Code of Health and Disability Services Consumers' Rights** or **Code** means the Code of Health and Disability Services Consumers' Rights for the time being prescribed by regulations made under section 74(1)

**Commissioner** means the Health and Disability Commissioner appointed in accordance with section 8 of this Act and section 28(1)(b) of the Crown Entities Act 2004

**Deputy Commissioner** means a Deputy Health and Disability Commissioner appointed under section 9

**Director of Advocacy** means the person for the time being designated under section 24(1) as the Director of Health and Disability Services Consumer Advocacy

**Director of Proceedings** means the person for the time being designated under section 15(1) as the Director of Proceedings

**disability services** includes goods, services, and facilities—

- (a) provided to people with disabilities for their care or support or to promote their independence; or
- (b) provided for purposes related or incidental to the care or support of people with disabilities or to the promotion of the independence of such people

**disability services consumer** means any person with a disability that—

- (a) reduces that person's ability to function independently; and
- (b) means that the person is likely to need support for an indefinite period

**disability services provider** means any person who provides, or holds himself or herself or itself out as providing, disability services

**disciplinary proceedings** means proceedings of a disciplinary nature taken under any former health registration enactment or the Health Practitioners Competence Assurance Act 2003

**document** has the meaning given to it by section 2(1) of the Official Information Act 1982

**former health registration enactment** means any of the former enactments specified in Schedule 1

**health** means human health

**health care institution** means—

- (a) premises used to provide health care services within the meaning of the Health and Disability Services (Safety) Act 2001, in compliance with that Act; or
- (b) a children's health camp operated by Children's Health Camps—The New Zealand Foundation for Child and Family Health and Development; or
- (c) a certified institution within the meaning of the Alcoholism and Drug Addiction Act 1966

**health care procedure** means any health treatment, health examination, health teaching, or health research administered to or carried out on or in respect of any person by any health care provider; and includes any provision of health services to any person by any health care provider

**health care provider** has the meaning given to it by section 3

**health consumer** includes any person on or in respect of whom any health care procedure is carried out

**health practitioner**—

- (a) has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003; and
- (b) includes—

- (i) a former health practitioner within the meaning of that section; and
- (ii) a person who was conditionally or unconditionally registered, or has held a certificate of registration, under a former health registration enactment; and
- (iii) a person who is receiving training or gaining experience under the supervision of a health practitioner
- (iii) a registered social worker within the meaning of the Social Workers Registration Act 2003

**health services—**

- (a) means—
  - (i) services to promote health:
  - (ii) services to protect health:
  - (iii) services to prevent disease or ill health:
  - (iv) treatment services:
  - (v) nursing services:
  - (vi) rehabilitative services:
  - (vii) diagnostic services; and
- (b) includes—
  - (i) psychotherapy and counselling services:
  - (ii) contraception services and advice:
  - (iii) fertility services:
  - (iv) sterilisation services

**health treatment**, to avoid doubt, includes treatment of a person (A) that is, or is related to, the taking of human tissue from A for all or any of the following purposes:

- (a) transplantation, or another therapeutic purpose, for the benefit of 1 or more persons other than A:
- (b) educational purposes or research purposes

**Human Rights Commission** means the Human Rights Commission continued by section 4 of the Human Rights Act 1993

**Human Rights Review Tribunal** or **Tribunal** means the Human Rights Review Tribunal continued by section 93 of the Human Rights Act 1993

**informed consent**, in relation to a health consumer on or in respect of whom there is carried out any health care procedure, means consent to that procedure where that consent—

- (a) is freely given, by the health consumer or, where applicable, by any person who is entitled to consent on that health consumer's behalf; and

- (b) is obtained in accordance with such requirements as are prescribed by the Code

**Minister** means the Minister of Health

**Ministry** means the Ministry of Health, being the department of the Public Service referred to by that name

**services** means health services and disability services or both

**sitting day** means a sitting day of the House of Representatives.

- (2) For the purposes of its application to any matter or situation arising or existing at any time, this Act—
- (a) applies to an institution that was then a health care institution by virtue of the definition of that term then in subsection (1) as if it had always been a health care institution by virtue of the current definition of that term in that subsection; and
- (b) applies to a person who was then a health care provider by virtue of section 3 as it then was as if the person had always been a health care institution by virtue of that section as it currently is.

Section 2(1) **appropriate authority**: inserted, on 18 September 2004, by section 3(4) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 2(1) **authority**: inserted, on 18 September 2004, by section 3(4) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 2(1) **authority**: amended, on 1 October 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **Commissioner**: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **Complaints Review Tribunal** or **Tribunal**: repealed, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 2(1) **Deputy Commissioner**: amended, on 18 September 2004, by section 3(1) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 2(1) **disciplinary proceedings**: amended, on 18 September 2004, by section 3(2) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 2(1) **former health registration enactment**: inserted, on 18 September 2004, by section 3(4) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 2(1) **health care institution**: substituted, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

Section 2(1) **health practitioner**: inserted, on 18 September 2004, by section 3(4) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 2(1) **health practitioner** second paragraph (b)(iii): added, on 1 October 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **health professional body**: repealed, on 18 September 2004, by section 3(3) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 2(1) **health registration enactment**: repealed, on 18 September 2004, by section 3(3) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 2(1) **health treatment**: inserted, on 1 November 2008, by section 90(2) of the Human Tissue Act 2008 (2008 No 28).



Section 2(1) **Human Rights Review Tribunal** or **Tribunal**: inserted, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 2(1) **purchaser**: repealed, on 1 January 2001, by section 111(1) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

Section 2(1) **registered health professional**: repealed, on 18 September 2004, by section 3(3) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 2(2): added, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

### 3 Definition of health care provider

In this Act, unless the context otherwise requires, the term **health care provider** means—

- (a) a person for the time being in charge of providing health care services within the meaning of the Health and Disability Services (Safety) Act 2001, in compliance with that Act:
- (b) a controlling authority of a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992:
- (c) *[Repealed]*
- (d) *[Repealed]*
- (e) Children's Health Camps—The New Zealand Foundation for Child and Family Health and Development:
- (f) *[Repealed]*
- (g) a manager of a certified institution within the meaning of the Alcoholism and Drug Addiction Act 1966:
- (h) any health practitioner:
- (i) any person who provides ambulance services to the public:
- (j) any person employed by the School Dental Service to carry on the practice of dentistry:
- (k) any other person who provides, or holds himself or herself or itself out as providing, health services to the public or to any section of the public, whether or not any charge is made for those services.

Section 3(a): substituted, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

Section 3(c): repealed, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

Section 3(d): repealed, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

Section 3(e): substituted, on 1 April 2000, by section 8 of the Children's Health Camps Board Dissolution Act 1999 (1999 No 141).

Section 3(f): repealed, on 1 April 2000, by section 8 of the Children's Health Camps Board Dissolution Act 1999 (1999 No 141).

Section 3(h): substituted, on 18 September 2004, by section 4 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **4 Definition of registered health professional**

*[Repealed]*

Section 4: repealed, on 18 September 2004, by section 5 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **5 Act to bind the Crown**

This Act binds the Crown.

#### **6 Purpose**

The purpose of this Act is to promote and protect the rights of health consumers and disability services consumers, and, to that end, to facilitate the fair, simple, speedy, and efficient resolution of complaints relating to infringements of those rights.

#### **7 Strategies and objectives to be taken into account**

In exercising or performing any power or function under this Act, every person must—

- (a) take into account the New Zealand health strategy and the New Zealand disability strategy issued under section 8 of the New Zealand Public Health and Disability Act 2000, so far as those strategies are applicable to the circumstances of the particular case; and
- (b) take into account the objectives for district health boards set out in section 22(1) of the New Zealand Public Health and Disability Act 2000, so far as those objectives are applicable in the circumstances of the particular case.

Section 7: substituted, on 1 January 2001, by section 111(1) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

## **Part 1 Health and Disability Commissioner**

#### **8 Health and Disability Commissioner**

- (1) There shall be a Commissioner called the Health and Disability Commissioner.
- (2) The Commissioner is—
  - (a) a corporation sole; and
  - (b) a Crown entity for the purposes of section 7 of the Crown Entities Act 2004; and
  - (c) the board for the purposes of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to the Commissioner except to the extent that this Act expressly provides otherwise.
- (4) *[Repealed]*

Section 8(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 8(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 8(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **9 Deputy Commissioners and Mental Health Commissioner**

- (1) One or more Deputy Health and Disability Commissioners may be appointed in the same way as the Commissioner is appointed, except that the Minister must consult the Commissioner before recommending a person for appointment as a Deputy Commissioner.
- (1A) Part 2 of the Crown Entities Act 2004 (except section 46) applies to the appointment and removal of a Deputy Health and Disability Commissioner in the same manner as it applies to the appointment and removal of the Commissioner.
- (2) A person may be appointed as the Mental Health Commissioner in the same way as the Commissioner is appointed, except that the Minister must consult the Commissioner before recommending a person for appointment as the Mental Health Commissioner.
- (3) A person who is a Deputy Commissioner or the Mental Health Commissioner has any powers, duties, and functions that—
  - (a) the Commissioner delegates to him or her under section 68(3A); and
  - (b) he or she may exercise and perform under subsection (4).
- (4) During the absence of the Commissioner from duty (for any reason) or a vacancy in the office of the Commissioner (for any reason), the powers, duties, and functions of the Commissioner may be exercised and performed by—
  - (a) a person appointed under this section who is nominated for the purpose by the Commissioner before the absence or vacancy by a written notice that is in force at the time of the absence or vacancy; or
  - (b) if there is no such notice, the longest serving person appointed under this section.

Section 9: replaced, on 1 July 2012, by section 5(2) of the Mental Health Commission Amendment Act 2012 (2012 No 42).

Section 9(1A): inserted, on 5 December 2013, by section 4 of the Health and Disability Commissioner Amendment Act 2013 (2013 No 120).

## **10 Qualifications for appointment**

- (1) No person shall be recommended for appointment as the Commissioner unless, in the opinion of the Minister, the person is qualified for appointment, having regard to the following matters:
  - (a) the functions and powers of the Commissioner;
  - (b) the person's personal attributes;

- (c) the person's knowledge of, or experience in,—
    - (i) the New Zealand health care system:
    - (ii) the New Zealand disability services system:
    - (iii) the resolution of disputes, including mediation and arbitration:
  - (d) the person's understanding of the various needs of health consumers:
  - (e) the person's understanding of the various needs of disability services consumers:
  - (f) the person's knowledge and recognition of the aims and aspirations of Maori:
  - (g) the person's recognition of the social, cultural, and religious values of different cultural and ethnic groups in New Zealand.
- (2) Subsection (1) does not limit section 29 of the Crown Entities Act 2004.
- (3) In addition to the matters in section 30(2) of the Crown Entities Act 2004, a member of a local authority is disqualified from being appointed as Commissioner.

Section 10(2): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 10(3): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **11 Commissioner to hold no other office**

*[Repealed]*

Section 11: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **12 Term of office**

*[Repealed]*

Section 12: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **13 Vacation of office**

*[Repealed]*

Section 13: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **14 Functions of Commissioner**

- (1) The functions of the Commissioner are as follows:
- (a) as a first priority, to prepare a draft Code of Health and Disability Services Consumers' Rights in accordance with section 19:
  - (b) in accordance with section 21, to review the Code and make to the Minister any recommendations for changes to the Code:

- (c) to promote, by education and publicity, respect for and observance of the rights of health consumers and disability services consumers, and, in particular, to promote awareness, among health consumers, disability services consumers, health care providers, and disability services providers of the rights of health consumers and disability services consumers and of the means by which those rights may be enforced:
- (d) to make public statements and publish reports in relation to any matter affecting the rights of health consumers or disability services consumers or both, including statements and reports that promote an understanding of, and compliance with, the Code or the provisions of this Act:
- (da) to act as the initial recipient of complaints about health care providers and disability services providers, and to ensure that each complaint is appropriately dealt with:
- (e) to investigate, on complaint or on the Commissioner's own initiative, any action that is or appears to the Commissioner to be in breach of the Code or, in the case of conduct that occurred before the enactment of the Code, in breach of certain disciplinary standards:
- (f) to refer complaints, or investigations on the Commissioner's own initiative, to the Director of Proceedings for the purpose of deciding whether or not any further action should be taken in respect of any such breach or alleged breach:
- (g) subject to section 15(2), to make recommendations to any appropriate person or authority in relation to the means by which complaints involving alleged breaches might be resolved and further breaches avoided:
- (h) to prepare guidelines for the operation of advocacy services in accordance with section 28:
- (i) to make suggestions to any person in relation to any matter that concerns the need for, or the desirability of, action by that person in the interests of the rights of health consumers or disability services consumers or both:
- (j) on the Commissioner's own initiative or at the request of the Minister, to advise the Minister on any matter relating to—
  - (i) the rights of health consumers or disability services consumers or both; or
  - (ii) the administration of this Act:
- (k) to report to the Minister from time to time on the need for, or desirability of, legislative, administrative, or other action to give protection or better protection to the rights of health consumers or disability services consumers or both:

- (l) to receive and invite representations from members of the public and from any other body, organisation, or agency on matters relating to the rights of health consumers or disability services consumers or both:
  - (m) to gather such information as in the Commissioner's opinion will assist the Commissioner in carrying out the Commissioner's functions under this Act:
  - (ma) to monitor mental health and addiction services and to advocate improvements to those services:
  - (n) *[Repealed]*
  - (o) to perform such functions as the Commissioner is for the time being directed to perform by the Minister in accordance with section 112 of the Crown Entities Act 2004:
  - (p) to exercise and perform such other functions, powers, and duties as are conferred or imposed on the Commissioner by or under this Act or any other enactment.
- (2) In performing his or her functions, the Commissioner shall—
- (a) establish and maintain effective links with—
    - (i) representatives of health consumers, disability services consumers, health care providers, and disability services providers:
    - (ii) other bodies and organisations (including community groups) concerned with health matters or matters relating to disabilities:
  - (b) consult and co-operate with other agencies concerned with personal rights, including the Ombudsmen, the Human Rights Commission, the Children's Commissioner, the Privacy Commissioner, and the Director of Mental Health.
- (2A) Except as expressly provided otherwise in this or another Act, the Commissioner must act independently in performing his or her statutory functions and duties, and exercising his or her statutory powers, under—
- (a) this Act; and
  - (b) any other Act that expressly provides for the functions, powers, or duties of the Commissioner (other than the Crown Entities Act 2004).

(3) *[Repealed]*

Section 14(1)(c): amended, on 18 September 2004, by section 7(1) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 14(1)(da): inserted, on 18 September 2004, by section 7(2) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 14(1)(e): amended, on 18 September 2004, by section 7(3) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 14(1)(g): amended, on 18 September 2004, by section 7(4) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 14(1)(ma): inserted, on 1 July 2012, by section 5(3) of the Mental Health Commission Amendment Act 2012 (2012 No 42).

Section 14(1)(n): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 14(1)(o): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 14(2)(b): amended, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

Section 14(2)(b): amended, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 14(2A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 14(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **15 Director of Proceedings**

- (1) For the purposes of this Act, the Commissioner shall from time to time designate one of its employees as the Director of Proceedings.
- (2) In exercising or performing the powers, duties, and functions of the Director of Proceedings under this Act, the person for the time being designated under subsection (1) shall not be responsible to the Commissioner but shall act independently.
- (3) Nothing in subsection (2) limits the responsibility of the Director of Proceedings to the Commissioner for the efficient, effective, and economical management of the activities of the Director of Proceedings.
- (4) No person shall hold, at the same time, a designation under subsection (1) and a designation under section 24(1).

Section 15(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **16 Annual report**

*[Repealed]*

Section 16: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **17 Further provisions relating to Commissioner**

The provisions of Schedule 2 shall have effect in relation to the Commissioner and the Commissioner's affairs.

## **18 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 Part, and then at intervals of not more than 5 years, the Commissioner shall—
  - (a) review the operation of this Act since—

- (i) the date of the commencement of this Part (in the case of the first review carried out under this paragraph); or
    - (ii) the date of the last review carried out under this paragraph (in the case of every subsequent review); and
  - (b) consider whether any amendments to this Act are necessary or desirable; and
  - (c) report the Commissioner's findings to the Minister.
- (2) As soon as practicable after receiving a report from the Commissioner under subsection (1)(c), the Minister shall lay a copy of that report before the House of Representatives.

## **Part 2**

### **Code of Health and Disability Services Consumers' Rights**

#### **19 Commissioner to prepare draft Code**

- (1) As soon as practicable after the commencement of this section, the Commissioner shall, subject to sections 22 and 23, prepare a draft Code of Health and Disability Services Consumers' Rights, and shall forward that draft to the Minister.
- (2) Within 12 sitting days after a draft is received by the Minister in accordance with this section, the Minister shall lay a copy of the draft before the House of Representatives.
- (3) Where, at the expiry of the period of 3 months beginning on the commencement of this Part, the Commissioner has not forwarded a draft Code to the Minister in accordance with subsection (1), the Commissioner shall, as soon as practicable after the expiry of that period, and then at intervals of not more than 3 months until a draft Code has been so forwarded, report to the Minister on the progress made in the preparation of the draft Code.

#### **20 Content of Code**

- (1) A Code of Health and Disability Services Consumers' Rights prescribed by regulations made under section 74(1) shall contain provisions relating to the following matters:
  - (a) the principle that, except where any enactment or any provision of the Code otherwise provides, no health care procedure shall be carried out without informed consent:
  - (b) the duties and obligations of health care providers as they relate to the principle set out in paragraph (a):
  - (c) the rights of health consumers and disability services consumers, and the duties and obligations of health care providers and disability services providers, as they relate to—



- (i) matters of privacy (other than matters that may be the subject of a complaint under Part 7 or Part 8 of the Privacy Act 1993 or matters to which Part 10 of that Act relates):
  - (ii) health teaching and health research:
  - (iii) the provision of services that take into account the needs, values, and beliefs of different cultural, religious, social, and ethnic groups:
  - (d) the duties of health care providers and disability services providers as they relate to the measures (including the provision of interpreters) necessary to enable health consumers and disability services consumers to communicate effectively with health care providers and disability services providers:
  - (e) the establishment and maintenance, by health care providers and disability services providers, of procedures for dealing with complaints against them by health consumers or disability services consumers, or both, and access by health consumers and disability services consumers to such procedures:
  - (f) the duties of health care providers and disability services providers to provide services of an appropriate standard:
  - (g) the duties of health care providers and disability services providers to provide services in a manner that respects the dignity and independence of the individual.
- (2) Without limiting the generality of subsection (1), a Code of Health and Disability Services Consumers' Rights prescribed by regulations made under section 74(1) may provide for—
- (a) any matter relating to the rights of disability services consumers that the Commissioner considers is of particular importance to such consumers:
  - (b) any matter incidental or ancillary to the rights of health consumers or disability services consumers, or both.

## 21 Review of Code

- (1) The Commissioner shall from time to time, as often as is necessary to ensure that a complete review of the Code is carried out at intervals of not more than 3 years, review the Code and make recommendations to the Minister on what changes (if any) the Commissioner considers should be made to the Code.
- (2) The Commissioner—
- (a) shall whenever the Minister so requests; and
  - (b) may at any time, on the Commissioner's own initiative,—
- review the Code, or any part of the Code, and make recommendations to the Minister on what changes (if any) the Commissioner considers should be made to the Code.

- (3) Section 22 shall apply, with all necessary modifications, in relation to any recommendations made by the Commissioner under this section as if those recommendations were a draft Code to which section 19(1) applies.
- (4) Within 12 sitting days after receiving any recommendations from the Commissioner in accordance with subsection (1) or, as the case may be, subsection (2), the Minister shall lay a copy of those recommendations before the House of Representatives.

## **22 Notification of intention to forward draft Code to Minister**

- (1) The Commissioner shall not forward a draft Code of Health and Disability Services Consumers' Rights to the Minister in accordance with section 19(1) unless—
  - (a) the Commissioner has given public notice of the Commissioner's intention to forward a draft Code to the Minister, which notice shall contain a statement that—
    - (i) the details of the proposed draft Code, including a copy of the proposed draft Code, may be obtained from the Commissioner; and
    - (ii) submissions on the proposed draft Code may be made in writing to the Commissioner within such period as is specified in the notice; and
  - (b) without limiting section 23, the Commissioner has done everything reasonably possible on his or her part to advise all persons whom the Commissioner considers may have an interest in the proposed draft Code, or representatives of those persons, of the terms of the proposed draft Code, has given such persons or their representatives a reasonable opportunity to consider the proposed draft Code and to make submissions on it to the Commissioner, and has considered any such submissions.
- (2) Nothing in subsection (1) prevents the Commissioner from adopting any additional means of publicising the proposal to forward a draft Code to the Minister, or of consulting with interested parties in relation to such a draft Code.
- (3) Failure to comply with all or any of the requirements of subsection (1) shall in no way affect the validity of any Code of Health and Disability Services Consumers' Rights prescribed by regulations made under section 74(1).

## **23 Consultation on preparation and review of Code**

Without limiting section 14(2), the Commissioner shall, in carrying out the requirements of sections 19 and 21, consult with, and invite submissions from, such persons, bodies, organisations, and agencies, including—

- (a) representatives of health consumers, disability services consumers, health care providers, and disability services providers; and

- (b) the Ombudsmen, the Human Rights Commission, the Privacy Commissioner, the Children's Commissioner, and the Director of Mental Health,—

as the Commissioner considers necessary to ensure that a wide range of views is available to the Commissioner to assist in the preparation and review of the Code of Health and Disability Services Consumers' Rights.

Section 23(b): amended, on 26 November 2003, by section 37 of the Children's Commissioner Act 2003 (2003 No 121).

Section 23(b): amended, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

### Part 3

## Health and Disability Services Consumer Advocacy Service

### 24 Director of Health and Disability Services Consumer Advocacy

- (1) For the purposes of this Act, the Commissioner shall from time to time designate one of its employees as the Director of Health and Disability Services Consumer Advocacy.
- (2) In exercising or performing the powers, duties, and functions of the Director of Advocacy under this Act, the person for the time being designated under subsection (1) shall not be responsible to the Commissioner but shall act independently.
- (3) Nothing in subsection (2) limits the responsibility of the Director of Advocacy to the Commissioner for the efficient, effective, and economical management of the activities of the Director of Advocacy.

Section 24(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### 25 Functions of Director of Advocacy

The functions of the Director of Advocacy are as follows:

- (a) to administer advocacy services agreements:
- (b) to promote, by education and publicity, advocacy services:
- (c) to oversee the training of advocates:
- (d) to monitor the operation of advocacy services, and to report to the Minister from time to time on the results of that monitoring.

### 26 Advocacy services to operate independently

Subject to this Act, advocacy services shall operate independently of the Commissioner, the Ministry, purchasers, health care providers, and disability services providers.

**27 Purchase of consumer advocacy services**

- (1) Subject to this Act, the Director of Advocacy shall from time to time, in the name and on behalf of the Crown,—
  - (a) negotiate and enter into advocacy services agreements containing such terms and conditions as may be agreed; and
  - (b) monitor the performance of each advocacy services agreement.
- (2) Every advocacy services agreement shall impose on the person that agrees to provide, or arrange for the provision of, advocacy services pursuant to the agreement the duty to ensure that any guidelines for the time being in force pursuant to section 28 are followed in the provision of those services.
- (3) Nothing in this section limits—
  - (a) any other enactment; or
  - (b) any powers that the Minister or the Crown has under any enactment or rule of law.

Compare: 1993 No 22 s 21

**28 Guidelines for operation of advocacy services**

- (1) The Commissioner may from time to time, and shall if directed to do so by the Minister, issue guidelines relating to the operation of advocacy services.
- (2) Without limiting subsection (1), any guidelines issued pursuant to subsection (1) shall include provisions relating to the procedures to be followed by advocates in carrying out their functions, including any special procedures to be followed when advocates are dealing with any particular persons or classes of persons.
- (3) The Commissioner may from time to time, and shall if directed to do so by the Minister, issue an amendment or revocation of any guidelines issued pursuant to this section.
- (4) No guidelines issued pursuant to this section, and no amendment or revocation of any such guidelines, shall have any force or effect unless those guidelines or, as the case requires, that amendment or revocation has been approved by the Minister.
- (5) Where the Minister approves any guidelines issued pursuant to this section or any amendment or revocation of any such guidelines, the Minister shall—
  - (a) publish a notice of the approval in the *Gazette*; and
  - (b) show the date of the approval on the guidelines or amendment or revocation, and promulgate the approval in such manner as the Minister thinks fit.
- (6) The Commissioner shall ensure that copies of all guidelines, and all amendments to any such guidelines, that are for the time being in force pursuant to this section are available—

- (a) for inspection by members of the public free of charge; and
  - (b) for purchase by members of the public at a reasonable price.
- (7) The notice of approval published in the *Gazette* pursuant to subsection (5)(a) shall show, in relation to the guidelines or the amendment to which it relates, a place at which copies of the guidelines or, as the case requires, the amendment are available for inspection free of charge and for purchase.

Compare: 1992 No 122 ss 36, 38, 39

## **29 Consultation on preparation of guidelines**

Without limiting section 14(2), the Commissioner shall, before issuing any guidelines or amendments to guidelines pursuant to subsection (1) or subsection (3) of section 28, consult with, and invite representations from, such persons, bodies, organisations, and agencies, including representatives of health consumers, disability services consumers, health care providers, and disability services providers, as the Commissioner considers necessary to ensure that a wide range of views is available to the Commissioner to assist in the preparation of those guidelines or amendments.

## **30 Functions of advocates**

An advocate shall have the following functions:

- (a) to act as an advocate for health consumers and disability services consumers:
- (b) to use his or her best endeavours to ensure that—
  - (i) health consumers on or in respect of whom any health care procedure is carried out, or is proposed to be carried out, by a health care provider; and
  - (ii) disability services consumers to whom disability services are provided, or are proposed to be provided, by a disability services provider—

are made aware of the provisions of the Code:

- (c) having regard to the needs, values, and beliefs of different cultural, religious, social, and ethnic groups, to provide information and assistance to health consumers, disability services consumers, and members of the public for the purposes of—
  - (i) promoting awareness of the rights of health consumers and of disability services consumers:
  - (ii) promoting awareness of the procedures available for the resolution of complaints involving a possible breach of the Code:
- (d) to provide to health consumers or, where applicable, persons entitled to consent on a health consumer's behalf such assistance as may be necessary to ensure—

- (i) that the health consumer's or, as the case may be, that person's consent to the carrying out of health care procedures is obtained; and
- (ii) that that consent is informed consent:
- (e) to promote, by education and publicity, an understanding of, and compliance with, the principle that, except where any enactment or any provision of the Code otherwise provides, no health care procedure shall be carried out without informed consent:
- (f) in respect of health care providers and disability services providers in the area that the advocate serves,—
  - (i) to provide information on the rights of health consumers and disability services consumers:
  - (ii) to promote awareness of advocacy services:
  - (iii) to provide advice on the establishment and maintenance of procedures for providing proper information to health consumers in relation to health care procedures and for the obtaining of consent to such health care procedures:
  - (iv) to provide advice on the establishment and maintenance of procedures to ensure the protection of the rights of health consumers and of disability services consumers, including monitoring procedures and complaints procedures:
- (g) to receive complaints alleging that any action of any health care provider or disability services provider is or appears to be in breach of the Code:
- (h) in respect of a complaint of the kind referred to in paragraph (g), to represent or assist the person alleged to be aggrieved for the purposes of endeavouring to resolve the complaint by agreement between the parties concerned:
- (i) to provide assistance to persons who wish—
  - (i) to pursue a complaint of the kind referred to in paragraph (g) through any formal or informal procedures (including proceedings before an authority) that exist for resolving that complaint:
  - (ii) to make a representation to the Commissioner or any other body or person in respect of any matter that is or appears to be in breach of the Code:
- (j) to report regularly to the Director of Advocacy on the operation of advocacy services in the area served by the advocate:
- (k) to report to the Commissioner from time to time on any matter relating to the rights of health consumers or disability services consumers or both (whether in relation to a particular health consumer or disability services consumer, or a group of health consumers or disability services consum-

ers, or in relation to health consumers or disability services consumers generally) that, in the advocate's opinion, should be drawn to the attention of the Commissioner:

- (l) to exercise and perform such other functions, powers, and duties as are conferred or imposed on advocates by or under this Act or any other enactment.

Section 30(i)(i): amended, on 18 September 2004, by section 8 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

## Part 4 Complaints and investigations

Part 4 heading: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### *Receipt of complaints*

Heading: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **31 General right to make complaints**

- (1) Any person may complain orally or in writing to an advocate or to the Commissioner alleging that any action of a health care provider or a disability services provider is or appears to be in breach of the Code.
- (2) Any person may complain orally or in writing to an advocate or to the Commissioner about any action of a health practitioner that was taken at any time before 1 July 1996, if it is alleged or it appears that the action—
  - (a) affected a health consumer; and
  - (b) was, at the time that it was taken, a ground for bringing disciplinary proceedings against the health practitioner under a former health registration enactment; but
  - (c) was not referred to the body that, under that enactment, had jurisdiction to consider it.
- (3) If a complaint is made under this section to an advocate and the advocate is unable to resolve the complaint, the advocate must—
  - (a) refer the complaint to the Commissioner; and
  - (b) inform the parties concerned of that referral and the reasons for it.

Section 31: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **32 Complaints referred to Commissioner**

For the purposes of this Part, a complaint that is referred to the Commissioner under section 31(3) of this Act or section 64(1) of the Health Practitioners

Competence Assurance Act 2003 must be treated as if it had been made to the Commissioner.

Section 32: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### **33 Preliminary assessment**

- (1) As soon as reasonably practicable after receiving a complaint, the Commissioner must make a preliminary assessment of the complaint to decide—
  - (a) whether to take 1 or more of the following courses of action:
    - (i) to refer the complaint to an agency or person in accordance with section 34 or section 36:
    - (ii) to refer the complaint to an advocate:
    - (iii) to call a conference, under section 61, of the parties concerned:
    - (iv) to investigate the complaint himself or herself; or
  - (b) whether to take no action on the complaint.
- (2) The Commissioner must promptly notify the complainant and the health care provider or the disability services provider to whom the complaint relates of the Commissioner's preliminary assessment.
- (3) This section does not preclude the Commissioner from revising a preliminary assessment and from subsequently exercising 1 or more of his or her other powers in relation to the complaint concerned.
- (4) If the Commissioner revises a preliminary assessment, the Commissioner must promptly notify the following persons and agencies of the revised assessment:
  - (a) the complainant:
  - (b) the health care provider or the disability services provider to whom the complaint relates:
  - (c) any agency or any person to whom the complaint has, in accordance with section 34 or section 36, been referred:
  - (d) any advocate to whom the complaint has been referred.

Section 33: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### *Referral of complaints to agencies, persons, statutory officers, or advocates*

Heading: inserted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### **34 Referral of complaint to agencies or persons involved in health or disability sector**

- (1) At any time after completing a preliminary assessment of a complaint, the Commissioner may refer the complaint, in whole or in part,—



- (a) to the appropriate authority if it appears from the complaint that the competence of a health practitioner or his or her fitness to practise or the appropriateness of his or her conduct may be in doubt; or
  - (b) to the Accident Compensation Corporation if it appears from the complaint that the aggrieved person may be entitled to cover under the Accident Compensation Act 2001; or
  - (c) to the Director-General of Health if it appears from the complaint that failures or inadequacies in the systems or practices of the health care provider or the disability services provider concerned may harm the health or safety of members of the public; or
  - (d) to the health care provider or the disability services provider to whom a complaint relates if the complaint does not raise questions about the health or safety of members of the public and can, in the Commissioner's opinion, be appropriately resolved by the provider.
- (2) At any time before or after referring a complaint, in whole or in part, to an agency or person mentioned in subsection (1), the Commissioner may consult with that agency or person as to the most appropriate means of dealing with the complaint.
- (3) After referring a complaint, in whole or in part, to an agency or person mentioned in subsection (1), the Commissioner must notify the complainant and the health care provider or the disability services provider to whom the complaint relates of the action that has been taken.
- (4) The Commissioner may refer a complaint, in whole or in part, to more than 1 agency or person mentioned in subsection (1), as long as each referral is authorised by a paragraph of that subsection.
- (5) A reference of a complaint under subsection (1) does not preclude the Commissioner from taking action on the complaint himself or herself.

Section 34: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 34(1)(b): amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

### **35 Agencies or persons to keep Commissioner informed about referred complaints**

Each agency or person to whom a complaint is referred under section 34 must—

- (a) promptly acknowledge receipt of the complaint; and
- (b) promptly advise the Commissioner of any significant step taken in its consideration or examination of the complaint; and
- (c) promptly advise the Commissioner of the outcome of its consideration or examination of the complaint.

Section 35: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### **36 Referrals of complaints to certain statutory officers**

- (1) If, at any time after completing a preliminary assessment of a complaint, the Commissioner considers that the complaint relates, in whole or in part, to a matter that is more properly within the scope of the functions of one of the statutory officers specified in subsection (4), the Commissioner must promptly consult with that officer in order to determine the appropriate means of dealing with the complaint.
- (2) As soon as reasonably practicable after consulting with the officer concerned, the Commissioner must determine whether the complaint should be dealt with, in whole or in part, under this Act.
- (3) If the Commissioner determines that the complaint should be dealt with, in whole or in part, by one of the officers specified in subsection (4), the Commissioner must promptly—
  - (a) refer the complaint or, as the case requires, the appropriate part of the complaint to that officer; and
  - (b) notify the complainant and the health care provider or the disability services provider to whom the complaint relates of the action that has been taken.
- (4) The statutory officers referred to in subsection (1) are—
  - (a) the Chief Commissioner under the Human Rights Act 1993;
  - (b) the Chief Ombudsman;
  - (c) the Privacy Commissioner.

Section 36: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### **37 Commissioner may refer complaint to advocate**

- (1) At any time after completing a preliminary assessment of a complaint (whether or not the Commissioner is investigating, or continuing to investigate, the complaint himself or herself), the Commissioner may refer the complaint to an advocate for the purpose of resolving the matter by agreement between the parties concerned.
- (2) On a referral of a complaint, under subsection (1), the advocate must—
  - (a) use his or her best endeavours to resolve the complaint by agreement between the parties concerned; and
  - (b) report the results of those endeavours to the Commissioner.
- (3) Every report made under subsection (2)(b) must record—
  - (a) the terms of any agreement reached between the parties concerned; and

- (b) if agreement is not reached on all matters, those matters on which agreement is reached and those matters on which no agreement is reached; and
  - (c) any other matters that the advocate thinks fit.
- (4) A copy of every report made under subsection (2)(b) must, on request, be made available by the Commissioner to each of the parties concerned.

Section 37: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### *Decision to take no action*

Heading: inserted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### **38 Commissioner may decide to take no action or no further action on complaint**

- (1) At any time after completing a preliminary assessment of a complaint (whether or not the Commissioner is investigating, or continuing to investigate, the complaint himself or herself), the Commissioner may, at his or her discretion, decide to take no action or, as the case may require, no further action on the complaint if the Commissioner considers that, having regard to all the circumstances of the case, any action or further action is unnecessary or inappropriate.
- (2) The Commissioner's consideration under subsection (1) may, in particular, take into account any of the following matters:
  - (a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made:
  - (b) whether the subject matter of the complaint is trivial:
  - (c) whether the complaint is frivolous or vexatious or is not made in good faith:
  - (d) whether the person alleged to be aggrieved does not want any action taken or, as the case may be, continued:
  - (e) whether there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the person alleged to be aggrieved to exercise.
- (3) Subsection (2) does not detract from the generality of subsection (1).
- (4) In any case where the Commissioner decides to take no action, or no further action, on a complaint, the Commissioner must inform the following persons and agencies of that decision and the reasons for it:
  - (a) the complainant:

- (b) the health care provider or the disability services provider to whom the complaint relates:
- (c) any agency or any person to whom the complaint has, in accordance with section 34 or section 36, been referred:
- (d) any advocate to whom the complaint has been referred.

Section 38: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 38 heading: amended, on 5 December 2013, by section 5 of the Health and Disability Commissioner Amendment Act 2013 (2013 No 120).

#### *Commissioner required to share certain information*

Heading: inserted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### **39 Commissioner to inform agencies of certain risks**

- (1) Whenever the Commissioner has reason to believe that the practice of a health practitioner may pose a risk of harm to the public, the Commissioner must promptly notify the appropriate authority of that belief and the reasons for it.
- (2) Whenever the Commissioner has reason to believe that failures or inadequacies in the systems or practices of a health care provider or a disability services provider are harming or are likely to harm the health or safety of members of the public, the Commissioner must promptly notify the Director-General of Health of that belief and the reasons for it.
- (3) If, during or after an investigation, the Commissioner is of the opinion that there is evidence of a significant breach of duty or misconduct on the part of a health care provider or disability services provider or an officer or employee or member of a health care provider or disability services provider, the Commissioner must promptly refer the matter to the appropriate person or agency.

Section 39: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### *Investigations by Commissioner*

Heading: inserted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### **40 Commissioner may investigate breaches**

- (1) The Commissioner may decide to investigate any action of a health care provider or a disability services provider if the action is, or appears to the Commissioner to be, in breach of the Code.
- (2) The Commissioner may investigate any action of a health practitioner that was taken at any time before 1 July 1996, if it appears that the action affected a health consumer and was, at the time that it was taken, a ground for bringing disciplinary proceedings against the health practitioner under a former health registration enactment.

- (3) The Commissioner may investigate an action under this section either on complaint or on the Commissioner's own initiative.

Section 40: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **41 Complainant and provider to be notified of investigation**

- (1) Before proceeding to investigate a matter under this Part, the Commissioner—
- (a) must, by written notice, inform the complainant (if any), the health care provider or the disability services provider to whom the investigation relates, and any person alleged to be aggrieved (if not the complainant) of the Commissioner's intention to make the investigation; and
  - (b) must, by written notice, inform the health care provider or the disability services provider to whom the investigation relates of—
    - (i) the details of the complaint (if any) or, as the case may be, the subject matter of the investigation; and
    - (ii) the right of that person to submit to the Commissioner, within 15 working days of the date of the notice, a written response in relation to the complaint or, as the case may be, the subject matter of the investigation.
- (2) The Commissioner may, at his or her discretion, extend the deadline of 15 working days set by a notice given under subsection (1)(b), and may do so before or after the deadline.

Section 41: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **42 On notification of investigation authority not to take disciplinary action until further notice**

- (1) In any case where, after deciding to investigate the action of a health care provider or a disability services provider, it appears to the Commissioner that the investigation directly concerns a health practitioner, the Commissioner must promptly give notice of the investigation to the appropriate authority.
- (2) Once the authority has received the notice, no disciplinary action under the Health Practitioners Competence Assurance Act 2003 may be taken in relation to any subject matter of the investigation until—
- (a) the Commissioner notifies the authority—
    - (i) that the matter is not to be investigated, or investigated further, under this Act; 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); or

- (b) the Director of Proceedings notifies the authority of his or her decision under section 49 not to institute disciplinary proceedings in relation to the matter.
- (3) This section does not prevent any action under the Health Practitioners Competence Assurance Act 2003—
  - (a) under any of sections 36 to 42, 45 to 51, or 69 of that Act; or
  - (b) in bringing and completing disciplinary proceedings initiated by a charge laid by the Director of Proceedings.

Section 42: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### **43 Information about result of investigation**

- (1) As soon as reasonably practicable after the Commissioner completes an investigation, the Commissioner must advise the persons specified in subsection (2)—
  - (a) of the results of the investigation; and
  - (b) of any further action that the Commissioner proposes to take or that the Commissioner proposes to take no further action.
- (2) The persons referred to in subsection (1) are—
  - (a) any complainant whose complaint led to the investigation;
  - (b) any person alleged to be aggrieved (if not the complainant);
  - (c) the health care provider or the disability services provider whose action was the subject of the investigation;
  - (d) if the investigation directly concerns a health practitioner, the appropriate authority.

Section 43: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

### **44 Consultation required before matter referred to Director of Proceedings**

- (1) The Commissioner may not, under section 45(2)(f), refer 1 or more health care providers or disability services providers to the Director of Proceedings for a decision as to whether proceedings should be instituted or action taken in respect of a person unless the Commissioner has given that person an opportunity to comment on that proposed referral.
- (2) The Commissioner must have regard to any relevant factors of the kind specified in subsection (3) when the Commissioner considers whether or not to refer, under section 45(2)(f), 1 or more health care providers or disability services providers to the Director of Proceedings for a decision as to whether proceedings should be instituted or any action taken.
- (3) The kinds of factors referred to in subsection (2) are—

- (a) the wishes of the complainant (if any) and the aggrieved person (if not the complainant) in relation to the matter; and
- (b) any comments made under subsection (1) in relation to the matter; and
- (c) the need to ensure that appropriate proceedings are instituted in any case where the public interest (whether for reasons of public health or public safety or for any other reason) so requires.

Section 44: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **45 Procedure after investigation**

- (1) This section applies if, after making an investigation under this Part, the Commissioner is of the opinion that any action that was the subject matter of the investigation—
  - (a) was in breach of the Code; or
  - (b) in the case of an action of a health practitioner that was taken at a time before 1 July 1996, affected a health consumer and was, at the time that it was taken, a ground for bringing disciplinary proceedings against the health practitioner under a former health registration enactment.
- (2) If this section applies, the Commissioner may do all or any of the following:
  - (a) report the Commissioner's opinion, with reasons, to any health care provider or disability services provider whose action was the subject matter of the investigation, and may make any recommendations as the Commissioner thinks fit;
  - (b) report the Commissioner's opinion, with reasons, together with any recommendations that the Commissioner thinks fit, to all or any of the following:
    - (i) any authority or professional body;
    - (ii) the Accident Compensation Corporation;
    - (iii) any other person that the Commissioner considers appropriate;
  - (c) make any report to the Minister that the Commissioner thinks fit;
  - (d) make a complaint to any authority in respect of any person;
  - (e) if any person wishes to make such a complaint, assist that person to do so;
  - (f) refer 1 or more health care providers or disability services providers to the Director of Proceedings for the purpose of deciding whether any 1 or more of the following actions should be taken in relation to those providers:
    - (i) any of the actions contemplated by section 47;
    - (ii) the institution of proceedings under section 50;
    - (iii) the institution of disciplinary proceedings.

- (3) On referring 1 or more health care providers or disability services providers to the Director of Proceedings under subsection (2)(f), the Commissioner must advise the Director of Proceedings of any relevant factors of the kind specified in section 44(3).
- (4) Subsection (2)(f)(ii) does not apply if this section applies because of subsection (1)(b).

Section 45: substituted, on 18 September 2004, by section 9 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **46 Implementation of recommendations of Commissioner**

- (1) Where, in accordance with section 45(2)(a) or (b), the Commissioner makes any recommendation to any person, the Commissioner may request that person to notify the Commissioner, within a specified time, of the steps (if any) that the person proposes to take to give effect to that recommendation.
- (2) If, within a reasonable time after a recommendation is made, no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner—
  - (a) shall, after considering the comments (if any) of the person concerned, inform the complainant (if any) of the Commissioner's recommendations and may make such comments on the matter as the Commissioner thinks fit; and
  - (b) may, where the Commissioner considers it appropriate, transmit to the Minister such report on the matter as the Commissioner thinks fit.

Compare: 1975 No 9 ss 22(3), 24

Section 46(1): amended, on 18 September 2004, by section 10 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **47 Director of Proceedings' right to participate in disciplinary and other proceedings**

- (1) The Director of Proceedings may, after referral from the Commissioner under section 45(2)(f),—
  - (a) provide assistance (whether financial or otherwise) to any complainant in any proceedings before any authority or tribunal:
  - (b) provide representation (either in person or by counsel)—
    - (i) for any complainant in any proceedings before an authority or a tribunal, in any case where the complainant, or any person acting on the complainant's behalf, is permitted, by or under the rules of procedure governing those proceedings, to appear and be heard in those proceedings:
    - (ii) for any party in any proceedings in any court in relation to any proceedings that are or have been before an authority or a tribunal:



- (iii) for any party in any proceedings before any court, tribunal, authority, Royal Commission, commission of inquiry, board of inquiry, court of inquiry, or committee of inquiry, in any case where those proceedings in any way relate to or arise from any matter that was or is the subject matter of any investigation by the Commissioner under this Part:
  - (c) appear and be heard, either in person or by counsel, in any proceedings of a kind described in subparagraph (ii) or subparagraph (iii) of paragraph (b), whether or not the Director of Proceedings is a party to those proceedings:
  - (d) in the Director of Proceedings' own right, take such proceedings as the Director of Proceedings thinks fit before any court or other tribunal in respect of any matter that in any way relates to or arises from any matter that was or is the subject matter of any investigation by the Commissioner under this Part.
- (2) Where, pursuant to subsection (1)(c), the Director of Proceedings appears in any proceedings, the Director of Proceedings shall, unless those proceedings are by way of appeal,—
- (a) to call evidence on any matter (including evidence in rebuttal) that should be taken into account in the proceedings:
  - (b) to examine, cross-examine, and re-examine witnesses,—
- but shall have no greater rights than parties to the proceedings in respect of the calling of evidence or evidence in rebuttal, or in respect of the examination, cross-examination, and re-examination of witnesses.
- (3) Where, pursuant to subsection (1)(c), the Director of Proceedings appears in any proceedings to which the Director of Proceedings is not a party, the court, tribunal, or other body before which those proceedings are conducted, where it has power to award costs to or against parties to the proceedings, may make such order as it thinks just—
- (a) as to the payment by any party to the proceedings of the costs incurred by the Director of Proceedings in so doing; or
  - (b) as to the payment by the Director of Proceedings of any costs incurred by any party to the proceedings by reason of the appearance of the Director of Proceedings.
- (4) Where any costs are so awarded to the Director of Proceedings, the Commissioner may recover them in the same manner as parties to the proceedings may recover costs awarded to them.
- (5) Costs ordered to be paid by the Director of Proceedings shall be paid by the Commissioner.

- (6) Nothing in subsection (3) limits or affects any power of a court, tribunal, or other body to award costs in any proceedings to which the Director of Proceedings is a party.

Section 47(1): amended, on 5 December 2013, by section 6 of the Health and Disability Commissioner Amendment Act 2013 (2013 No 120).

Section 47(1)(a): amended, on 18 September 2004, by section 11(a) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 47(1)(b)(i): amended, on 18 September 2004, by section 11(b) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 47(1)(b)(ii): amended, on 18 September 2004, by section 11(b) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **48 Commissioner to report certain matters to appropriate authority**

*[Repealed]*

Section 48: repealed, on 18 September 2004, by section 12 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### **49 Functions of Director of Proceedings**

- (1) The functions of the Director of Proceedings under this Part are—
- (a) to decide, on referral from the Commissioner pursuant to section 45(2)(f),—
- (i) whether to institute proceedings under section 50, or disciplinary proceedings, or both, against a person against whom a complaint has been made under this Part or in respect of whom an investigation has been conducted under this Part; and
- (ii) whether to take any of the actions contemplated by section 47; and
- (b) if the Director of Proceedings decides that such proceedings should be instituted or, as the case may be, that any such action should be taken, to institute the proceedings or, as the case may be, to take the action.

(2) *[Repealed]*

(3) *[Repealed]*

Section 49(1)(a): amended, on 18 September 2004, by section 13(1) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 49(2): repealed, on 18 September 2004, by section 13(2) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 49(3): repealed, on 18 September 2004, by section 13(2) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

#### *Proceedings before Human Rights Review Tribunal*

Heading: amended, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

## **50 Proceedings before Human Rights Review Tribunal**

- (1) This section applies to any health care provider or disability services provider in respect of whom or of which an investigation has been conducted under this Part in relation to any action alleged to be in breach of the Code.
- (2) Subject to sections 44(1) and 53, civil proceedings before the Human Rights Review Tribunal shall lie at the suit of the Director of Proceedings against any person to whom this section applies for a breach, by that person, of the Code.
- (3) The Director of Proceedings may, under subsection (2), bring proceedings on behalf of a class of persons, and may seek on behalf of persons who belong to the class any of the remedies described in section 54, where the Director of Proceedings considers that a person to whom this section applies is carrying on a practice which affects that class and which is in breach of the Code.
- (4) Where proceedings are commenced by the Director of Proceedings under subsection (2), neither the complainant (if any) nor the aggrieved person (if not the complainant) shall be an original party to, or, unless the Tribunal otherwise orders, join or be joined in, any such proceedings.

Compare: 1993 No 82 s 83(1)–(3)

Section 50 heading: amended, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 50(2): amended, on 18 September 2004, by section 14 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 50(2): amended, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

## **51 Aggrieved person may bring proceedings before Tribunal**

Notwithstanding section 50(2) but subject to section 53, the aggrieved person (whether personally or by any person authorised to act on his or her behalf) may bring proceedings before the Tribunal against a person to whom section 50 applies if he or she wishes to do so, and—

- (a) the Commissioner, having found a breach of the Code on the part of the person to whom that section applies, has not referred the person to the Director of Proceedings under section 45(2)(f); or
- (b) the Director of Proceedings declines or fails to take proceedings.

Compare: 1993 No 82 s 83(4)

Section 51(a): substituted, on 18 September 2004, by section 15 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 51(b): substituted, on 18 September 2004, by section 15 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

## **52 Remedies that may be sought**

- (1) Subject to subsection (2), in any proceedings before the Tribunal brought by the Director of Proceedings or the aggrieved person, the plaintiff may seek such of the remedies described in section 54 as he or she thinks fit.

- (2) If any person has suffered personal injury (within the meaning of the Accident Compensation Act 2001) covered by that Act, no damages (other than punitive damages in accordance with section 57(1)(d)) arising directly or indirectly out of that personal injury—
- (a) may be sought by or on behalf of that person in any proceedings under section 50 or section 51:
  - (b) may be awarded to or for the benefit of that person in any such proceedings.

Compare: 1993 No 82 s 86(1)

Section 52(2): substituted, on 1 April 2002, by section 337(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

Section 52(2): amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

### **53 Limitation on right to bring proceedings**

Nothing in section 50 or section 51 authorises or permits the Director of Proceedings or any aggrieved person to bring proceedings before the Tribunal in respect of any action that is alleged to be in breach of the Code in any case where the matter has been resolved under this Act by agreement between the parties concerned, unless a term of that agreement has not been complied with.

### **54 Powers of Human Rights Review Tribunal**

- (1) If, in any proceedings under section 50 or section 51, the Tribunal is satisfied on the balance of probabilities that any action of the defendant is in breach of the Code, it may grant 1 or more of the following remedies:
- (a) a declaration that the action of the defendant is in breach of the Code:
  - (b) an order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order:
  - (c) damages in accordance with section 57:
  - (d) an order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the aggrieved person as a result of the breach:
  - (e) such other relief as the Tribunal thinks fit.
- (2) In any proceedings under section 50 or section 51, the Tribunal may award such costs against the defendant as it thinks fit, whether or not it makes any other order, or may award costs against the plaintiff, or may decline to award costs against either party.
- (3) Where the Director of Proceedings is the plaintiff, any costs awarded against him or her shall be paid by the Commissioner, and the Commissioner shall not

be entitled to be indemnified by the complainant or, as the case may be, the aggrieved person.

- (4) It shall not be a defence to proceedings under section 50 or section 51 that the breach was unintentional or without negligence on the part of the defendant or any officer or employee or member of the defendant, but the Tribunal shall take the conduct of the defendant or, as the case may require, of any officer or employee or member of the defendant into account in deciding what, if any, remedy to grant.
- (5) In any proceedings under section 50 or section 51 in respect of any action of a health practitioner, the Tribunal shall, where that action has been the subject of disciplinary proceedings, have regard to the findings of the body before which those disciplinary proceedings were heard and to any penalty imposed on that health practitioner in those proceedings.

Compare: 1993 No 82 ss 86(2), (3), 87

Section 54 heading: amended, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 54(5): amended, on 18 September 2004, by section 16 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

## **55 Right of Director of Proceedings to appear in proceedings**

- (1) The Director of Proceedings may appear and be heard, in person or by counsel,—
  - (a) in any proceedings under this Act before the Human Rights Review Tribunal; and
  - (b) in any proceedings in—
    - (i) a District Court; or
    - (ii) the High Court; or
    - (iii) the Court of Appeal,—in relation to any proceedings that are or have been before the Tribunal under this Act,—

whether or not the Director of Proceedings is or was a party to the proceedings before the Tribunal.

- (2) Where, pursuant to subsection (1), the Director of Proceedings appears in any proceedings of a kind described in that subsection, he or she shall, unless those proceedings are by way of appeal, have the right—
  - (a) to call evidence on any matter (including evidence in rebuttal) that should be taken into account in the proceedings:
  - (b) to examine, cross-examine, and re-examine witnesses,—but shall have no greater rights than parties to the proceedings in respect of the calling of evidence or evidence in rebuttal, or in respect of the examination, cross-examination, and re-examination of witnesses.

- (3) Where, pursuant to subsection (1), the Director of Proceedings, not being a party to any proceedings before the Tribunal, appears in those proceedings or in any proceedings in any court in relation to those proceedings, the Tribunal or the court, as the case may be, may make such order as it thinks fit—
- (a) as to the payment by any party to the proceedings before the Tribunal or the court of the costs incurred by the Director of Proceedings in so doing; or
  - (b) as to the payment by the Director of Proceedings of any costs incurred by any of the parties to the proceedings before the Tribunal or the court by reason of the appearance of the Director of Proceedings.
- (4) Costs ordered to be paid by the Director of Proceedings shall be paid by the Commissioner.
- (5) Nothing in this section limits or affects—
- (a) section 54(2); or
  - (b) any power of a court to award costs in any proceedings to which the Director of Proceedings is a party.

Compare: 1993 No 82 s 84

Section 55(1)(a): amended, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

## **56 Proof of exceptions**

Where, by any provision of the Code, conduct is excepted from conduct that is in breach of the Code, the onus of proving the exception in any proceedings under this Part lies upon the defendant.

Compare: 1993 No 82 s 85

## **57 Damages**

- (1) Subject to section 52(2), in any proceedings under section 50 or section 51, the Tribunal may award damages against the defendant for a breach of any of the provisions of the Code in respect of any 1 or more of the following:
- (a) pecuniary loss suffered as a result of, and expenses reasonably incurred by the aggrieved person for the purpose of, the transaction or activity out of which the breach arose:
  - (b) loss of any benefit, whether or not of a monetary kind, which the aggrieved person might reasonably have been expected to obtain but for the breach:
  - (c) humiliation, loss of dignity, and injury to the feelings of the aggrieved person:
  - (d) any action of the defendant that was in flagrant disregard of the rights of the aggrieved person.

- (2) Subject to subsections (3) to (5), the Commissioner shall pay damages recovered by the Director of Proceedings under this section to the aggrieved person on whose behalf the proceedings were brought.
- (3) If the aggrieved person is a minor who is not married or in a civil union, the Commissioner may, in his or her discretion, pay the damages to Public Trust or to any person or trustee corporation acting as the manager of any property of that person.
- (4) If the aggrieved person is a mentally disordered person within the meaning of section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 whose property is not being managed under the Protection of Personal and Property Rights Act 1988, the Commissioner may, in his or her discretion, pay the damages to Public Trust.
- (5) If the aggrieved person is a person whose property is being managed under the Protection of Personal and Property Rights Act 1988, the Commissioner shall ascertain whether the terms of the property order cover management of money received as damages and,—
  - (a) if damages fall within the terms of the property order, the Commissioner shall pay the damages to the person or trustee corporation acting as the property manager; or
  - (b) if damages do not fall within the terms of the property order, the Commissioner may, in his or her discretion, pay the damages to Public Trust.
- (6) Where money is paid to Public Trust under subsection (3) or subsection (4) or subsection (5),—
  - (a) section 12 of the Minors' Contracts Act 1969 shall apply in the case of a minor who is not married or in a civil union; and
  - (b) sections 108D, 108F, and 108G of the Protection of Personal and Property Rights Act 1988 apply, with any necessary modifications, in the case of a person referred to in subsection (4) or subsection (5)(b); and
  - (c) section 108E of the Protection of Personal and Property Rights Act 1988 applies, with any necessary modifications, in the case of a person referred to in subsection (5)(a).

Compare: 1993 No 82 s 88

Section 57(3): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 57(3): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 57(4): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 57(5)(b): amended, on 1 March 2002, pursuant to section 152(1) of the Public Trust Act 2001 (2001 No 100).

Section 57(6): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 57(6)(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 57(6)(b): substituted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 57(6)(c): added, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

## **58 Certain provisions of Human Rights Act 1993 to apply**

Sections 92Q to 92W and Part 4 of the Human Rights Act 1993 shall apply, with such modifications as are necessary, in respect of proceedings under section 50 or section 51 of this Act as if they were proceedings under section 92E of that Act.

Compare: 1993 No 28 s 89; 1993 No 82 s 145

Section 58: amended, on 1 January 2002, by section 71(1) of the Human Rights Amendment Act 2001 (2001 No 96).

## **Part 5 Miscellaneous provisions**

### *Miscellaneous provisions*

## **59 Procedure**

- (1) Every investigation under Part 4 by the Commissioner may be conducted in public or in private.
- (2) Subject to section 67,—
  - (a) the Commissioner may hear or obtain information from such persons as the Commissioner thinks fit, including, where the Commissioner considers that cultural matters are a factor relevant to a complaint or investigation, information from such persons as the Commissioner thinks have knowledge of or experience in those matters:
  - (b) the Commissioner may make such inquiries as the Commissioner thinks fit:
  - (c) it shall not be necessary for the Commissioner to hold any hearing.
- (3) Subject to sections 41(b) and 67, no person shall be entitled as of right to be heard by the Commissioner.
- (4) Without limiting any other provision of this Act, the Commissioner may, at any time, if the Commissioner considers that it is necessary or desirable in the public interest (whether for reasons of public health or public safety or for any other reason) that any matter be brought to the attention of any person or authority, refer the matter to the appropriate person or authority.
- (5) Subject to the provisions of this Act, the Commissioner and every advocate may regulate his or her procedure in such manner as he or she thinks fit.

Compare: 1993 No 28 s 90



## **60 Duty to forward complaints**

Notwithstanding any provision in any enactment, where any letter appearing to be written by or on behalf of any health consumer in any health care institution is addressed to the Commissioner or to an advocate, the person for the time being in charge of that institution shall immediately forward the letter, unopened, to the Commissioner or, as the case may require, that advocate.

Compare: 1975 No 9 s 16

## **61 Mediation conference**

- (1) Where, in respect of any matter that is the subject of a complaint made to, or an investigation by, the Commissioner, the Commissioner is of the opinion that it would be appropriate to do so, the Commissioner may call a conference of the parties concerned in an endeavour to resolve the matter by agreement between those parties.
- (2) Any such conference may be called by a notice in writing signed by the Commissioner notifying the date, time, and place of the conference.
- (3) In addition to the parties or their representatives, the Commissioner may also invite to attend the conference any other person whose attendance would in the Commissioner's opinion be likely to assist in resolving the matter by agreement between the parties.
- (4) There may be paid, out of the funds of the Commissioner,—
  - (a) to each party or to the representatives of each party, to the number determined by the Commissioner as being necessary to enable that party to be adequately represented, attending any conference called under this section; and
  - (b) to any person (other than the Commissioner) attending any conference pursuant to subsection (3),—

fees, allowances, and expenses as if the parties or their representatives and those persons were witnesses in a court, and, for that purpose,—
  - (c) the provisions of any regulations in that behalf under the Criminal Procedure Act 2011 shall apply accordingly; and
  - (d) the Commissioner shall have the powers of a court under any such regulations to fix or disallow, in whole or in part, or to increase, any amounts payable under the regulations.
- (5) No evidence shall be admissible in any court, or before any person acting judicially, of any information, statement, or admission disclosed or made to any person in the course of a conference called under this section.

Compare: 1987 No 77 ss 249, 250(2)

Section 61(1): amended, on 18 September 2004, by section 17 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Section 61(4)(c): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**62 Evidence**

- (1) The Commissioner may from time to time, by notice in writing, require any person who in the Commissioner's opinion is able to give information relating to any matter under investigation by the Commissioner to furnish such information, and to produce such documents or things in the possession or under the control of that person, as in the opinion of the Commissioner are relevant to the subject matter of the investigation.
- (2) The Commissioner may summon before him or her and examine on oath any person who, in the Commissioner's opinion is able to give information relating to the matter under investigation, and may, for that purpose, administer an oath to any person so summoned.
- (3) Every such examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

Compare: 1993 No 28 s 91

**63 Protection and privileges of witnesses, etc**

- (1) Except as provided in section 64(2), every person shall have the same privileges in relation to the giving of information to, the answering of questions put by, and the production of documents and things to the Commissioner or any employee of the Commissioner, as witnesses have in any court.
- (2) No person shall be required to supply any information to or to answer any question put by the Commissioner or any employee of the Commissioner in relation to any matter, or to produce to the Commissioner or any employee of the Commissioner any document or thing relating to any matter, in any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person by the provisions of any Act or regulations, other than the Official Information Act 1982 or the State Sector Act 1988.
- (3) No person shall be liable to prosecution for an offence against any enactment, other than section 73, by reason of that person's compliance with any requirement of the Commissioner or any employee of the Commissioner under section 62.
- (4) Where the attendance of any person is required by the Commissioner under section 62, the person shall be entitled to the same fees, allowances, and expenses as if the person were a witness in a court and, for the purpose,—
  - (a) the provisions of any regulations in that behalf under the Criminal Procedure Act 2011 shall apply accordingly; and
  - (b) the Commissioner shall have the powers of a court under any such regulations to fix or disallow, in whole or in part, or to increase, any amounts payable under the regulations.

Compare: 1993 No 82 s 128

Section 63(4)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **64 Disclosure of certain matters not to be required**

- (1) Where—
- (a) the Prime Minister certifies that the giving of any information or the production of any document or thing might prejudice—
    - (i) the security or defence of New Zealand, or the international relations of the Government of New Zealand; or
    - (ii) any interest protected by section 7 of the Official Information Act 1982 (which relates to the Cook Islands, Niue, Tokelau, and the Ross Dependency); or
  - (b) the Attorney-General certifies that the giving of any information or the production of any document or thing—
    - (i) might prejudice the prevention, investigation, or detection of offences; or
    - (ii) might involve the disclosure of proceedings of Cabinet, or any committee of Cabinet, relating to matters of a secret or confidential nature, and such disclosure would be injurious to the public interest,—

neither the Commissioner nor any employee of the Commissioner shall require the information to be given, or, as the case may be, the document or thing to be produced.

- (2) Except as provided in subsection (1), the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest, shall not apply in respect of any investigation by or proceedings before the Commissioner.

Compare: 1993 No 82 s 129

#### **65 Proceedings privileged**

- (1) Sections 120 to 126 and section 135 of the Crown Entities Act 2004 apply to an advocate, with any necessary modifications, as if the advocate were an office holder.
- (2) Subject to subsection (3),—
- (a) *[Repealed]*
  - (b) none of the Commissioner, an office holder, or employee of the Commissioner, nor any advocate is required to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions.
- (3) Nothing in subsection (2) applies in respect of proceedings for—

- (a) an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961; or
  - (b) the offence of conspiring to commit an offence against section 78 or section 78A(1) or section 105 or section 105A or section 105B of the Crimes Act 1961.
- (4) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner or an advocate under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.
- (5) For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any report made under this Act by the Commissioner shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Compare: 1993 No 82 s 130

Section 65(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 65(2)(a): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 65(2)(b): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **66 Corrupt use of official information**

*[Repealed]*

Section 66: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **67 Adverse comment**

The Commissioner shall not, in any report or recommendation made or published under any of sections 14, 45, and 46(2)(b) or its annual report under Part 4 of the Crown Entities Act 2004, make any comment that is adverse to any person unless—

- (a) that person has been given a reasonable opportunity—
  - (i) to be heard; and
  - (ii) to make a written statement in answer to the adverse comment; and
- (b) where that person so requires, there is included in or appended to the report or recommendation either—
  - (i) the written statement referred to in paragraph (a)(ii); or
  - (ii) a fair and accurate summary of that statement,—
 whichever the Commissioner considers is more appropriate in the circumstances.

Compare: 1993 No 82 s 138

Section 67: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Delegations*

#### **68 Delegation of functions and powers**

- (1) *[Repealed]*
- (2) The Commissioner may not delegate to any person other than a Deputy Commissioner or the Mental Health Commissioner—
  - (a) *[Repealed]*
  - (b) the functions of the Commissioner under Part 2; or
  - (c) the power to designate any person under section 15(1) or section 24(1), or to revoke any such designation; or
  - (d) the power to make any recommendation or report under this Act.
- (3) The Commissioner may not delegate the functions or powers of the Commissioner under Part 4 or section 61 to the Director of Proceedings.
- (3A) In other respects, the Commissioner may delegate in accordance with section 73 of the Crown Entities Act 2004.
- (4) The Director of Proceedings may from time to time, with the prior approval of the Commissioner in each case, delegate to any person holding office under the Commissioner all or any of the functions and powers of the Director of Proceedings under this Act or any other Act.
- (5) The Director of Advocacy may from time to time, with the prior approval of the Commissioner in each case, delegate to any person holding office under the Commissioner all or any of the functions and powers of the Director of Advocacy under this Act or any other Act.
- (6) No delegation under subsection (4) shall be to the Director of Advocacy.
- (7) No delegation under subsection (5) shall be to the Director of Proceedings.
- (8) Sections 62 to 72 of the Crown Entities Act 2004 apply to a delegate under subsection (4) or (5) as if the delegate were a member and as if the disclosure must be made to the Commissioner and with other necessary modifications.
- (9) Sections 74 to 76 of the Crown Entities Act 2004 do not apply to a delegation under subsection (4) or (5).

Compare: 1993 No 28 s 121(1), (3)

Section 68(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 68(2): amended, on 1 July 2012, by section 5(4) of the Mental Health Commission Amendment Act 2012 (2012 No 42).

Section 68(2): amended (with effect on 25 January 2005), on 20 September 2007, by section 5 of the Health and Disability Commissioner Amendment Act 2007 (2007 No 62).

Section 68(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 68(2)(a): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 68(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 68(3A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 68(8): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 68(9): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **69 Further provisions relating to delegations**

- (1) Every delegation under section 68(4) or (5) shall be in writing.
- (2) The power to delegate under section 68(4) or (5) does not limit any power of delegation conferred on the Commissioner or the Director of Proceedings or the Director of Advocacy by any other Act.
- (3) Subject to any general or special directions given or conditions imposed by the person by whom the delegation is made, the person to whom any functions or powers are delegated under section 68(4) or (5) may exercise any functions or powers so delegated to that person in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation.
- (4) Every person purporting to act pursuant to any delegation under section 68(4) or (5) shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (5) Any delegation under section 68(4) or (5) may be made—
  - (a) to any specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices:
  - (b) subject to such restrictions and conditions as the person by whom the delegation is made thinks fit:
  - (c) either generally or in relation to any particular case or class of cases.
- (6) No delegation under section 68(4) or (5) shall affect or prevent the exercise of any function or power by the Commissioner or, as the case requires, the Director of Proceedings or the Director of Advocacy, nor shall any such delegation affect the responsibility of the Commissioner for the actions of any person acting under the delegation.

Compare: 1993 No 28 s 121(2), (4)–(8)

Section 69(1): amended (with effect on 25 January 2005), on 20 September 2007, by section 6 of the Health and Disability Commissioner Amendment Act 2007 (2007 No 62).

Section 69(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 69(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 69(3): amended (with effect on 25 January 2005), on 20 September 2007, by section 6 of the Health and Disability Commissioner Amendment Act 2007 (2007 No 62).

Section 69(3): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 69(4): amended (with effect on 25 January 2005), on 20 September 2007, by section 6 of the Health and Disability Commissioner Amendment Act 2007 (2007 No 62).

Section 69(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 69(5): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 69(6): amended (with effect on 25 January 2005), on 20 September 2007, by section 6 of the Health and Disability Commissioner Amendment Act 2007 (2007 No 62).

Section 69(6): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **70 Delegate to produce evidence of authority**

Any person purporting to exercise any power of the Commissioner or, as the case requires, the Director of Proceedings or the Director of Advocacy by virtue of a delegation under section 68(4) or (5) shall, when required to do so, produce evidence of that person's authority to exercise the power.

Compare: 1993 No 28 s 122

Section 70: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **71 Revocation of delegations**

- (1) Every delegation under section 68(4) or (5) shall be revocable in writing at will.
- (2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the person by whom the delegation was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of the person by whom the delegation was made.

Compare: 1993 No 28 s 123

Section 71(1): amended (with effect on 25 January 2005), on 20 September 2007, by section 7 of the Health and Disability Commissioner Amendment Act 2007 (2007 No 62).

Section 71(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### *Vicarious liability*

## **72 Liability of employer and principal**

- (1) In this section, the term **employing authority** means a health care provider or a disability services provider.
- (2) Subject to subsection (5), anything done or omitted by a person as the employee of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned

person, whether or not it was done or omitted with that employing authority's knowledge or approval.

- (3) Anything done or omitted by a person as the agent of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person, unless it is done or omitted without that employing authority's express or implied authority, precedent or subsequent.
- (4) Anything done or omitted by a person as a member of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person, unless it is done or omitted without that employing authority's express or implied authority, precedent or subsequent.
- (5) In any proceedings under this Act against any employing authority in respect of anything alleged to have been done or omitted by an employee of that employing authority, it shall be a defence for that employing authority to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing or omitting to do that thing, or from doing or omitting to do as an employee of the employing authority things of that description.

Compare: 1993 No 82 s 68

### *Offences*

#### **73 Offences**

Every person commits an offence against this Act and is liable on conviction to a fine not exceeding \$3,000 who,—

- (a) without reasonable excuse, obstructs, hinders, or resists the Commissioner or any other person in the exercise of their powers under this Act:
- (b) without reasonable excuse, refuses or fails to comply with any lawful requirement of the Commissioner or any other person under this Act:
- (c) makes any statement or gives any information to the Commissioner or any other person exercising powers under this Act, knowing that the statement or information is false or misleading:
- (d) represents directly or indirectly that he or she holds any authority under this Act when he or she does not hold that authority.

Compare: 1975 No 9 s 30

Section 73: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).



### *Regulations*

#### **74 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations prescribing a Code of Health and Disability Services Consumers' Rights.
- (2) In addition to the power conferred by subsection (1), the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing the procedure for the service of notices and other documents under this Act;
  - (b) providing for such matters as are contemplated by or necessary for giving effect to this Act and for its due administration.

#### **75 Where regulations made against or without advice of Commissioner**

- (1) This section applies where any regulations are made under section 74(1)—
  - (a) as a result of any draft Code, or any draft amendments to a Code, forwarded to the Minister by the Commissioner, where the regulations differ in any material respect (other than in matters of drafting style) from the draft so forwarded; or
  - (b) other than in accordance with, or in the absence of, a recommendation of the Commissioner.
- (2) Where this section applies, the Minister shall, within 12 sitting days of the making of the regulations, lay before the House of Representatives a statement setting out the following matters:
  - (a) where paragraph (a) of subsection (1) applies,—
    - (i) the respects in which the regulations differ in a material respect (other than in matters of drafting style) from the draft forwarded by the Commissioner; and
    - (ii) the reasons for the differences:
  - (b) where paragraph (b) of that subsection applies, the reasons why the regulations were made other than in accordance with, or in the absence of, a recommendation of the Commissioner.

### *Amendments to other enactments*

#### **76 Amendments to Ombudsmen Act 1975**

- (1), (2) *Amendment(s) incorporated in the Act(s).*
- (3) *[Repealed]*

Section 76(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**77 Amendments to Higher Salaries Commission Act 1977***[Repealed]*

Section 77: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**78 Amendment to Public Finance Act 1989***[Repealed]*

Section 78: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**79 Amendment to Accident Rehabilitation and Compensation Insurance Act 1992***Amendment(s) incorporated in the Act(s).***80 Amendments to Health Reforms (Transitional Provisions) Act 1993***Amendment(s) incorporated in the Act(s).***81 Amendments to Privacy Act 1993***Amendment(s) incorporated in the Act(s).***82 Amendment to Human Rights Act 1993***Amendment(s) incorporated in the Act(s).*

## **Schedule 1**

### **Former health registration enactments**

s 2

Schedule 1 heading: amended, on 18 September 2004, by section 20 of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Chiropractors Act 1982

Dental Act 1988

Dietitians Act 1950

Medical Auxiliaries Act 1966

Medical Practitioners Act 1995

Nurses Act 1977

Occupational Therapy Act 1949

Optometrists and Dispensing Opticians Act 1976

Pharmacy Act 1970

Physiotherapy Act 1949

Psychologists Act 1981

Schedule 1: amended, on 1 July 1996, by section 143(1) of the Medical Practitioners Act 1995 (1995 No 95).

## Schedule 2

### Provisions applying in respect of Commissioner

s 17

#### 1 Employment of experts

*[Repealed]*

Schedule 2 clause 1: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 2 Staff

*[Repealed]*

Schedule 2 clause 2: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 3 Salaries and allowances

*[Repealed]*

Schedule 2 clause 3: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 4 Superannuation or retiring allowances

- (1) For the purpose of providing superannuation or retiring allowances for the Commissioner, the Commissioner may, out of the funds of the Commissioner, make payments to or subsidise any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).
- (2) Notwithstanding anything in this Act, any person who, immediately before being appointed as the Commissioner or, as the case may be, becoming an employee of the Commissioner, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as the Commissioner or, as the case may be, to be an employee of the Commissioner; and that Act shall apply to that person in all respects as if that person's service as the Commissioner or, as the case may be, as such an employee were Government service.
- (3) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) entitles any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as the Commissioner or, as the case may be, is in the service of the Commissioner as an employee and (in either case) is a contributor to the Government Superannuation Fund, the term **controlling authority**, in relation to any such person, means the Commissioner.

- (5) For the purposes of this clause, **Commissioner** includes any Deputy Commissioner or the Mental Health Commissioner.

Schedule 2 clause 4(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Schedule 2 clause 4(1): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 2 clause 4(5): added, on 18 September 2004, by section 21(2) of the Health and Disability Commissioner Amendment Act 2003 (2003 No 49).

Schedule 2 clause 4(5): amended, on 1 July 2012, by section 5(5) of the Mental Health Commission Amendment Act 2012 (2012 No 42).

## **5 Application of certain Acts to Commissioner and staff**

*[Repealed]*

Schedule 2 clause 5: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **6 Services for Commissioner**

*[Repealed]*

Schedule 2 clause 6: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **7 Funds of Commissioner**

*[Repealed]*

Schedule 2 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **8 Bank accounts**

*[Repealed]*

Schedule 2 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **9 Investment of money**

*[Repealed]*

Schedule 2 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **10 Commissioner not to borrow without consent of Minister of Finance**

*[Repealed]*

Schedule 2 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **11 Auditor-General to be auditor of Commissioner's accounts**

*[Repealed]*

Schedule 2 clause 11: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**12 Seal**

*[Repealed]*

Schedule 2 clause 12: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**13 Exemption from income tax**

The income of the Commissioner shall be exempt from income tax.

## **Mental Health Commission Amendment Act 2012**

Public Act	2012 No 42
Date of assent	6 June 2012
Commencement	see section 2

### **1 Title**

This Act is the Mental Health Commission Amendment Act 2012.

### **2 Commencement**

This Act comes into force on 1 July 2012.

### *Other amendments*

### **5 Amendments to Health and Disability Commissioner Act 1994**

(1) This section amends the Health and Disability Commissioner Act 1994.

(2)–(5) *Amendment(s) incorporated in the Act(s).*

(6) The person who, immediately before the commencement of this section, was the chairperson of the Mental Health Commission is deemed to have been appointed as the first Mental Health Commissioner until the close of 31 August 2015 and holds that new office on the same terms and conditions as he or she held that former office (as if determined by the Remuneration Authority).

## Reprints notes

### 1 *General*

This is a reprint of the Health and Disability Commissioner Act 1994 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 and Disability Commissioner Amendment Act 2013 (2013 No 120)  
Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150  
Mental Health Commission Amendment Act 2012 (2012 No 42): section 5  
Criminal Procedure Act 2011 (2011 No 81): section 413  
Accident Compensation Amendment Act 2010 (2010 No 1): section 5(1)(b)  
Human Tissue Act 2008 (2008 No 28): section 90  
Health and Disability Commissioner Amendment Act 2007 (2007 No 62)  
Relationships (Statutory References) Act 2005 (2005 No 3): section 7  
Crown Entities Act 2004 (2004 No 115): section 200  
Children's Commissioner Act 2003 (2003 No 121): section 37  
Health and Disability Commissioner Amendment Act 2003 (2003 No 49)  
Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)  
Public Trust Act 2001 (2001 No 100): sections 152(1), 170(1)  
Human Rights Amendment Act 2001 (2001 No 96): section 71(1)  
Health and Disability Services (Safety) Act 2001 (2001 No 93): section 58(1)  
Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49): section 337(1)  
New Zealand Public Health and Disability Act 2000 (2000 No 91): section 111(1)  
Children's Health Camps Board Dissolution Act 1999 (1999 No 141): section 8  
Medical Practitioners Act 1995 (1995 No 95): section 143(1)  
Health and Disability Commissioner Act Commencement Order 1996 (SR 1996/79)



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**Health and Disability Commissioner Act 1994**

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