



## ANALYSIS

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1994, No. 91

**An Act to amend the Dietitians Act 1950**

[20 October 1994]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Dietitians Amendment Act 1994, and shall be read together with and deemed part of the Dietitians Act 1950 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

**2. Interpretation**—Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“Code” means the Code of Health and Disability Services Consumers’ Rights for the time being prescribed by regulations made under section 74 of the Health and Disability Commissioner Act 1994:

“Commissioner” means the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994:

“Director of Proceedings” means the person for the time being designated under section 15 of the Health and

Disability Commissioner Act 1994 as the Director of Proceedings.”.

**3. New sections inserted**—The principal Act is hereby amended by inserting, after section 25E (as substituted by section 12 of the Dietitians Amendment Act 1979), the following sections:

**“25F. Complaints to be notified to Commissioner—**  
(1) Where—

“(a) A complaint is made under section 25 of this Act; or

“(b) The Board otherwise becomes aware, in respect of any dietitian, that there might be grounds entitling the Board to exercise its disciplinary powers under section 25B of this Act,—

the Registrar shall forthwith notify the Commissioner of that complaint or matter.

“(2) Where, pursuant to section 25A (6) of this Act, the Penal Cases Committee becomes aware that a dietitian might be guilty of professional misconduct, the convener of the Committee shall forthwith notify the Commissioner of that matter.

**“25G. Consultation with Commissioner—**Where, in accordance with section 25F of this Act, a complaint or matter is notified to the Commissioner, the Commissioner may at any time after receiving the notification, consult with the Board in relation to the complaint or matter.

**“25H. Suspension of action under this Act—**  
(1) Notwithstanding anything in this Part of this Act, but subject to subsection (2) of this section and to section 25I (3) of this Act, where a complaint or matter is notified to the Commissioner in accordance with section 25F of this Act, no action shall be taken under this Act concerning the complaint or matter until—

“(a) The Commissioner notifies the Board—

“(i) That the complaint or matter is not to be investigated, or investigated further, under the Health and Disability Commissioner Act 1994; or

“(ii) That the complaint or matter has been resolved; or

“(iii) That the complaint or matter has been investigated under that Act and the complaint or matter is not to be referred to the Director of Proceedings in accordance with section 45 (f) of that Act; or

“(b) The Director of Proceedings notifies the Board that the Director of Proceedings has decided, pursuant to section 49 of that Act, not to institute disciplinary proceedings under this Act in relation to the complaint or matter.

“(2) Nothing in this section prevents the taking of any action under section 23 of this Act.

“**25I. Director of Proceedings may lay charge under this Part of this Act**—(1) This section applies where,—

“(a) After conducting an investigation under Part IV of the Health and Disability Commissioner Act 1994, the Commissioner is of the opinion that any action (within the meaning of that Act) that was the subject-matter of the investigation, being the action of a dietitian, was in breach of the Code; and

“(b) The Director of Proceedings decides, pursuant to section 49 of that Act, that disciplinary proceedings should be taken under this Act against that person.

“(2) Where this section applies, the Director of Proceedings shall frame an appropriate charge (being a charge of professional misconduct) and lay the charge with the Board.

“(3) Where the Director of Proceedings lays a charge with the Board under subsection (2) of this section, the Board shall deal with the matter as if the charge had been referred to the Chairman of the Board by the Penal Cases Committee under section 25A (3) of this Act, and, subject to section 25J of this Act, the provisions of this Part of this Act shall apply accordingly with all necessary modifications.

“**25J. Director of Proceedings to prosecute charge**— Notwithstanding anything in this Part of this Act, any charge laid under section 25I of this Act by the Director of Proceedings shall be prosecuted at the hearing by the Director of Proceedings, who for that purpose may be represented by counsel or otherwise.

“**25K. Costs may be awarded to Commissioner**—(1) In any proceedings under this Act relating to a charge laid by the Director of Proceedings under section 25I of this Act, the dietitian so charged may be ordered to pay—

“(a) Any costs and expenses of and incidental to any investigation made by the Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject-matter of the charge:

“(b) The costs and expenses of and incidental to the prosecution of the charge by the Director of Proceedings.

“(2) Any costs and expenses payable pursuant to subsection (1) of this section—

“(a) Shall be recoverable as a debt due to the Crown; and

“(b) Notwithstanding anything in section 31 of this Act, shall be paid to the Commissioner.

“(3) Section 25c (12) of this Act shall apply in respect of any order made under subsection (1) of this section as if it were an order made under section 25c of this Act.

“(4) Nothing in this section limits section 25B (3) of this Act.”

**4. Appeals from decisions of Board**—(1) Section 26 of the principal Act (as substituted by section 12 of the Dietitians Amendment Act 1979) is hereby amended by inserting, after paragraph (d), the following paragraph:

“(da) Any order of the Board requiring him to pay any costs or expenses of and incidental to any inquiry, investigation, or prosecution; or”.

(2) Section 26 (4) of the principal Act (as so substituted) is hereby amended by inserting, after the expression “section 25c”, the expression “or section 25k”.

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This Act is administered in the Ministry of Health.

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