

Queensland



# **HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) ACT 1999**

**Reprinted as in force on 22 October 2003  
(includes commenced amendments up to 2003 Act No. 68)**

**Reprint No. 2A**

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# **HEALTH PRACTITIONERS (PROFESSIONAL STANDARDS) ACT 1999**

[as amended by all amendments that commenced on or before 22 October 2003]

**An Act to establish arrangements for the disciplining of registrants and the management of impaired registrants, and for other purposes**

## **PART 1—PRELIMINARY**

### *Division 1—Introduction*

#### **1 Short title**

This Act may be cited as the *Health Practitioners (Professional Standards) Act 1999*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Dictionary**

The dictionary in the schedule defines particular words used in this Act.

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#### **4 The legislative scheme**

This Act is part of a legislative scheme consisting of this Act, the health practitioner registration Acts<sup>1</sup> and the *Health Practitioner Registration Boards (Administration) Act 1999*.

#### **5 Relationship with Health Rights Commission Act**

This Act must be read in conjunction with the *Health Rights Commission Act 1991*.

### *Division 2—Objects*

#### **6 Objects of Act**

The objects of this Act are—

- (a) to protect the public by ensuring health care is delivered by registrants in a professional, safe and competent way; and
- (b) to uphold the standards of practice within the health professions; and
- (c) to maintain public confidence in the health professions; and
- (d) to provide a uniform system to deal with complaints, investigations and disciplinary proceedings relating to registrants, and the management of impaired registrants; and
- (e) to provide a system to deal with complaints about registrants that is complementary to the *Health Rights Commission Act 1991*.

#### **7 How objects are to be primarily achieved**

The objects are to be primarily achieved by—

- (a) enabling complaints to be made to boards about registrants; and
- (b) enabling boards to immediately suspend, or impose conditions on, registrants under certain circumstances; and

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<sup>1</sup> For the definition “health practitioner registration Act”—see the schedule (Dictionary).



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- (c) providing for investigations about the conduct and practice of registrants; and
- (d) establishing disciplinary bodies to decide on disciplinary matters about registrants; and
- (e) establishing processes for the management of impaired registrants; and
- (f) providing for the dissemination of information about disciplinary proceedings to registrants and the public.

*Division 3—Operation of Act*

**8 Act binds all persons**

(1) This Act binds all persons, including the State.

(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

*Division 4—Application of Act to former registrants*

**9 Application of Act to persons who are no longer registered**

(1) This section applies if a person was a registrant but is no longer registered.

(2) This Act, other than the following parts, applies to the person while the person was a registrant as if the person were still a registrant—

- (a) the immediate suspension part;
- (b) the impairment part;
- (c) the foreign law part.

(3) Without limiting subsection (2)—

- (a) an entity may complain about a person to the board with which the person was registered about any aspect of the person's conduct or practice, or another matter relating to the person, while the person was a registrant as if the person were still a registrant; and

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- (b) a board may investigate any aspect of a person's conduct or practice, or another matter relating to the person, while the person was a registrant as if the person were still a registrant; and
- (c) a disciplinary body may conduct disciplinary proceedings about any aspect of a person's conduct or practice, or another matter relating to the person, while the person was a registrant as if the person were still a registrant.

**(3A)** In this section a reference to a person who was a registrant includes a reference to a person who was registered under a repealed health practitioner registration Act.

**(4)** For subsection (2), this Act applies, with any necessary changes, to a person mentioned in subsection (1) as if a reference to a registrant included the person.

## **PART 2—ADMINISTRATION**

### *Division 1—Preliminary*

#### **10 Purposes of pt 2**

The purposes of this part include—

- (a) to state the boards' functions under this Act; and
- (b) to state the functions of professional conduct review panels and provide a mechanism for establishing the panels; and
- (c) to establish, and state the functions of, the Health Practitioners Tribunal; and
- (d) to provide for panels of assessors; and
- (e) to provide for the appointment of—
  - (i) the secretary of the professional conduct review panels; and
  - (ii) the registrar of the Health Practitioners Tribunal.

## ***Division 2—Boards***

### **11 Boards' functions under this Act**

A board's functions under this Act are the following—

- (a) to receive complaints about its registrants and, if appropriate, refer the complaints to the commissioner;
- (b) to consult and cooperate with the commissioner in investigating and disciplining its registrants and in relation to complaints about impaired registrants;
- (c) to immediately suspend, or impose conditions on, the registration of its registrants if the registrants pose an imminent threat to the wellbeing of vulnerable persons;
- (d) to conduct investigations, whether because of complaints or on its own initiative, about the conduct and practice of its registrants;
- (e) to deal with disciplinary matters relating to its registrants that can be satisfactorily addressed through advising, cautioning and reprimanding;
- (f) to bring disciplinary proceedings relating to its registrants before panels or the tribunal;
- (g) to implement orders of panels or the tribunal relating to the board's registrants;
- (h) to establish health assessment committees to assess the health of registrants who may be impaired and make decisions about impaired registrants;
- (i) to monitor its registrants' compliance with conditions imposed or other disciplinary action taken, or undertakings entered into, under this Act;
- (j) to cancel or suspend, or impose conditions on, its registrants' registration as a result of action taken under a foreign law;
- (k) to consult and cooperate with other boards, foreign regulatory authorities and other relevant entities about the investigation and disciplining of its registrants and the management of its

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registrants who are impaired;

- (1) to exercise other functions given to the board under this Act.

## 12 Delegation of certain powers

(1) A board may delegate its powers under this Act, other than its power—

- (a) to conduct disciplinary proceedings; or
- (b) to make a decision at the end of disciplinary proceedings to advise, caution or reprimand a registrant; or
- (c) to make a decision to cancel or suspend, or impose conditions on, a registrant's registration or enter into an undertaking with a registrant; or
- (d) to order a registrant to attend for a further health assessment; or
- (e) to make a decision to end a suspension or remove or change conditions; or
- (f) to make a decision to reinstate a registrant's registration.

(2) The board may delegate its powers to—

- (a) a member of the board; or
- (b) the executive officer; or
- (c) with the agreement of the executive officer—an appropriately qualified member of the office's staff.

(3) In subsection (2)(c)—

**“appropriately qualified”**, for a member of the office's staff, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

The staff member's classification level in the office.

## 13 Minister's power to give directions

(1) The Minister may give a board a written direction about a matter relevant to the board's functions under this Act if the Minister is satisfied it is necessary to give the direction in the public interest.

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(2) Without limiting subsection (1), a direction may be—

- (a) that a registrant's board conduct an investigation of the registrant;  
or
- (b) to give reports and information to the Minister.

(3) However, a direction can not be about the following—

- (a) a decision by the board at the end of disciplinary proceedings to advise, caution or reprimand a registrant;
- (b) a decision by the board to cancel or suspend, or impose conditions on, a registrant's registration or enter into an undertaking with a registrant;
- (c) a decision by the board to order a registrant to attend for further health assessments;
- (d) a decision by the board to end a suspension or remove or change conditions;
- (e) a decision by the board to reinstate a registrant's registration.

(4) The board must comply with the direction.

(5) The board's annual report for a financial year, under the *Financial Administration and Audit Act 1977*, must include copies of all directions given to it in the financial year.

(6) However, the board must exclude from the copies all information likely to identify a complainant or registrant to which the direction relates.

***Division 3—Professional conduct review panels***

***Subdivision 1—Functions and establishment of panels***

**14 Functions of panel**

The functions of a professional conduct review panel include conducting a hearing, and making decisions, relating to disciplinary matters about a registrant, other than disciplinary matters that may, if proven, provide a ground for suspending or cancelling the registrant's registration.

## **15 Secretary to establish panel**

(1) If a board refers a disciplinary matter about a registrant under section 126<sup>2</sup> for hearing by a panel, the secretary must, by written notice to the members of the panel, establish a professional conduct review panel to hear the disciplinary matter.

(2) The secretary must establish the panel as soon as practicable after the referral.

## **16 When panel ceases to exist**

The panel ceases to exist when it has performed the functions, or is no longer able to perform the functions, for which it was established.

### *Subdivision 2—Membership of panels*

## **17 Membership of panel**

(1) The panel must consist of at least 3, and not more than 4, members.

(2) The secretary must choose the following to be members of the panel—

- (a) 2 persons who are members of the professional panel of assessors for the registrant's profession;
- (b) 1 person who is a member of the public panel of assessors;
- (c) if under section 20(1), the registrant's board nominates a board member who is not also a member of the registrant's profession to be a member of the panel—that board member;
- (d) if paragraph (c) does not apply and the secretary considers it necessary, having regard to the nature of the disciplinary matter, for the panel to consist of 4 members, another person who is—
  - (i) a member of the public panel of assessors; or
  - (ii) a member of the professional panel of assessors for the registrant's profession.

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2 Section 126 (How disciplinary proceedings may be started)

(3) If, under section 20(1), the registrant's board nominates a board member who is also a member of the registrant's profession to be a member of the panel, the secretary must choose the board member as a member of the panel either instead of a person mentioned in subsection (2)(a) or instead of the person mentioned in subsection (2)(d).

## **18 Restrictions on membership of panel**

(1) If the registrant is registered in more than 1 profession, the members of the panel mentioned in section 17(2)(a) or (d)(ii) must be chosen from the panel of assessors for the profession to which the disciplinary proceedings relate.

(2) If the disciplinary matter to be heard by the panel relates to a complaint by a user of a service provided by the registrant, or an entity acting on behalf of a user of a service provided by the registrant, the panel must include at least 1 member who is the same gender as the user.

(3) Subsection (2) does not apply if the complaint is a complaint accepted by a board under section 50(2).<sup>3</sup>

(4) Before choosing a person under section 17, other than a board member, the secretary must be satisfied the person does not have a personal or professional connection with the registrant that may prejudice the way in which the person performs the person's functions as a member of the panel.

## **19 Board must advise secretary of specialist and technical issues**

(1) The board that refers a disciplinary matter for hearing by a panel must, at the time of the referral—

- (a) advise the secretary whether the matter is likely to raise issues of a specialist or technical nature; and
- (b) if the matter is likely to raise issues of a specialist or technical nature, advise the secretary of the desirable professional background or skills of the members of the panel to be chosen under section 17(2)(a).

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3 Section 50 (Entity making complaint to reveal identity)  
Under section 50(2) a board may accept a complaint even though the complainant does not provide details or information under subsection (1).

(2) The secretary must have regard to the board's advice under subsection (1) when choosing the members of the panel.

## **20 Board may nominate member**

(1) The board may, when it refers a disciplinary matter for hearing by a panel, nominate 1 of its members, other than a member who was involved in an investigation of the disciplinary matter, to be a member of the panel.

(2) Before nominating a person under subsection (1), the board must be satisfied the person does not have a personal or professional connection with the registrant that may prejudice the way in which the person performs the person's functions as a member of the panel.

(3) For subsection (1), a board member was involved in the investigation of a disciplinary matter if the board member—

- (a) was an investigator or a member of an investigation committee for the matter; or
- (b) was directly involved in preparing a report about the investigation; or
- (c) participated in deliberations or decisions about the matter during or after the investigation, including, for example, the decision to refer the matter under section 126<sup>4</sup> for hearing by a panel.

## **21 Chairperson**

The secretary must appoint a person chosen as a member of a panel who is a member of the professional panel of assessors as chairperson of the panel.

## **22 Payment of members**

A member of a panel is entitled to be paid the remuneration and allowances decided by the Governor in Council.

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4 Section 126 (How disciplinary proceedings may be started)



***Subdivision 3—Secretary of professional conduct review panels***

### **23 Appointment of secretary**

(1) The Governor in Council may appoint a public service employee as the secretary of professional conduct review panels.

(2) A person is not qualified for appointment as the secretary if the person is—

- (a) a member of a board; or
- (b) a member of a panel of assessors; or
- (c) a member of the staff of the office.

### **24 Conditions of appointment**

(1) The secretary holds office on the conditions stated in the instrument of appointment.

(2) The secretary ceases holding office—

- (a) if the appointment provides for a term of appointment—at the end of the term; or
- (b) if the secretary ceases to be a public service employee; or
- (c) if the conditions in the instrument of appointment provide—on ceasing to hold another office (the “**main office**”) stated in the instrument of appointment.

(3) The secretary may resign by signed notice of resignation given to the Minister.

(4) However, the secretary may not resign from the office of secretary (the “**secondary office**”) if a term of the secretary’s employment to the main office requires the secretary to hold the secondary office.

### **25 Functions of secretary**

The secretary’s functions under this Act are the following—

- (a) to establish panels to hear disciplinary matters referred by boards;

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- (b) to provide support and advice to the panels about the panels' functions;<sup>5</sup>
- (c) to advise the panel about procedural matters relevant to the hearing;
- (d) to give notices under this Act;
- (e) to arrange payment of remuneration and allowances to members of panels and assessors;
- (f) to keep records of the panels' decisions and the reasons for the decisions;
- (g) to give the executive officer copies of records kept under section 263;<sup>6</sup>
- (h) to perform other functions given to the secretary under this Act, including the secretary's functions as an inspector under this Act.

***Division 4—Health Practitioners Tribunal***

***Subdivision 1—Establishment and membership of tribunal***

**26 Establishment of tribunal**

The Health Practitioners Tribunal is established.

**27 Members and constitution of tribunal**

- (1) The members of the tribunal are the District Court judges.
- (2) The tribunal is constituted by any 1 of its members.

**28 Tribunal may sit in more than 1 place**

The tribunal, as constituted by any 1 of its members, may sit in more than 1 place at the same time.

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<sup>5</sup> See section 14 for the panels' functions.

<sup>6</sup> Section 263 (Records to be kept and made publicly available)

## 29 Chairperson

The chairperson of the tribunal is the Chief Judge of District Courts appointed under the *District Court Act 1967*, section 10.<sup>7</sup>

### *Subdivision 2—Functions of tribunal*

## 30 Functions

(1) The primary function of the tribunal is to conduct hearings, and make decisions, relating to disciplinary matters about registrants.

(2) Without limiting subsection (1), the tribunal's functions include the following—

- (a) to hear disciplinary matters about registrants referred by boards under section 126 for hearing by the tribunal, including matters that boards reasonably believe may provide a ground for suspending or cancelling registrants' registration;
- (b) to hear appeals from decisions by boards under the immediate suspension part to suspend, or impose conditions on, registrants' registration;
- (c) to hear appeals from decisions of panels under the disciplinary proceedings part or the review and appeal part;
- (d) to review certain decisions made by the tribunal;
- (e) to hear appeals from decisions by boards under the impairment part or the foreign law part;
- (f) to perform other functions given to the tribunal under this or another Act.

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<sup>7</sup> *District Court of Queensland Act 1967*, section 10 (Chief Judge)  
Now see the *District Court of Queensland Act 1967*, section 140(2).

### ***Subdivision 3—Assessors***

#### **31 Assessors to assist tribunal**

(1) In conducting a hearing relating to a registrant under this Act, the tribunal must be assisted by—

- (a) 1 assessor chosen by the registrar from the public panel of assessors; and
- (b) 2 assessors chosen by the registrar from the professional panel of assessors for the registrant’s profession.

(2) Despite subsection (1), the tribunal may conduct a hearing under this Act without the assistance of assessors if the tribunal is satisfied it is necessary because of the urgency of the matter.

#### **32 Restrictions on appointment of assessors**

(1) If the registrant to whom disciplinary proceedings relate is registered in more than 1 profession, the assessors mentioned in section 31(1)(b) must be chosen from the panel of assessors for the profession to which the disciplinary matter before the tribunal relates.

(2) A person is not eligible to be an assessor if the person was a member of a panel that made a decision about the disciplinary matter being heard, including, for example, a decision directing the board to refer the matter under section 126 for hearing by the tribunal.

(3) If the disciplinary matter to be heard by the tribunal relates to a complaint by a user of a service provided by the registrant, or an entity acting on behalf of a user of a service provided by a registrant, either the constituting member or at least 1 of the assessors must be the same gender as the user unless—

- (a) the constituting member is conducting the hearing under section 31(2); or
- (b) the complaint is a complaint accepted by a board under section 50(2).

(4) Before choosing an assessor under section 31(1), the registrar must be satisfied the assessor does not have a personal or professional connection with the registrant to whom the disciplinary proceedings relate

that may prejudice the way in which the assessor performs the assessor's functions.

### **33 Board must advise registrar of specialist and technical issues**

(1) A board that refers a disciplinary matter under section 126 for hearing by the tribunal must, at the time of the referral—

- (a) advise the registrar whether the matter is likely to raise issues of a specialist or technical nature; and
- (b) if the matter is likely to raise issues of a specialist or technical nature, advise the registrar of the desirable professional background or skills of the assessors to be chosen from the professional panel of assessors.

(2) The registrar must have regard to the board's advice under subsection (1) when choosing the assessors to assist the tribunal.

### **34 Functions and powers of assessors**

(1) The function of an assessor is to advise the tribunal about questions of fact arising during the hearing of a disciplinary matter.

(2) To enable an assessor to perform the assessor's function, the assessor may, during the hearing—

- (a) ask questions of a witness before the tribunal; and
- (b) discuss any question of fact with a lawyer or other person appearing for a party at the hearing.

### **35 Payment of assessors**

An assessor is entitled to be paid the remuneration and allowances decided by the Governor in Council.

### ***Subdivision 4—Registrar of tribunal***

#### **36 Registrar**

The registrar of the tribunal is the registrar of the District Court at Brisbane.

#### **37 Functions of registrar**

The registrar's functions under this Act are—

- (a) to provide assistance to the tribunal in carrying out its functions;<sup>8</sup> and
- (b) to give notices under this Act; and
- (c) to choose assessors to assist the tribunal in conducting hearings; and
- (d) to keep records of the tribunal's decisions and the reasons for the decisions;<sup>9</sup> and
- (e) to perform other functions given to the registrar under this Act.

#### **38 Delegation of powers**

(1) The registrar may delegate the registrar's powers under this Act to any registrar or deputy registrar of the District Court who is not a judicial registrar of the court.

(2) For subsection (1), the registrar's powers include a power delegated to the registrar by the tribunal under section 217(7).<sup>10</sup>

### ***Division 5—Panels of assessors***

#### **39 Panels of assessors**

There is to be—

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8 See section 30 for the tribunal's functions.

9 See section 263 (Records to be kept and made publicly available).

10 Section 217 (Directions conference)

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- (a) a public panel of assessors; and
- (b) the following professional panels of assessors—
  - (i) a chiropractors panel of assessors;
  - (ii) a dentists panel of assessors;
  - (iii) a dental technicians panel of assessors;
  - (iv) a dental prosthetists panel of assessors;
  - (v) a medical practitioners panel of assessors;
  - (va) a medical radiation technologists panel of assessors;
  - (vi) an occupational therapists panel of assessors;
  - (vii) an optometrists panel of assessors;
  - (viii) an osteopaths panel of assessors;
  - (ix) a pharmacists panel of assessors;
  - (x) a physiotherapists panel of assessors;
  - (xi) a podiatrists panel of assessors;
  - (xii) a psychologists panel of assessors;
  - (xiii) a speech pathologists panel of assessors.

#### **40 Appointment of individuals to panels of assessors**

(1) The Governor in Council may, by gazette notice, appoint individuals as members of—

- (a) the public panel of assessors; and
- (b) each of the professional panels of assessors.

(2) Each panel of assessors must consist of the number of members decided by the Minister for the panel having regard to—

- (a) the likely demand for members to assist the tribunal and be members of professional conduct review panels; and
- (b) for a professional panel of assessors—the diversity of the profession.

(3) An individual is qualified to be recommended by the Minister for appointment as a member of the public panel of assessors only if the

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Minister is satisfied the person has sufficient experience, knowledge, skills and standing in the community having regard to the functions of assessors and members of professional conduct review panels.

(4) An individual is qualified to be recommended by the Minister for appointment as a member of a professional panel of assessors only if—

- (a) the individual is—
  - (i) registered with the board for the profession for which the panel is established; or
  - (ii) registered, licensed or otherwise authorised to practise the profession in another State; and
- (b) the Minister is satisfied the individual has sufficient experience, knowledge, skills and standing in the profession having regard to the functions of assessors and members of professional conduct review panels.

#### **41 Disqualification from membership of panel of assessors**

An individual must not be appointed as, or continue as, a member of a panel of assessors if—

- (a) for the public panel of assessors—
  - (i) the individual is a member of a board; or
  - (ii) the individual is, or has been, a registrant; or
  - (iii) the individual is, or has been, registered as a health practitioner under the law of another State or a foreign country that corresponds to a health practitioner registration Act; or
  - (iv) the individual is, or has been, a health service provider; and
- (b) for a professional panel of assessors—
  - (i) the individual is a member of a board; or
  - (ii) the individual is a registrant—
    - (A) whose registration ceases to have effect; or
    - (B) whose registration is subject to conditions that limit the registrant's right to practise the profession; or



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- (C) who has entered into an undertaking with the registrant's board or has given the tribunal an undertaking; or
- (iii) the individual is registered, licensed or otherwise authorised to practise the profession in another State and—
  - (A) the registration, licence or other authorisation is cancelled or suspended; or
  - (B) the registration, licence or other authorisation is subject to conditions that limit the individual's right to practise the profession; or
  - (C) the individual has entered into an undertaking with an entity in that State that performs the same functions as a disciplinary body.

#### **42 Procedure for recommending members of panels of assessors**

(1) Before recommending individuals as members of the public panel of assessors, the Minister must—

- (a) invite nominations from community groups and other entities that the Minister considers have an interest in consumer health issues; and
- (b) by advertisement in a newspaper circulating generally throughout the State, invite members of the public to nominate individuals who are qualified as mentioned in section 40(3) and not disqualified under section 41(a).

(2) Before recommending individuals as members of a professional panel of assessors, the Minister must invite nominations from—

- (a) the board for the profession for which the panel is established; and
- (b) universities and training institutions that—
  - (i) are established in Queensland; and
  - (ii) are engaged in the education of students for the profession for which the panel is established; and

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- (c) professional colleges established in Australia that the Minister considers are relevant to the profession for which the panel is established; and
- (d) professional associations that the Minister considers are representative of the profession for which the panel is established; and
- (e) persons who are qualified as mentioned in section 40(4) and not disqualified under section 41(b).

(3) The invitation in subsection (2)(e) must be made by advertisement in a newspaper circulating generally throughout the State.

(4) However, subsections (2) and (3) do not apply if the Minister reasonably believes that it is necessary to urgently appoint an individual as a member of a professional panel of assessors because—

- (a) the secretary or registrar considers a disciplinary matter is likely to raise issues of a specialist or technical nature, whether on the basis of advice received under section 19(1) or 33(1) from a board or otherwise; and
- (b) the secretary or registrar has advised the Minister that—
  - (i) none of the panel members have the desirable professional background or skills; or
  - (ii) panel members who do have the desirable professional background or skills will not be available to hear the matter.

### **43 Duration of appointment**

A member of a panel of assessors may be appointed for a term not longer than 5 years.

### **44 Conditions of appointment**

A member of a panel of assessors holds office on the conditions provided in this Act and the other conditions decided by the Governor in Council.

### **45 Vacation of office**

(1) A member of a panel of assessors vacates the member's office if—

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- (a) the member can not continue as a member under section 41; or
- (b) the member resigns by signed notice of resignation given to the Minister; or
- (c) the Governor in Council, by written notice given to the member, removes the member from the panel.

(2) The Governor in Council may remove a member from a panel if the member is—

- (a) incapable of properly performing the functions of an assessor; or
- (b) unfit to be a member of a panel.

*Example of circumstances when member may be unfit to be a member of a panel—*

A member of a professional panel of assessors may be considered to be unfit to hold office as a member if disciplinary action is taken against the member under this Act.

## **PART 3—COMPLAINTS**

### *Division 1—Preliminary*

#### **46 Purposes of pt 3**

The purposes of this part include—

- (a) to provide for complaints to be made to boards about registrants; and
- (b) to state how complaints must be made; and
- (c) to state how complaints must be dealt with under this Act.

## ***Division 2—Making a complaint***

### **47 Who may make complaint about registrant**

A complaint about a registrant may be made by any entity, including, for example—

- (a) the user of a service provided by the registrant; or
- (b) an entity acting on behalf of the user of a service provided by the registrant; or
- (c) another registrant; or
- (d) the chief executive; or
- (e) the Minister; or
- (f) a foreign regulatory authority.

### **48 Grounds for complaint**

(1) An entity may complain about a registrant by complaining to the registrant's board about any aspect of the registrant's conduct or practice, or another matter relating to the registrant, that appears to provide a ground for disciplinary action against the registrant.

(2) Also, a complaint may be made about a matter for which a complaint could be made under the *Health Rights Commission Act 1991*, section 57.<sup>11</sup>

### **49 How complaint is made**

A complaint about a registrant to a board must be in writing and contain particulars of the allegation on which it is founded.<sup>12</sup>

### **50 Entity making complaint to reveal identity**

(1) An entity making a complaint about a registrant must give the registrant's board—

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<sup>11</sup> *Health Rights Commission Act 1991*, section 57 (Health service complaint)

<sup>12</sup> Section 63 allows a board to investigate a registrant other than on a written complaint.

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- (a) the entity's name and address; and
- (b) any other information relating to the entity's identity that the board reasonably requires.

(2) However, the board may accept a complaint from a complainant who does not comply with subsection (1) if the board reasonably believes it is in the public interest to do so.

(3) If the board accepts a complaint under subsection (2), the board must provide the registrant with written notice of its reasons for accepting the complaint.

***Division 3—How complaints are dealt with***

***Subdivision 1—Complaints by users of registrant's services or entity acting on behalf of user***

**51 Action by board on receipt of complaint**

(1) This section applies if a registrant's board receives a complaint about the registrant from a user of a service provided by the registrant or an entity acting on behalf of the user.

(2) The board must refer it to the commissioner unless—

- (a) following consultation between the board and the commissioner, the board and the commissioner agree it is in the public interest for the board to do 1 of the following—
  - (i) keep the complaint for investigation under the investigation part;
  - (ii) keep the complaint and start disciplinary proceedings under the disciplinary proceedings part;
  - (iii) keep the complaint and deal with it under the impairment part;
  - (iv) keep the complaint and deal with it under the inspection part or the health practitioner registration Act under which the board is established and, if appropriate, start proceedings to prosecute the registrant under this Act or the health practitioner registration Act;

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- (v) refer the complaint to another entity that has the function or power under an Act of the State, the Commonwealth or another State to deal with the matter; or
- (b) the board keeps the complaint under a standing arrangement entered into between the board and the commissioner and deals with it in a way mentioned in paragraph (a); or
- (c) the board, under the immediate suspension part, suspends, or imposes conditions on, the registrant's registration; or
- (d) the complaint is about a matter that happened before 1 July 1991 and the complainant was aware of the matter before 1 July 1991.<sup>13</sup>

*Example for subsection (2)(b)—*

A board and the commissioner may have a standing arrangement that all complaints about the board's registrants alleging sexual impropriety are to be kept by the board for investigation under the investigation part.

**(3)** If the board keeps the complaint under subsection (2)(a)(ii), the board must refer the disciplinary matter the subject of complaint under section 126 for hearing by the tribunal if the board and the commissioner reasonably believe the complaint may provide a ground for suspending or cancelling the registrant's registration.

**(4)** For subsection (2)(a)(iii), the board and the commissioner may agree it is in the public interest for the board to keep the complaint and take action under the impairment part only if the board and the commissioner reasonably believe the complaint does not provide a ground for suspending or cancelling the registrant's registration.

**(5)** If the board keeps a complaint and deals with it under subsection (2)(a)(i), (ii), (iii) or (iv), the board may decide to also refer the complaint to another entity under subsection (2)(a)(v).

**(6)** The consultation between the board and the commissioner may be in the form agreed between the board and the commissioner.

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13 The *Health Rights Commission Act 1991*, section 149 provides that the Act does not authorise a complaint to be made to the commissioner about a health service provided before the commencement of the section, if the complaint relates to a matter arising more than 1 year before the commencement and the complainant was aware of the matter of the complaint more than 1 year before the commencement. Section 149 commenced on 1 July 1992.

(7) As soon as practicable after agreeing not to refer a complaint to the commissioner under subsection (2), the board must give a copy of the complaint to the commissioner.

(8) If the board keeps a complaint under subsection (2)(a) or (b) for stated action, the board must take the stated action as soon as practicable.

(9) If the board is required to refer the complaint to the commissioner under subsection (2), the board must do so immediately.

## **52 Referral of complaint to commissioner**

(1) This section applies if a board refers a complaint to the commissioner under section 51.

(2) The complaint is taken to be a health service complaint made to the commissioner under the *Health Rights Commission Act 1991*.

(3) The board must not take any further action on the complaint unless the commissioner refers the complaint back to the board under the *Health Rights Commission Act 1991*.

(4) The board may give the commissioner information, comments and recommendations relating to the complaint and the registrant against whom the complaint was made, including, for example, the registrant's name and address.

### ***Subdivision 2—Complaints made or referred to board by other entities and complaints commissioner not authorised to receive***

## **53 Action by board on receipt of complaint made or referred by another entity, or complaint commissioner not authorised to receive**

(1) This section applies if—

- (a) a registrant's board receives a complaint about the registrant from an entity, other than a user of a service provided by the registrant or an entity acting on behalf of the user; or
- (b) a complaint about a registrant is referred to the registrant's board by the commissioner under the *Health Rights Commission Act 1991*; or

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- (c) a registrant's board receives a complaint about the registrant and—
  - (i) the complaint is about a matter that happened before 1 July 1991; and
  - (ii) the complainant was aware of the matter before 1 July 1991.<sup>14</sup>

(2) After considering the complaint, the board must decide to do 1 of the following—

- (a) under the immediate suspension part, to suspend, or impose conditions on, the registrant's registration;
- (b) investigate the complaint under the investigation part;
- (c) start disciplinary proceedings under the disciplinary proceedings part;
- (d) deal with it under the impairment part;
- (e) deal with the complaint under the inspection part or the health practitioner registration Act under which the board is established and, if appropriate, start proceedings to prosecute the registrant under this Act or the health practitioner registration Act;
- (f) refer the complaint to another entity that has the function or power under an Act of the State, the Commonwealth or another State to deal with the matter;
- (g) reject the complaint under section 54.

(3) If the board decides to act under subsection (2)(c), the board must refer the disciplinary matter the subject of the complaint under section 126 for hearing by the tribunal if the board reasonably believes the complaint may provide a ground for suspending or cancelling the registrant's registration.

(4) Also, the board may deal with the complaint under the impairment part only if the board reasonably believes the complaint does not provide a ground for suspending or cancelling the registrant's registration.

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14 See the *Health Rights Commission Act 1991*, section 149 (Transitional for Health Rights Commission Act 1991 (Act No. 88 of 1991)).



(5) If the board takes action about a complaint under subsection (2)(a), (b), (c), (d) or (e), the board may decide to also refer the complaint to another entity under subsection (2)(f).

(6) As soon as practicable after receiving a complaint under this section, other than a complaint referred to the board by the commissioner, the board must give a copy of the complaint to the commissioner.

#### **54 When complaint may be rejected**

(1) A board may decide to reject a complaint mentioned in section 53 if—

- (a) having regard to the amount of time that has elapsed since the matter complained of happened, it is not practicable for the board to investigate or otherwise deal with it under this Act; or
- (b) the board reasonably believes the complaint is frivolous, vexatious or trivial; or
- (c) the subject matter of the complaint has already been dealt with adequately by the board or another appropriate entity; or
- (d) the complainant fails, without reasonable excuse, to—
  - (i) disclose the complainant's name and address under section 50(1)(a); or
  - (ii) provide further information about the complaint within the time stated in a notice given by the board under section 56(1); or
  - (iii) verify the complaint or further information by statutory declaration when required to do so by the board under section 56(2); or
- (e) the person to whom the complaint relates was, but is not at the time the complaint is received by the board, a registrant.

(2) However, the board must not decide to reject a complaint about a registrant under subsection (1)(a) if the board reasonably believes the complaint may provide a ground for suspending or cancelling the registrant's registration.

(3) A decision by the board to reject a complaint about a registrant does not prevent a disciplinary body taking the complaint into consideration at a

later time as part of a pattern of conduct or practice by the registrant that may result in disciplinary action.<sup>15</sup>

### **55 Notice to be given if complaint rejected**

(1) If a board decides to reject a complaint under section 54, the board must, within 14 days of making its decision, give written notice of its decision—

- (a) to the complainant; and
- (b) to the registrant; and
- (c) to the commissioner.

(2) The notice must—

- (a) for the registrant's notice—state the nature of the complaint; and
- (b) state the reasons for the board's decision.

(3) However, the board need not give the registrant the notice if the board reasonably believes doing so may—

- (a) place at risk the wellbeing of vulnerable persons; or
- (b) place the complainant or another person at risk of harassment or intimidation.

### ***Subdivision 3—Other matters about complaints***

### **56 Board may require further information or statutory declaration**

(1) A board may, by written notice, ask a complainant to give it more information about the complaint within the reasonable time stated in the notice.

(2) Also, a board may require a complainant to verify the complaint or further information given to it by the complainant, by statutory declaration.

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<sup>15</sup> See section 125(2)(b) which provides that a board may start disciplinary proceedings against a registrant on the basis of a number of complaints, including, for example, a number of complaints that suggest a pattern of conduct or practice.

(3) This section does not apply to a complaint that the board must under section 51, refer to the commissioner, unless the complaint is referred back to the board by the commissioner.

### **57 Withdrawal of complaint**

(1) This section applies if a complainant withdraws a complaint about a registrant—

- (a) made to the registrant's board; or
- (b) referred to the registrant's board by the commissioner.

(2) The board need not take any further action about the complaint.

(3) However, the withdrawal does not prevent the board—

- (a) investigating or continuing to investigate, the matter of the complaint; or
- (b) starting or continuing disciplinary proceedings relating to the matter of the complaint; or
- (c) dealing, or continuing to deal with, the matter of the complaint under the impairment part.

(4) In deciding whether to act as mentioned in subsection (2), the board must have regard to the objects of this Act and the grounds for disciplinary action.

## **PART 4—IMMEDIATE SUSPENSION OF REGISTRANTS OR IMPOSITION OF CONDITIONS ON THEIR REGISTRATION**

### **58 Purpose of pt 4**

The purpose of this part is to give boards the power to effectively respond to imminent threats posed by registrants to the wellbeing of vulnerable persons.

## **59 Immediate suspension or imposition of conditions on registration**

(1) This section applies if a registrant's board reasonably believes at any time, whether on the basis of a complaint or otherwise, that—

- (a) the registrant poses an imminent threat to the wellbeing of vulnerable persons; and
- (b) immediate action to suspend, or impose conditions on, the registrant's registration is necessary to protect the vulnerable persons.

(2) The board may decide to suspend, or impose conditions on, the registrant's registration.

(3) However, in making its decision under subsection (2), the board must take the action the board considers is the least onerous necessary to protect the vulnerable persons.

(4) Immediately after deciding to suspend, or impose conditions on, a registrant's registration, the board must give written notice to the registrant and commissioner and—

- (a) investigate the matter under the investigation part; or
- (b) refer it under section 126 to the tribunal for hearing under the disciplinary proceedings part.

(5) The notice must state—

- (a) the board's decision; and
- (b) the reasons for the decision; and
- (c) whether the matter—
  - (i) will be investigated under the investigation part; or
  - (ii) will be referred under section 126 for hearing by the tribunal under the disciplinary proceedings part; and
- (d) that the registrant may appeal to the tribunal against the decision to suspend, or impose conditions on, the registrant's registration; and
- (e) how the registrant may appeal.

(6) The decision takes effect on the later of—

- (a) the day the notice is given to the registrant; or

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(b) the day of effect stated in the notice.

(7) The decision continues to have effect until the first of the following happens—

- (a) the decision is set aside by the tribunal on appeal;
- (b) if the matter is referred under subsection (4)(b) for hearing by the tribunal under the disciplinary proceedings part—the tribunal decides the matter;
- (c) if the matter is investigated under the investigation part and is referred under section 126 for hearing by the tribunal under the disciplinary proceedings part—the tribunal decides the matter;
- (d) if the matter is investigated under the investigation part and at the end of the investigation the board decides to end the suspension or remove the conditions—the board makes the decision.

## **60 Suspension or conditions to be recorded in board's register**

(1) This section applies if the board decides under section 59(2) to suspend or impose conditions on the registrant's registration.

(2) As soon as practicable after suspending, or imposing conditions on, the registration, the board must record in its register, for the period for which the suspension or conditions are in force—

- (a) for a decision to suspend the registrant's registration—that the registrant's registration has been suspended; and
- (b) for a decision to impose conditions on the registrant's registration—
  - (i) that conditions have been imposed on the registrant's registration; and
  - (ii) details of the conditions imposed.

## **PART 5—INVESTIGATIONS**

### *Division 1—Preliminary*

#### **61 Purposes of pt 5**

The purposes of this part are—

- (a) to state when an investigation must or may be conducted; and
- (b) to allow a board to start an investigation without first receiving a complaint; and
- (c) to state a board’s investigative powers; and
- (d) to state the actions that must be taken at the end of an investigation.

### *Division 2—General provisions about investigation*

#### **62 When investigation of registrant must be conducted**

A registrant’s board must investigate the registrant if—

- (a) the Minister under section 13<sup>16</sup> directs the board to conduct the investigation; or
- (b) the Minister administering the *Health Rights Commission Act 1991*, section 74(7)(b),<sup>17</sup> decides under that paragraph that a complaint about the registrant should be referred by the commissioner to the board for investigation; or
- (c) the board and commissioner agree under the *Health Rights Commission Act 1991*, section 74(2), or under section 51(2)(a) or (b)<sup>18</sup> of this Act, that a complaint about the registrant is to be investigated by the board; or

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16 Section 13 (Minister’s power to give directions)

17 *Health Rights Commission Act 1991*, section 74 (Action on acceptance of complaint about registered provider)

18 Section 51 (Action by board on receipt of complaint)

- (d) the board decides under section 53<sup>19</sup> to investigate a complaint about the registrant under this part; or
- (e) the board suspends, or imposes conditions on, the registrant's registration under the immediate suspension part and decides to investigate the matter under this part; or
- (f) the board decides, under section 272(2)(b), 276(2)(b), 289(1)(b) or 299(2)(d)<sup>20</sup> to conduct an investigation under this part.

### **63 When investigation of registrant may be conducted on board's initiative**

(1) A registrant's board may investigate the registrant if—

- (a) it reasonably believes that an aspect of the registrant's conduct or practice, or another matter relating to the registrant, may provide a ground for disciplinary action against the registrant;<sup>21</sup> and
- (b) it has not received a complaint under the complaints part about the aspect of the registrant's conduct or practice or the other matter.

(2) However, the board must not investigate the registrant because it believes the registrant is impaired if it is dealing with the registrant under the impairment part.

(3) Subsection (2) does not prevent the board investigating the registrant about a matter other than the impairment.

### **64 Who may investigate**

(1) For investigating a registrant, the board may—

- (a) establish an investigation committee, that consists of some or all of the board's members, to conduct the investigation; or

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19 Section 53 (Action by board on receipt of complaint made or referred by another entity, or complaint commissioner not authorised to receive)

20 Section 272 (Powers of board if registrant does not undergo health assessment etc.), 276 (Decision about action to be taken for impaired registrant), 289 (Failure to comply with requirement of health assessment committee) or 299 (Decision about action to be taken for impaired registrant)

21 See section 124 (Grounds for disciplinary action).

(b) direct an investigator to conduct the investigation.

(2) Before establishing a committee or directing an investigator to conduct an investigation, the board must be satisfied the committee members or investigator does not have a personal or professional connection with the registrant to whom the investigation relates that may prejudice the way in which the members or investigator conduct the investigation.

### **65 Investigation must be conducted as quickly as possible**

(1) The board must ensure an investigation committee it establishes, or an investigator it directs to conduct an investigation, conducts the investigation as quickly as possible having regard to the nature of the matter to be investigated.

(2) Without limiting subsection (1), the board must have particular regard to conducting the investigation quickly if—

- (a) it relates to a complaint made by, or on behalf of, a person who is seriously ill; or
- (b) the board has suspended, or imposed conditions, on the registrant's registration, under the immediate suspension part.

### **66 Registrant to be given notice of investigation**

(1) As soon as practicable after establishing the investigation committee or directing an investigator to conduct an investigation, the board must give the registrant written notice about the investigation.

(2) The notice must state the following—

- (a) the nature of the complaint, if the investigation relates to a complaint;
- (b) the grounds forming the basis for the investigation, if the board is acting on its own initiative under section 63;
- (c) whether the investigation is being conducted by an investigation committee or an investigator;
- (d) that the registrant may make a submission to the committee or investigator about the complaint or other grounds for the investigation and how a submission may be made;



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- (e) if the submission may be an oral submission—a time and place, not less than 14 days after the day the notice is given, for the registrant to attend before the committee or investigator to make the submission;
- (f) if the submission may be a written submission—a stated day, not less than 14 days after the notice is given, by which the submission, if any, must be given to the committee or investigator.

(3) However, the board need not give the registrant the notice if the board reasonably believes doing so may—

- (a) seriously prejudice the investigation; or
- (b) place at risk the wellbeing of vulnerable persons; or
- (c) place the complainant or another person at risk of harassment or intimidation.

## **67 Registrant may make submissions**

A registrant given a notice under section 66 may make a submission to the investigation committee or investigator at the time and in the way stated in the notice.

### *Division 3—Investigation committees*

## **68 Function of investigation committee**

An investigation committee has the function of conducting the investigation for which the committee is established.

## **69 Powers of investigation committee**

For conducting an investigation, an investigation committee has the powers given to it under this Act.

### ***Division 4—Investigators***

#### **70 Function of investigator**

An investigator has the function of conducting the investigation the investigator is directed to conduct by a board.

#### **71 Powers of investigator**

For conducting an investigation, an investigator has the powers given to the person under this Act.

#### **72 Limitation on powers of investigator**

The powers of an investigator may be limited—

- (a) under a condition of the investigator's appointment; or
- (b) under the board's direction given to the investigator by the board to conduct the investigation.

#### **73 Who may be appointed as investigator**

A board may appoint any of the following as an investigator—

- (a) a member of the board;
- (b) the executive officer;
- (c) with the agreement of the executive officer—a member of the office's staff the board considers has the necessary expertise or experience to be an investigator;
- (d) another person the board considers has the necessary expertise or experience to be an investigator.

#### **74 Investigator's appointment conditions**

(1) An investigator holds office on the conditions stated in the instrument of appointment.

(2) If an investigator's appointment provides for a term of appointment, the investigator ceases holding office at the end of the term.

(3) An investigator may resign by signed notice of resignation given to the board.

### **75 Investigator's identity card**

(1) The board must give an identity card to each investigator it appoints.

(2) The identity card must—

- (a) contain a recent photograph of the investigator; and
- (b) be signed by the investigator; and
- (c) identify the person as an investigator appointed by a board for this Act; and
- (d) include an expiry date.

(3) This section does not prevent the issue of a single identity card to a person—

- (a) if the person is appointed as an investigator for this Act by more than 1 board; or
- (b) for this Act and other Acts.

### **76 Failure to return identity card**

A person who ceases to be an investigator must give the person's identity card to the executive officer within 7 days after the person ceases to be an investigator, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **77 Display of investigator's identity card**

(1) An investigator may exercise a power in relation to someone else (the “**other person**”) only if the investigator—

- (a) first produces the investigator's identity card for the other person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the investigator must produce

the identity card for the other person's inspection at the first reasonable opportunity.

### ***Division 5—Investigation powers***

#### ***Subdivision 1—Power to obtain information***

#### **78 Power to require information or attendance**

For conducting an investigation, an investigation committee or investigator may, by written notice given to a person, require the person—

- (a) to give stated information to the committee or investigator within a stated reasonable time and in a stated reasonable way; or
- (b) to attend before the committee or investigator at a stated reasonable time and place—
  - (i) to answer questions; or
  - (ii) to produce a stated thing.

#### **79 Offences**

(1) A person required to give stated information to an investigation committee or investigator under section 78 must not fail, without reasonable excuse, to give the information as required by the notice.

Maximum penalty—50 penalty units.

(2) A person given a notice to attend before an investigation committee or investigator must not fail, without reasonable excuse, to—

- (a) attend as required by the notice; or
- (b) continue to attend as required by the committee or investigator until excused from further attendance; or
- (c) answer a question the person is required to answer by the committee or investigator; or
- (d) produce a thing the person is required to produce by the notice.

Maximum penalty for subsection (2)—50 penalty units.

## **80 Self-incrimination**

For section 79, it is a reasonable excuse for an individual to fail to give stated information, answer a question or to produce a stated thing, if giving the information, answering the question or producing the thing might tend to incriminate the individual.

## **81 Inspection of produced things**

(1) If a thing is produced to an investigation committee or investigator, whether under a notice under section 78 or otherwise, the committee or investigator may inspect it.

(2) The investigation committee or investigator may do all or any of the following if the committee or investigator reasonably considers the thing may be relevant to the investigation being conducted by the committee or investigator—

- (a) photograph the thing;
- (b) for a document—make a copy of, or take an extract from, it;
- (c) keep the thing while it is necessary for the investigation.

(3) If the committee or investigator keeps the thing, the committee or investigator must permit a person otherwise entitled to possession of the thing to—

- (a) for a document—inspect, make a copy of, or take an extract from, the document, at the reasonable time and place the committee or investigator decides; and
- (b) for another thing—inspect or photograph the thing, at the reasonable time and place the committee or investigator decides.

### *Subdivision 2—Entry of places by investigator*

## **82 Power to enter places**

(1) An investigator may enter a place for investigating a registrant under this Act if—

- (a) its occupier consents to the entry; or

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- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant.

(2) For the purpose of asking the occupier of a place for consent to enter, an investigator may, without the occupier's consent or a warrant—

- (a) enter land around the premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

*Subdivision 3—Procedure for entry by investigator*

### **83 Consent to entry**

(1) This section applies if an investigator intends to ask an occupier of a place to consent to the investigator entering the place under section 82(1)(a).

(2) Before asking for the consent, the investigator must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the investigator may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the investigator consent to enter the place and exercise powers under this division; and
- (d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the investigator must immediately give a copy to the occupier.

(6) A court or disciplinary body must find the occupier of a place did not consent to an investigator entering the place under this division if—

- (a) an issue arises in a proceeding before the court or disciplinary body whether the occupier of the place consented to the entry under section 82(1)(a); and
- (b) an acknowledgment is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

#### **84 Application for warrant**

(1) An investigator may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

#### **85 Issue of warrant**

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence about a disciplinary matter being investigated by the investigator; and
- (b) the evidence is at the place, or may be at the place within the next 7 days.

(2) The warrant must state—

- (a) that a stated investigator may, with necessary and reasonable help and force—

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- (i) enter the place and any other place necessary for entry; and
- (ii) exercise the investigator's powers under this division; and
- (b) the disciplinary matter for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

### 86 Special warrants

(1) An investigator may apply for a warrant (a **“special warrant”**) by phone, fax, radio or another form of communication if the investigator considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the investigator's remote location.

(2) Before applying for the special warrant, the investigator must prepare an application stating the grounds on which the warrant is sought.

(3) The investigator may apply for the special warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy (the **“facsimile warrant”**) to the investigator if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the investigator—

- (a) the magistrate must tell the investigator—
  - (i) what the terms of the special warrant are; and
  - (ii) the date and time the special warrant was issued; and
- (b) the investigator must complete a form of warrant (a **“warrant form”**) and write on it—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the terms of the warrant.



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(6) The facsimile warrant, or the warrant form properly completed by the investigator, authorises the entry and the exercise of the other powers stated in the special warrant issued by the magistrate.

(7) The investigator must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the investigator completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the special warrant.

(9) A court or disciplinary body must find the exercise of the power by an investigator was not authorised by a special warrant if—

- (a) an issue arises in a proceeding before the court or disciplinary body whether the exercise of the power was authorised by a special warrant; and
- (b) the special warrant is not produced in evidence; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the investigator obtained the special warrant.

## **87 Warrants—procedure before entry**

(1) This section applies if an investigator named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.

(2) Before entering the place, the investigator must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the investigator's identity card or another document evidencing the investigator's appointment;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 86(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the investigator is permitted by the warrant to enter the place;

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(d) give the person an opportunity to allow the investigator immediate entry to the place without using force.

(3) However, the investigator need not comply with subsection (2) if the investigator reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

***Subdivision 4—Powers of investigator after entry***

**88 General powers after entering places**

(1) This section applies to an investigator who enters a place.

(2) However, if an investigator enters a place to get the occupier's consent to enter a place, this section applies to the investigator only if the consent is given or the entry is otherwise authorised.

(3) For conducting an investigation under this Act, the investigator may do all or any of the following—

- (a) search any part of the place;
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
- (c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;
- (d) copy, or take an extract from, a document, at the place;
- (e) take into or onto the place any person, equipment and materials the investigator reasonably requires for exercising a power under this division;
- (f) require the occupier of the place, or a person at the place, to give the investigator reasonable help to exercise the investigator's powers under paragraphs (a) to (e);
- (g) require the occupier of the place, or a person at the place, to give the investigator information to help the investigator in conducting the investigation.

(4) When making a requirement mentioned in subsection (3)(f) or (g), the investigator must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

## **89 Failure to help investigator**

(1) A person required to give reasonable help under section 88(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) If an individual is required under section 88(3)(f) to give information or produce a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

## **90 Failure to give information**

(1) A person of whom a requirement is made under section 88(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

### *Subdivision 5—Power of investigator to seize evidence*

## **91 Seizing evidence at public place if entry made when place open**

An investigator, who enters a public place when the place is open to the public, may seize a thing at the place if the investigator reasonably believes the thing is evidence that is relevant to the investigation being conducted by the investigator.

## **92 Seizing evidence at place entered with consent or warrant**

(1) This section applies if—

- (a) an investigator is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
- (b) the investigator enters the place after obtaining the necessary consent or warrant.

(2) If the investigator enters the place with the occupier's consent, the investigator may seize a thing at the place if—

- (a) the investigator reasonably believes the thing is evidence that is relevant to the investigation being conducted by the investigator; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(3) If the investigator enters the place with a warrant, the investigator may seize the evidence for which the warrant was issued.

(4) The investigator may also seize anything else at the place if the investigator reasonably believes—

- (a) the thing is evidence that is relevant to the investigation; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

### 93 Securing seized things

Having seized a thing, an investigator may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

### 94 Tampering with seized things

If an investigator restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without the investigator's approval.

Maximum penalty—50 penalty units.

## **95 Powers to support seizure**

(1) To enable a thing to be seized, an investigator may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

(2) The requirement—

- (a) must be made by written notice; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

(3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

## **96 Receipt for seized things**

(1) As soon as practicable after an investigator seizes a thing, the investigator must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the investigator must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally the thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt given the thing's nature, condition and value.

## **97 Forfeiture of seized things**

(1) A seized thing is forfeited to the State if the investigator who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts.

(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the investigator to make inquiries if it would be unreasonable to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the investigator to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for subsection (2)(b)—*

The owner of the thing has migrated to a foreign country.

(3) Regard must be had to a thing's nature, condition and value in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

## **98 Dealing with forfeited things etc.**

(1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the executive officer as the executive officer considers appropriate.

(2) Without limiting subsection (1), the executive officer may destroy or dispose of the thing.

## **99 Return of seized things**

(1) If a seized thing has not been forfeited, the investigator must return it to its owner—

- (a) at the end of 6 months; or

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(b) if proceedings involving the thing are started within 6 months—at the end of the proceedings and any appeal from the proceedings.

(2) Despite subsection (1), unless the thing has been forfeited, the investigator must immediately return a thing seized as evidence to its owner if the investigator stops being satisfied its continued retention as evidence is necessary.

### **100 Access to seized things**

(1) Until a seized thing is forfeited or returned, an investigator must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

### *Subdivision 6—General enforcement matters*

### **101 Notice of damage**

(1) This section applies if—

- (a) an investigator damages property when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction of an investigator damages property.

(2) The investigator must promptly give written notice of particulars of the damage to the person who appears to the investigator to be the owner of the property.

(3) If the investigator believes the damage was caused by a latent defect in the property or circumstances beyond the investigator’s or other person’s control, the investigator may state the belief in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the investigator must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the investigator reasonably believes is trivial.

(6) In subsection (2)—  
“owner”, of property, includes the person in possession or control of it.

### **102 Compensation**

(1) A person may claim compensation from the board for whom the investigator is conducting the investigation if the person incurs loss or expense because of the exercise or purported exercise of a power under subdivision 2, 4 or 5.<sup>22</sup>

(2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.

(3) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.

(4) A court may order compensation to be paid only if it is satisfied it is fair to make the order in the circumstances of the particular case.

### **103 False or misleading information**

A person must not state anything to an investigation committee or investigator that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

### **104 False or misleading documents**

(1) A person must not give to an investigation committee or investigator a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

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- (a) informs the investigation committee or investigator, to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the committee or investigator if the person has, or can reasonably obtain, the correct information.

### **105 Obstructing investigators**

(1) A person must not obstruct an investigator in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If a person has obstructed an investigator and the investigator decides to proceed with the exercise of the power, the investigator must warn the person that—

- (a) it is an offence to obstruct the investigator, unless the person has a reasonable excuse; and
- (b) the investigator considers the person's conduct is an obstruction.

(3) In this section—

“**obstruct**” includes hinder and attempt to obstruct or hinder.

### **106 Impersonation of investigators**

A person must not pretend to be an investigator.

Maximum penalty—50 penalty units.

### *Subdivision 7—Health assessments and expert assistance*

### **107 Board may require health assessment**

(1) This section applies if—

- (a) a registrant's board is conducting an investigation of the registrant; and
- (b) the board reasonably believes it is necessary for the registrant to undergo a health assessment because—

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- (i) there may be a ground for disciplinary action to be taken against the registrant; and
- (ii) the nature of the ground makes it reasonable to require the registrant to undergo a health assessment.

(2) The board may, by written notice given to the registrant, require the registrant to undergo a health assessment at a reasonable time and place.

(3) The notice must state—

- (a) the reasons for the health assessment; and
- (b) the name and qualifications of the person appointed by the board to conduct the assessment; and
- (c) the place where, and the day and time at which, the assessment is to be conducted.

(4) The registrant must not fail, without reasonable excuse—

- (a) to attend as required by the notice; and
- (b) to continue to attend as required by the person conducting the health assessment until excused from further attendance; and
- (c) to cooperate with the person in the conduct of the health assessment.

Maximum penalty for subsection (4)—50 penalty units.

### **108 Appointment of appropriately qualified person to conduct health assessment**

(1) This section applies if a registrant's board believes it is necessary for a registrant to undergo a health assessment.

(2) The board may appoint 1 or more appropriately qualified persons to conduct the assessment, in whole or part.

(3) At least 1 of the persons appointed to conduct the assessment must be a medical practitioner.

(4) Before appointing a person to conduct a health assessment, the board must be satisfied the person does not have a personal or professional connection with the registrant to whom the assessment relates that may prejudice the way in which the person conducts the assessment.

(5) In subsection (2)—

**“appropriately qualified”**, for a medical practitioner or other person conducting a health assessment, includes having the qualifications, experience, skills or knowledge appropriate to conduct the health assessment.

### **109 Report about health assessment**

(1) A person appointed under section 108 to conduct all or part of a health assessment of a registrant must prepare a report about the assessment (an **“assessment report”**).

(2) The assessment report must include—

- (a) the person’s findings as to whether the registrant is impaired; and
- (b) if the person finds the registrant is impaired—
  - (i) the nature and extent of the registrant’s impairment; and
  - (ii) the person’s recommendations as to any action that needs to be taken in relation to the registrant to protect the wellbeing of vulnerable persons.

(3) The person must—

- (a) give the assessment report to the board who appointed the person; and
- (b) give a copy of the assessment report to the registrant or, if it appears to the person that giving a copy of the report to the registrant may be prejudicial to the physical or psychological health or wellbeing of the registrant, a medical practitioner nominated by the registrant; and
- (c) if the copy of the assessment report is given to a medical practitioner under paragraph (b), give the registrant written notice that the copy has been given to the medical practitioner.

(4) The registrant may nominate a medical practitioner under subsection (3)(b) only if the medical practitioner has agreed to be nominated.

(5) If a registrant does not nominate a medical practitioner under subsection (3)(b), the person who conducted the assessment may—

- (a) refuse to give a copy of the assessment report to the registrant; or
- (b) give the registrant a summary only of the findings in the report.

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(6) A medical practitioner who has been given a copy of an assessment report under subsection (3)(b) must, within 14 days after receiving the report—

- (a) give the registrant the information from the report that the medical practitioner reasonably considers appropriate in the circumstances; or
- (b) decide that, in the circumstances, it is not appropriate to give the registrant any information from the report.

(7) As soon as practicable after the medical practitioner gives the registrant information from the report or decides not to give the registrant any information, the medical practitioner must, by written notice given to the board, advise the board—

- (a) whether or not the information was given to the registrant; and
- (b) if information was given to the registrant—
  - (i) what information was given; and
  - (ii) when the information was given.

### **110 Registrant may make submissions about assessment report**

(1) A registrant given a copy of an assessment report or a summary under section 109 may, within 14 days after receiving the copy or summary, make a written submission relating to the report or summary to the board.

(2) A registrant given information by a medical practitioner under section 109(6) may, within 14 days after receiving the information, make a written submission about the information to the board.

(3) Also, the registrant may give to the board a copy of a report about any other recent and relevant health assessment the registrant has undergone.

(4) If the registrant gives a copy of a report to the board under subsection (3), the copy must be a complete copy of the report.

### **111 Expert assistance**

(1) For investigating a registrant, the registrant's board may obtain a written report (an “**expert's report**”) from a person who, it reasonably

considers is sufficiently qualified or experienced to give expert advice on the matter the subject of the investigation.

(2) Before acting under subsection (1), the board must be satisfied the person does not have a personal or professional connection with the registrant that may prejudice the way in which the person gives the advice.

(3) Despite subsection (2), the board may obtain an expert's report from a person without being satisfied the person does not have a personal or professional connection to the registrant if the board does not identify the registrant to the person.

### **112 Use of assessment and expert's report**

(1) An assessment report or expert's report is not admissible in any proceedings, other than proceedings under this Act.

(2) A person can not be compelled to produce the report, or to give evidence relating to the report or its contents, in any proceedings, other than proceedings under this Act.

(3) Subsections (1) and (2) do not apply if the report is admitted or produced, or evidence relating to the report or its contents is given, with the consent of the person who prepared the report and the registrant to which the report relates.

(4) In this section—

**“assessment report”** or **“expert's report”** includes a copy of the report, or a part of the report or copy.

**“proceedings under this Act”** includes a health assessment by a health assessment committee but does not include proceedings for an offence against this Act.

### **113 Payment for health assessments and reports**

A person who conducts a health assessment and prepares an assessment report, or prepares an expert's report, for a board is entitled to be paid for his or her work by the board.

### ***Division 6—Action following investigation***

#### **114 Preliminary report prepared by investigation committee or investigator**

(1) An investigation committee established, or investigator directed, by a board under section 64<sup>23</sup> to conduct an investigation must, as soon as practicable after completing the investigation, give to the board a report (a “preliminary report”) about the investigation.

(2) However, if an investigation committee consists of all the members of the board, the committee need not comply with subsection (1).

#### **115 Board to prepare report on completion of investigation**

(1) This section applies if—

- (a) a board is, under section 114, given a preliminary report about an investigation; or
- (b) an investigation committee established by a board consists of all the members of the board and the committee has completed its investigation.

(2) The board must prepare a report about the investigation as soon as practicable after receiving the preliminary report or completing the investigation.

(3) In preparing the report, the board must have regard to the actions the board must take under section 118.

(4) The report must include—

- (a) the board’s findings about the investigation including, if the investigation was the result of a complaint, the board’s findings about the complaint; and
- (b) the action proposed to be taken by the board about the complaint or other matter the subject of the investigation.

(5) For subsection (2), the board may adopt a report mentioned in subsection (1)(a), with or without changes, as its report.

### **116 Board to keep commissioner informed about investigation**

(1) This section applies if a board establishes an investigation committee, or directs an investigator, to investigate a complaint or other matter about a registrant.

(2) While the investigation is being conducted, the board must give to the commissioner the reasonable reports asked for by the commissioner about the investigation.

(3) As soon as practicable after the board prepares its report about the investigation under section 115(2), it must give the commissioner a report about the investigation.

(4) The report must include—

- (a) the board's findings about the investigation, including, if the investigation was the result of a complaint, the board's findings about the complaint; and
- (b) the action proposed to be taken by the board about the complaint or other matter the subject of the investigation.

(5) The commissioner may give the board comments about a report given to the commissioner under subsection (2) or (3) within—

- (a) 14 days after receiving the report; or
- (b) a longer period agreed to by the board.

(6) After giving the commissioner a report under subsection (3), the board must not take any action under section 118, about the complaint or other matter until 1 of the following happens—

- (a) the board receives the commissioner's comments about the report and considers the comments;
- (b) the commissioner advises the board that the commissioner does not intend to give the board comments about the report;
- (c) the period mentioned in subsection (5) for the commissioner to give comments about the report to the board ends.

(7) In this section—

“**comments**”, of the commissioner, include recommendations and other information.

### **117 Commissioner may report to Minister**

The commissioner may, at any time, give the Minister a report about investigations conducted by boards or a particular investigation.

### **118 Decision on investigation**

(1) As soon as practicable after an event mentioned in section 116(6) happens, the board must—

- (a) if the investigation was the result of a decision by the board under section 59(2)<sup>24</sup> and the board reasonably believes further action is necessary—refer the disciplinary matter under section 126 for hearing by the tribunal; or
- (b) if the investigation was the result of a decision by the board under section 59(2) and the board reasonably believes no further action is necessary—end the suspension or remove the conditions and take no further action; or
- (c) otherwise—decide to do 1 of the following—
  - (i) refer the disciplinary matter under section 126 for hearing by the tribunal;
  - (ii) subject to a decision by the registrant under section 120(3)—refer the disciplinary matter under section 126 for hearing by a panel;
  - (iii) subject to a decision by the registrant under section 120(3)—deal with the disciplinary matter by taking disciplinary proceedings itself, or establishing a disciplinary committee to conduct disciplinary proceedings, under the disciplinary proceedings part;
  - (iv) enter into an undertaking with the registrant, with the registrant's agreement, about the registrant's professional conduct or practice;
  - (v) deal with the disciplinary matter under the impairment part;
  - (vi) take another action approved by the Minister that will achieve the objects of this Act;

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(vii) decide to take no further action about the disciplinary matter.

(2) In deciding to take an action under subsection (1), the board must have regard to the objects of the Act mentioned in section 6 and, in particular, section 6(a).

(3) If the board reasonably believes the subject matter of the investigation may provide a ground for suspending or cancelling the registrant's registration, the board must decide under subsection (1)(c)(i) to refer the matter to the tribunal.

(4) However, the board need not act under subsection (3) if it reasonably believes the matter will not be substantiated.

(5) Also, regardless of what the board decides under subsection (1), it may also decide to do either or both of the following—

- (a) start proceedings to prosecute the registrant for an offence;
- (b) refer the matter to another entity that has the function or power under an Act of the State, the Commonwealth or another State to deal with the matter.

(6) If the board decides to enter into an undertaking with the registrant under subsection (1)(c)(iv), it must also decide whether details of the undertaking must be recorded in the board's register for the period for which the undertaking is in force.

(7) The board must decide to record the details of the undertaking in its register unless it reasonably believes it is not in the interests of users of the registrant's services or the public to know the details.

(8) A decision by the board to take no further action about the matter under subsection (1)(b) or (c)(vii) does not prevent the board taking the matter into consideration at a later time as part of a pattern of conduct or practice by the registrant that may result in disciplinary action.

### **119 Board to take action as soon as practicable**

(1) This section applies if a board decides to take action under section 118(1)(a), (b) or (c)(i), (iv), (v) or (vi) or (5) about a registrant.

(2) The board must, as soon as practicable after making the decision, take the action.

## **120 Board must give notice about investigation to registrant and other persons**

(1) As soon as practicable after deciding what action to take under section 118(1) or (5), the board must give written notice about its decision to—

- (a) the registrant concerned; and
- (b) the complainant, if the investigation was the result of a complaint; and
- (c) the commissioner.

(2) The notice must state—

- (a) the action the board has decided to take; and
- (b) for a decision to take action mentioned in section 118(1)(c)(ii) or (iii)—
  - (i) that the registrant may, within 14 days after receiving the notice, elect to have the matter dealt with by the tribunal; and
  - (ii) that if the matter is dealt with by the board or a disciplinary committee there is no right of appeal against the board's or committee's decision; and
- (c) for a decision to enter into an undertaking with the registrant—
  - (i) the fact an undertaking has been entered into must be recorded in the board's register for the period for which the undertaking is in force; and
  - (ii) if details of the undertaking must be recorded in the register—the details that must be recorded in the register for the period for which the undertaking is in force; and
  - (iii) if details of the undertaking are not to be recorded—the reason why the details are not to be recorded.

(3) For subsection (2)(b), the registrant may elect to have the matter dealt with by the tribunal by, within 14 days after receiving the board's notice, giving the board written notice of the election.

(4) As soon as practicable after receiving notice under subsection (3), the board must refer the matter under section 126 for hearing by the tribunal.

(5) If the board's decision was to take action mentioned in section 118(1)(c)(ii) or (iii) and the registrant does not, within 14 days after receiving the board's notice, elect to have the matter dealt with by the tribunal, the board must take the action decided as soon as practicable after the end of the 14 days.

### **121 Undertaking to be recorded in board's register**

(1) This section applies if the board made a decision under section 118(1)(c)(iv) to enter into an undertaking with a registrant.

(2) As soon as practicable after entering into the undertaking, the board must record in its register, for the period for which the undertaking is in force—

- (a) the fact that an undertaking has been entered into with the registrant; and
- (b) if the board decided under section 118(6) to record details of the undertaking in its register—the details.

## **PART 6—DISCIPLINARY PROCEEDINGS**

### *Division 1—Preliminary*

### **122 Purposes of pt 6**

The purposes of this part are—

- (a) to state the purposes of disciplinary proceedings and disciplinary action against registrants; and
- (b) to state the circumstances under which a board may start disciplinary proceedings; and
- (c) to state the grounds for disciplinary action against registrants; and
- (d) to provide for adjudication relating to disciplinary matters.

### **123 Purposes of disciplinary proceedings and disciplinary action**

The purposes of disciplinary proceedings and disciplinary action against registrants are as follows—

- (a) to protect the public;
- (b) to uphold standards of practice within the health professions;
- (c) to maintain public confidence in the health professions.

#### *Division 2—Grounds for disciplinary action*

### **124 Grounds for disciplinary action**

(1) Each of the following is a ground for disciplinary action against a registrant—

- (a) the registrant has behaved in a way that constitutes unsatisfactory professional conduct;
- (b) the registrant has failed to comply with a condition of practice imposed under this Act or the health practitioner registration Act under which the registrant is registered;
- (c) the registrant has failed to comply with an undertaking entered into under this Act;
- (d) the registrant has failed to comply with a lawful demand of a board, investigator, investigation committee, disciplinary committee, panel, health assessment committee, inspector or the tribunal or another entity authorised to make the demand under this Act or a health practitioner registration Act;
- (e) the registrant does not meet, or no longer meets, the criteria for registration under the health practitioner registration Act under which the registrant is registered;
- (f) the registrant has failed to comply with a provision of this Act or the health practitioner registration Act under which the registrant is registered;
- (g) the registrant has been convicted of an offence against an Act of the State, the Commonwealth or another State related to the practise of the registrant's profession, including, for example—

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- (i) a health practitioner registration Act or this Act; or
  - (ii) the *Health Act 1937*; or
  - (iii) the *Fair Trading Act 1989*; or
  - (iv) the *Health Insurance Act 1973* (Cwlth);
- (h) a finding has been made under the *Health Insurance Act 1973* (Cwlth) that the registrant engaged in inappropriate practice within the meaning of that Act;<sup>25</sup>
- (i) the registrant has been convicted of an indictable offence.

(2) Also, if a registrant is impaired the registrant's impairment is taken to be a ground for disciplinary action against the registrant.

***Division 3—Starting disciplinary proceedings***

**125 When disciplinary proceedings may be started**

(1) A registrant's board may start disciplinary proceedings against the registrant if it reasonably believes a disciplinary matter exists in relation to the registrant.

(2) Without limiting subsection (1), a registrant's board may start disciplinary proceedings against the registrant on the basis of—

- (a) a single complaint received about the registrant; or
- (b) a number of complaints about the registrant, including, for example, a number of complaints suggesting a pattern of conduct or practice.

(3) A registrant's board may start disciplinary proceedings against the registrant without having conducted an investigation under the investigation part.

(4) Also, a board may start disciplinary proceedings under subsection (1) on the basis of more than 1 disciplinary matter.

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<sup>25</sup> *Health Insurance Act 1973* (Cwlth), section 82 (Definitions of inappropriate practice)

## 126 How disciplinary proceedings may be started

(1) A registrant's board may start disciplinary proceedings against the registrant by—

- (a) taking disciplinary proceedings itself or establishing a disciplinary committee to conduct the proceedings; or
- (b) referring the disciplinary matter for hearing by a panel or the tribunal.

(2) Disciplinary proceedings are started by—

- (a) if the board is taking the proceedings itself or establishing a disciplinary committee to conduct the proceedings—the board or disciplinary committee giving a notice to the registrant and other relevant persons under section 131 or 153;<sup>26</sup> or
- (b) if the board refers the disciplinary matter for hearing by a panel—the board filing a written notice (a “**referral notice**”) with the secretary; or
- (c) if the board refers the disciplinary matter for hearing by the tribunal—the board filing a written notice (also a “**referral notice**”) with the registrar.

(3) A referral notice must state—

- (a) the name of—
  - (i) the registrant; and
  - (ii) the complainant, if the disciplinary proceedings relate to a complaint; and
- (b) an address for service of documents on each of the following—
  - (i) the registrant;
  - (ii) the board;
  - (iii) the complainant, if the disciplinary proceedings relate to a complaint;
  - (iv) the commissioner; and
- (c) the ground for disciplinary action against the registrant; and

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26 Section 131 (Notice of intention to conduct disciplinary proceedings by hearing) or 153 (Notice of intention to conduct disciplinary proceedings by correspondence)

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- (d) the facts and circumstances forming the basis for the ground; and
- (e) if, under section 120(3), 133(2) or 155(2),<sup>27</sup> the registrant elected to have the disciplinary matter dealt with by the tribunal—that the matter is being referred to the tribunal at the election of the registrant.

***Division 4—Disciplinary proceedings conducted by board***

***Subdivision 1—Boards’ jurisdiction to conduct disciplinary proceedings and form of proceedings***

**127 Boards’ jurisdiction to conduct disciplinary proceedings**

(1) A board has power to conduct disciplinary proceedings relating to disciplinary matters about its registrants.

(2) A board may start or continue disciplinary proceedings relating to 1 of its registrants despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

**128 Form of disciplinary proceedings**

(1) A board may—

- (a) conduct disciplinary proceedings itself; or
- (b) establish a committee (a “**disciplinary committee**”), consisting of some of the board’s members, to conduct the proceedings.

(2) If the board establishes a disciplinary committee, it must appoint 1 of the committee members as chairperson of the committee.

(3) Disciplinary proceedings conducted by a board or disciplinary committee may take the form of—

- (a) a hearing before the board or disciplinary committee; or

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<sup>27</sup> Section 120 (Board must give notice about investigation to registrant and other persons), 133 (Registrant may require referral to tribunal) or 155 (Registrant may require referral to tribunal)

- (b) written correspondence between the board or disciplinary committee and the registrant.

### **129 Additional disciplinary matters**

(1) If, during disciplinary proceedings, it appears to the board or disciplinary committee that another disciplinary matter relating to the registrant exists in addition to the matter the subject of the proceedings, the board or committee may deal with it in the same proceedings.

(2) If the board or disciplinary committee decides to deal with an additional disciplinary matter under subsection (1) the board or committee—

- (a) if the registrant agrees—may continue with the disciplinary proceedings or adjourn the proceedings for a particular period; or
- (b) otherwise—must adjourn the disciplinary proceedings for the period it considers fair in the circumstances before continuing with the proceedings.

(3) Subsection (2) does not affect the power of the board or disciplinary committee under section 144(2).<sup>28</sup>

### *Subdivision 2—Disciplinary proceedings in form of a hearing*

### **130 Application of sdiv 2**

This subdivision applies if disciplinary proceedings against a registrant by the registrant’s board, or a disciplinary committee established by the board, take the form of a hearing.

### **131 Notice of intention to conduct disciplinary proceedings by hearing**

(1) The board or disciplinary committee must give written notice (a “**hearing notice**”) about its intention to conduct a hearing of a disciplinary matter relating to the registrant to the following persons—

- (a) the registrant;

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<sup>28</sup> Section 144 (Board or disciplinary committee may proceed in absence of registrant or may adjourn hearing)



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(b) the complainant, if the disciplinary proceedings relate to a complaint;

(c) the commissioner.<sup>29</sup>

(2) The hearing notice must state the following—

(a) the ground for the disciplinary action against the registrant;

(b) the facts and circumstances forming the basis for the ground;

(c) the time and place of the hearing;

(d) that the registrant must attend the hearing;

(e) that the complainant, if any, may attend the hearing, unless the board or disciplinary committee directs that the complainant must not attend before giving evidence;

(f) that the registrant or complainant may be accompanied by a lawyer or another person;

(g) if the registrant was not given a notice under section 120<sup>30</sup>—

(i) that the registrant may, within 14 days after receiving the hearing notice, elect to have the matter dealt with by the tribunal; and

(ii) that, if the matter is dealt with by the board, there is no right of appeal against the board's decision.

(3) The time for the hearing, as stated in the hearing notice, must be at least 14 days after the registrant receives the notice.

### **132 Substituted service on registrant and complainant**

(1) A board or disciplinary committee may order substituted service of a hearing notice on a registrant or complainant, if the board or committee is satisfied service can not be effected on the registrant or complainant.

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29 Under the *Health Rights Commission Act 1991*, section 130, the commissioner may intervene in disciplinary proceedings if the proceeding is taken against a registered provider for a matter because of a health service complaint or an inquiry matter and the proceeding is before a disciplinary body.

30 Section 120 (Board must give notice about investigation to registrant and other persons)

(2) Substituted service may be effected in any way ordered, including, for example, by facsimile or telephone.

(3) If the registrant or complainant is served with the hearing notice as ordered by the board or disciplinary committee under subsection (1), the notice is taken to have been given to the registrant or complainant under section 131.

### **133 Registrant may require referral to tribunal**

(1) This section applies if the registrant was not—

- (a) the subject of an investigation under the investigation part; and
- (b) given a notice under section 120.

(2) The registrant may elect to have the disciplinary matter dealt with by the tribunal by, within 14 days after receiving the hearing notice, giving the board written notice of the election.

(3) As soon as practicable after receiving a notice under subsection (2), the board must refer the matter under section 126 for hearing by the tribunal.

### **134 Powers of board to refer matter to panel or tribunal etc.**

(1) In conducting a hearing for a disciplinary matter relating to a registrant, a board must immediately refer the matter under section 126 for hearing by the tribunal if the board reasonably believes the matter may provide a ground for suspending or cancelling the registrant's registration.

(2) Also, the board may, if it considers it appropriate—

- (a) refer the matter under section 126 for hearing by a panel or the tribunal; or
- (b) end the disciplinary proceedings and deal with the disciplinary matter under the impairment part.

*Example for subsection (2)(a)—*

After referring a complaint about a registrant to the tribunal for disciplinary proceedings, the board receives and starts to hear a second complaint about the registrant. The board may decide to refer the second complaint to the tribunal.

(3) However, the board need not act under subsection (1) if it reasonably believes the matter will not be substantiated.

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(4) If the board refers a matter for hearing by a panel or the tribunal under subsection (1) or (2)(a), the referral notice must be accompanied by—

- (a) a statement by the board about the reason for the referral; and
- (b) any comment or other information about the matter the board considers appropriate.

(5) Also, the board must give notice that the matter has been referred for hearing by a panel or the tribunal, or is to be dealt with under the impairment part, to—

- (a) the registrant; and
- (b) the complainant, if the disciplinary proceedings relate to a complaint; and
- (c) the commissioner.

**135 Powers of disciplinary committee to refer matter to panel or tribunal etc.**

(1) In conducting a hearing for a disciplinary matter relating to a registrant, a disciplinary committee must direct the registrant's board to immediately refer the matter under section 126 for hearing by the tribunal if the committee reasonably believes the matter may provide a ground for suspending or cancelling the registrant's registration.

(2) Also, the disciplinary committee may, if the committee considers it appropriate—

- (a) direct the board to refer the matter under section 126 for hearing by a panel or the tribunal; or
- (b) end the disciplinary proceedings and refer the disciplinary matter to the board for the board to deal with it under the impairment part.

*Example for subsection (2)(a)—*

A disciplinary committee may consider it appropriate to direct the board to refer the disciplinary matter to the tribunal if the committee becomes aware that another disciplinary matter relating to the registrant has been referred to, or is being heard by, the tribunal.

(3) However, the disciplinary committee need not act under subsection (1) if it reasonably believes the matter will not be substantiated.

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(4) If the disciplinary committee directs the board to refer the disciplinary matter for hearing by a panel or the tribunal—

- (a) the disciplinary committee must prepare a statement stating why it considers the matter must be referred to the tribunal; and
- (b) the disciplinary committee may prepare any comment or other information about the matter it considers appropriate; and
- (c) the board must refer the matter under section 126 for hearing by a panel or the tribunal as soon as practicable.

(5) If the disciplinary committee refers the disciplinary matter to the board to be dealt with under the impairment part—

- (a) the disciplinary committee must give the board a statement stating why it considers the matter must be dealt with under the impairment part; and
- (b) the disciplinary committee may give the board any comment or other information about the matter it considers appropriate; and
- (c) the board must deal with the matter under the impairment part as soon as practicable.

(6) Also, the disciplinary committee must give notice that the committee has directed the board to refer the disciplinary matter for hearing by a panel or the tribunal, or has referred the matter to the board to be dealt with under the impairment part, to—

- (a) the registrant; and
- (b) the complainant, if the disciplinary proceedings relate to a complaint; and
- (c) the commissioner.

(7) The referral notice for a referral under subsection (4)(c) must be accompanied by the statement of reasons, and any comments or other information, about the matter prepared by the disciplinary committee.

### **136 Procedure for hearing by board or disciplinary committee**

(1) When conducting a hearing, a board or disciplinary committee—

- (a) must comply with natural justice; and

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- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it; and
- (c) is not bound by the rules of evidence; and
- (d) may inform itself of anything in the way it considers appropriate.

(2) The chairperson of the board or disciplinary committee may decide the procedures to be followed for the hearing.

(3) However, the board or disciplinary committee must comply with this division.

(4) Also, the board or disciplinary committee must—

- (a) tell the registrant—
  - (i) the facts and circumstances forming the basis for the ground for disciplinary action against the registrant; and
  - (ii) what possible disciplinary action the board or committee may take under section 165 or 166;<sup>31</sup> and
- (b) if asked to do so by the registrant—explain to the registrant any aspect of the board's or committee's procedures, or any decisions or rulings, relating to the hearing; and
- (c) ensure the registrant has the fullest opportunity practicable to be heard.

### **137 Time and place of hearing**

A hearing conducted by a board or disciplinary committee must be conducted at the times and places the chairperson of the board or committee decides.

### **138 Hearing not open to the public**

A hearing before a board or disciplinary committee is not open to the public.

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31 Section 165 (Decision about disciplinary action relating to registrant) or 166 (Decision about disciplinary action relating to former registrant)

### **139 Attendance and appearance at hearing**

(1) At a hearing, the registrant may be accompanied by a lawyer or another person but the lawyer or other person is not entitled to appear on behalf of the registrant.

(2) Also, the complainant may attend the hearing and may be accompanied by a lawyer or other person.

(3) The board or disciplinary committee may, if it considers it appropriate or necessary, allow a person, other than a lawyer, to address the board on the registrant's behalf.<sup>32</sup>

### **140 Board or disciplinary committee may exclude complainant from hearing**

(1) This section applies if a complainant is to give evidence at the hearing.

(2) The board or disciplinary committee may direct that the complainant be excluded from a part or all of the hearing until the complainant gives evidence, if the board or committee reasonably believes the attendance of the complainant before giving evidence would seriously prejudice the fairness of the hearing.

### **141 Board or disciplinary committee may exclude disruptive person from hearing**

The board or disciplinary committee may direct a person attending the hearing, other than the registrant, to leave if the person is disrupting the hearing.

### **142 Board or disciplinary committee may be assisted by lawyer or other person**

(1) A board or disciplinary committee may appoint a lawyer or other person to assist the board or committee at the hearing.

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<sup>32</sup> See also the *Health Rights Commission Act 1991*, section 130 (Commissioner may intervene in disciplinary proceedings).

(2) The person appointed may advise the board or committee about procedural matters relevant to the hearing but may not ask questions of the registrant or other persons appearing at the hearing.

### **143 Witnesses**

(1) A board or disciplinary committee may, by written notice given to a person (an “**attendance notice**”), require the person to attend the hearing at a stated reasonable time and place—

- (a) to give evidence or answer questions; or
- (b) to produce a stated thing.

(2) The registrant may ask the board or disciplinary committee for an attendance notice to be given to a person.

(3) The board or disciplinary committee must give the attendance notice to the person unless the board or committee reasonably believes it is unnecessary or inappropriate to do so.

### **144 Board or disciplinary committee may proceed in absence of registrant or may adjourn hearing**

(1) At a hearing, the board or disciplinary committee may proceed in the absence of the registrant if it reasonably believes the registrant has been given notice of the hearing.

(2) The board or disciplinary committee may adjourn the hearing from time to time.

### **145 Questions to be decided by majority of board or disciplinary committee**

A question before the board or disciplinary committee must be decided by a majority vote of the board or committee members and, if the votes are equal, the chairperson of the board or committee has a casting vote.

### **146 Procedure if board member absent etc.**

(1) This section applies if—

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- (a) a board has started to hear a disciplinary matter relating to a registrant but has not made its decision under subdivision 5;<sup>33</sup> and
- (b) a board member ceases to be a board member or, for any other reason, is unable to take further part in the disciplinary proceedings.

(2) The remaining board members may continue to hear the matter provided there is a quorum of board members.

(3) If there is not a quorum, the board must adjourn the matter until a quorum of board members is available.

(4) For this section, a quorum of board members means the number of members required for a quorum stated under the board's health practitioner registration Act.

#### **147 Procedure if committee member absent etc.**

(1) This section applies if—

- (a) a disciplinary committee has started to hear a disciplinary matter relating to a registrant but has not made its decision under subdivision 5; and
- (b) a committee member ceases to be a committee member or, for any other reason, is unable to take further part in the disciplinary proceedings.

(2) The remaining committee members may, if the registrant to whom the disciplinary proceedings relate consents, constitute the disciplinary committee for completing the proceedings and making a decision under subdivision 5.

(3) If the registrant does not consent to the remaining committee members constituting the disciplinary committee, the board must—

- (a) establish a new disciplinary committee to hear the proceedings;  
or
- (b) conduct the proceedings itself.

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33 Subdivision 5 (Decision on completion of disciplinary proceedings)



(4) A member of the disciplinary committee first established to hear the disciplinary proceedings may be appointed to the new disciplinary committee.

(5) If the committee member mentioned in subsection (1)(b) is the chairperson of the disciplinary committee and the remaining committee members constitute the committee for completing the proceedings, the board must appoint another member of the committee to be the chairperson of the committee.

### **148 Inspection of things**

(1) If a thing is produced to a board or disciplinary committee at a hearing, the board or committee may inspect it.

(2) The board or disciplinary committee may do all or any of the following if the board or committee reasonably considers the thing may be relevant to the hearing—

- (a) photograph the thing;
- (b) for a document—make a copy of, or take an extract from, it;
- (c) keep the thing while it is necessary for the hearing and any appeal relating to the hearing.

(3) If the board or disciplinary committee keeps the thing, the board or committee must permit a person otherwise entitled to possession of the thing to—

- (a) for a document—inspect, make a copy of, or take an extract from, the document, at the reasonable time and place the board or committee decides; and
- (b) for another thing—inspect or photograph the thing, at the reasonable time and place the board or committee decides.

### **149 Evidence and findings etc. in other proceedings may be received or adopted**

During the hearing, the board or disciplinary committee may—

- (a) receive in evidence a transcript, or part of a transcript, of evidence taken in a proceeding before a disciplinary body or a court, tribunal or other entity constituted under the law of the

State, the Commonwealth, another State or a foreign country, and draw conclusions of fact from the evidence that it considers appropriate; or

- (b) adopt, as it considers appropriate, decisions, findings, judgments, or reasons for judgment, of a disciplinary body, court, tribunal or entity that may be relevant to the hearing.

### **150 Allowance to witnesses**

(1) A witness who appears at a hearing before a board or disciplinary committee is entitled to be paid the allowance prescribed under a regulation for attendance at the hearing.

(2) The allowance must be paid by—

- (a) the registrant, if the registrant calls the witness; or
- (b) the board, if the board or disciplinary committee calls the witness; or
- (c) the commissioner, if the commissioner calls the witness.

### **151 Board or disciplinary committee to keep record of disciplinary proceedings**

(1) A board or disciplinary committee must keep, in the way it considers appropriate, a record of evidence given to it in relation to disciplinary proceedings.

(2) However, a board or disciplinary committee is not required to keep a transcript of disciplinary proceedings conducted before it.

#### ***Subdivision 3—Disciplinary proceedings by correspondence***

### **152 Application of sdiv 3**

This subdivision applies if disciplinary proceedings relating to a registrant by the registrant's board, or a disciplinary committee established by the board, take the form of written correspondence between the board or committee and the registrant.

### **153 Notice of intention to conduct disciplinary proceedings by correspondence**

(1) The board or disciplinary committee must give notice about its intention to conduct disciplinary proceedings about a disciplinary matter relating to the registrant by correspondence to the following—

- (a) the registrant;
- (b) the complainant, if the disciplinary proceedings relate to a complaint;
- (c) the commissioner.<sup>34</sup>

(2) The notice must state the following—

- (a) the ground for the disciplinary action against the registrant;
- (b) the facts and circumstances forming the basis for the ground;
- (c) that the registrant may give the board or disciplinary committee a written submission about the ground within the period stated in the notice;
- (d) that, even if the registrant fails to make a submission, the board or committee may—
  - (i) continue the disciplinary proceedings under this subdivision; and
  - (ii) make a decision under subdivision 5 about whether the ground for disciplinary action is established;
- (e) if the registrant was not given a notice under section 120<sup>35</sup>—
  - (i) that the registrant may, within 14 days after receiving the notice given under subsection (1), elect to have the matter dealt with by the tribunal; and
  - (ii) that, if the matter is dealt with by the board, there is no right of appeal against the board's decision.

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34 Under the *Health Rights Commission Act 1991*, section 130, the commissioner may intervene in disciplinary proceedings if the proceeding is taken against a registered provider for a matter because of a health service complaint or an inquiry matter and the proceeding is before a disciplinary body.

35 Section 120 (Board must give notice about investigation to registrant and other persons)

(3) The period for making a submission, as stated in the notice under subsection (2)(c), must be at least 14 days after the registrant receives the notice.

### **154 Substituted service on registrant or complainant**

(1) The board or disciplinary committee may order substituted service of a notice under section 153 on a registrant or complainant if the board or committee is satisfied service can not be effected on the registrant or complainant.

(2) Substituted service may be effected in any way ordered, including, for example, facsimile or telephone.

(3) If the registrant or complainant is served with a notice as ordered by the board or disciplinary committee under subsection (1), the notice is taken to have been given to the registrant or complainant under section 153.

### **155 Registrant may require referral to tribunal**

(1) This section applies if the registrant was not—

- (a) the subject of an investigation under the investigation part; and
- (b) given a notice under section 120.

(2) The registrant may elect to have the disciplinary matter dealt with by the tribunal by, within 14 days after receiving the board's or committee's notice under section 153, giving the board written notice of the election.

(3) As soon as practicable after receiving a notice under subsection (2), the board must refer the matter under section 126 for hearing by the tribunal.

### **156 Board or disciplinary committee may require other information**

(1) For conducting disciplinary proceedings by correspondence, the board or disciplinary committee may, by written notice given to the registrant or another person, require the registrant or other person to give the board or committee information, including a document, relevant to the disciplinary proceedings.

(2) If a document is given to the board or disciplinary committee under subsection (1), the board or committee may make a copy of, or take an extract from, it.

### **157 Power of board or committee to continue disciplinary proceedings without receiving registrant's submission**

(1) This section applies if the registrant does not make a written submission about the ground for disciplinary action as stated by a notice given to the registrant by the board or disciplinary committee under section 153, or give information as required under section 156.

(2) The board or disciplinary committee may—

- (a) continue the disciplinary proceedings; and
- (b) make a decision under subdivision 5 about whether the ground for disciplinary action is established.

#### ***Subdivision 4—Offences relating to disciplinary proceedings dealt with by board or disciplinary committee***

### **158 Offences about attending hearing, answering questions and related matters**

(1) A registrant given a hearing notice, or a person given an attendance notice must not fail, without reasonable excuse—

- (a) to attend as required by the notice; or
- (b) to continue to attend as required by the board or disciplinary committee until excused from further attendance.

Maximum penalty—60 penalty units.

(2) At a hearing, a person appearing as a witness must not—

- (a) fail to take an oath or make an affirmation when required by the board or disciplinary committee; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the board or a committee member; or

- (c) fail, without reasonable excuse, to produce a thing the person is required to produce by an attendance notice.

Maximum penalty for subsection (2)—60 penalty units.

### **159 Offence for failing to give information**

A person given a notice under section 156 must not fail, without reasonable excuse, to give the board or disciplinary committee the information the person is required to give by the notice.

Maximum penalty—60 penalty units.

### **160 Self-incrimination**

For section 158 or 159, it is a reasonable excuse for an individual to fail to answer a question, produce a thing or give information, if answering the question, producing the thing or giving the information might tend to incriminate the individual.

### **161 False or misleading information**

A person must not state anything to a board or disciplinary committee, for disciplinary proceedings under this division, that the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

### **162 False or misleading documents**

(1) A person must not give to a board or disciplinary committee, for disciplinary proceedings under this division, a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the board or disciplinary committee, to the best of the person's ability, how it is false or misleading; and

- (b) gives the correct information to the board or disciplinary committee if the person has, or can reasonably obtain, the correct information.

### **163 Contempt of board or disciplinary committee**

At a hearing before a board or disciplinary committee, a person must not—

- (a) insult the board or committee or a board or committee member; or
- (b) deliberately interrupt the hearing; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the board or committee is conducting the hearing; or
- (d) without lawful excuse, disobey a lawful order or direction of the board or committee; or
- (e) do anything else that would be contempt of court if the board or committee were a court of record.

Maximum penalty—100 penalty units.

#### ***Subdivision 5—Decision on completion of disciplinary proceedings***

### **164 Decision about whether ground for disciplinary action established**

(1) As soon as practicable after completing a hearing of a disciplinary matter relating to a registrant under subdivision 2, or within 14 days after the end of the period for making a submission stated in the notice given to a registrant under section 153,<sup>36</sup> the board or disciplinary committee must decide whether a ground for disciplinary action against the registrant is established.

(2) If the board or disciplinary committee is making a decision about whether the registrant has behaved in a way that constitutes unsatisfactory professional conduct, the board or committee—

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<sup>36</sup> Section 153 (Notice of intention to conduct disciplinary proceedings by correspondence)

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- (a) must have regard to any relevant codes of practice; and
- (b) must have regard to any relevant previous decision by a disciplinary body or the Medical Assessment Tribunal of which the board or committee is aware; and
- (c) may have regard to any relevant previous decisions by a foreign disciplinary body.

(3) For subsection (2)(b), the board or disciplinary committee is entitled to access the previous decisions of other disciplinary bodies or the Medical Assessment Tribunal and the reasons for the decisions.

(4) Subsection (2) does not limit the matters the board or disciplinary committee may consider in making its decision.

### **165 Decision about disciplinary action relating to registrant**

(1) This section applies if, under section 164(1), a board or disciplinary committee decides a ground for disciplinary action is established against a registrant who is registered at the time of the decision.

(2) The board or disciplinary committee must do one or both of the following—

- (a) advise, caution or reprimand the registrant or require the registrant to attend, at a stated reasonable time and place, to be advised, cautioned or reprimanded;
- (b) with the registrant's agreement, enter into an undertaking with the registrant about the registrant's professional conduct or practice.

(3) Also, the board or disciplinary committee must decide—

- (a) for a decision to advise, caution or reprimand the registrant—
  - (i) whether the disciplinary action must be recorded in the board's register; and
  - (ii) for a disciplinary action that must be recorded in the register—the period for which it must be recorded; and
- (b) for a decision to enter into an undertaking with the registrant—whether details of the undertaking must be recorded in the board's register for the period for which the undertaking is in force.



(4) The board or disciplinary committee must decide that details of an undertaking must be recorded in the board's register, unless it reasonably believes it is not in the interests of users of the registrant's services or the public to know the details.

### **166 Decision about disciplinary action relating to former registrant**

(1) This section applies if, under section 164(1), a board or disciplinary committee decides a ground for disciplinary action is established against a person who was a registrant but is not registered for the relevant profession at the time of the board's or committee's decision.

(2) The board or disciplinary committee must decide—

- (a) to take no further action relating to the matter; or
- (b) that a form of disciplinary action mentioned in section 165(2)(a) would have been taken if the person were still registered.

### **167 Matters board or disciplinary committee must consider in making decision about disciplinary action**

(1) In making its decision under section 165 or 166, the board or disciplinary committee—

- (a) must have regard to the purposes of disciplinary action mentioned in section 123; and
- (b) must have regard to any relevant previous decisions about the registrant by a disciplinary body or the Medical Assessment Tribunal of which the board or committee is aware; and
- (c) may have regard to any relevant previous decisions about the registrant by a foreign regulatory authority.

(2) For subsection (1)(b), the board or disciplinary committee is entitled to access the previous decisions of other disciplinary bodies or the Medical Assessment Tribunal and the reasons for the decisions.

(3) Subsection (1) does not limit the matters the board or disciplinary committee may consider in making its decision.

***Subdivision 6—Action after decision about disciplinary action***

**168 Notification of decision**

(1) The board or disciplinary committee must, as soon as practicable after making its decision under section 164, 165 or 166, give written notice of its decision to—

- (a) the registrant; and
- (b) the complainant, if the disciplinary proceedings relate to a complaint; and
- (c) the commissioner.

(2) The notice must state the following—

- (a) the board's or disciplinary committee's decision—
  - (i) if the notice relates to the board's or committee's decision under section 164—about whether a ground for disciplinary action against the registrant is established; and
  - (ii) if the notice relates to the board's or committee's decision under section 165 or 166—about the disciplinary action the board or committee has decided to take in relation to the disciplinary proceedings;
- (b) the reasons for the decision, including the reasons for any disciplinary action;
- (c) the board's or committee's decisions on material questions of fact arising during the disciplinary proceedings;
- (d) by reference or otherwise, any evidence or other material on which the board's or committee's decisions about material questions of fact were based.

(3) Also, the board or disciplinary committee may give notice of its decision to any other person given an attendance notice for the hearing.

(4) The decision takes effect on the later of—

- (a) the day the notice is given to the registrant; or
- (b) the day of effect stated in the notice.

### **169 Additional information to be included in notice**

(1) This section applies if the board or disciplinary committee decides, under section 164(1), that a ground for disciplinary action against the registrant is established.

(2) The notice under section 168 must also state—

- (a) for a decision to advise, caution or reprimand the registrant—
  - (i) whether the disciplinary action must be recorded in the board's register; and
  - (ii) if it must be recorded in the board's register—the period for which it must be recorded in the register; and
- (b) for a decision to enter into an undertaking with the registrant—
  - (i) the fact that an undertaking has been entered into must be recorded in the board's register for the period for which the undertaking is in force; and
  - (ii) if details of the undertaking must be recorded in the register—the details that must be recorded in the register for the period for which the undertaking is in force; and
  - (iii) if details of the undertaking must not be recorded—the reason why the details must not be recorded.

### **170 Disciplinary action to be recorded in board's register**

(1) This section applies if the board or disciplinary committee decides a ground for disciplinary action against the registrant is established.

(2) As soon as practicable after the board or disciplinary committee makes its decision, the board must record in its register—

- (a) for a decision to advise, caution or reprimand the registrant and record the action in the board's register—that the particular disciplinary action was taken against the registrant; and
- (b) for a decision to enter into an undertaking with the registrant—
  - (i) that an undertaking has been entered into between the registrant and the board; and

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- (ii) if the board or committee decides under section 165(3) that details of the undertaking must be recorded in the board's register—the details.

(3) If the board records details of disciplinary action or an undertaking in its register, the details must remain in the register—

- (a) for a decision to advise, caution or reprimand the registrant—for the period decided by the board or disciplinary committee; or
- (b) for a decision to enter into an undertaking—for the period for which the undertaking is in force.

***Division 5—Professional conduct review panels***

***Subdivision 1—Jurisdiction of panels***

**171 Panels' jurisdiction to conduct disciplinary proceedings**

(1) A panel established to hear a disciplinary matter relating to a registrant has power to conduct disciplinary proceedings for the matter.

(2) The panel may start or continue the disciplinary proceedings relating to the registrant despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

(3) A panel may deal with more than 1 disciplinary matter relating to the same registrant in the same disciplinary proceedings.

**172 Additional disciplinary matters**

(1) If, during disciplinary proceedings, it appears to the panel that another disciplinary matter relating to the registrant exists in addition to the matter the subject of the proceedings, the panel may take that other matter to have been referred to it under section 126 and may deal with it in the same proceedings.

(2) If the panel decides to deal with an additional disciplinary matter under subsection (1), the panel—

- (a) if the registrant agrees—may continue with the disciplinary proceedings or adjourn the proceedings for a particular period; or

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(b) otherwise—must adjourn the disciplinary proceedings for the period it considers fair in the circumstances before continuing with the proceedings.

(3) Subsection (2) does not affect the power of a panel under section 187(2).<sup>37</sup>

(4) This section does not apply to the proceedings of a review panel.

*Subdivision 2—Procedural matters*

### 173 Parties to disciplinary proceedings

The parties to disciplinary proceedings before a panel are—

- (a) the registrant to whom the proceedings relate; and
- (b) the registrant’s board; and
- (c) if the commissioner intervenes in the proceedings under the *Health Rights Commission Act 1991*, section 130, the commissioner.

### 174 Notice of intention to conduct hearing

(1) The secretary must give written notice (a “**hearing notice**”) about the panel’s intention to conduct a hearing of a disciplinary matter relating to the registrant to the following persons—

- (a) the registrant;
- (b) the registrant’s board;
- (c) the complainant, if the disciplinary proceedings relate to a complaint;
- (d) the commissioner.

(2) The hearing notice must state the following—

- (a) the ground for the disciplinary action against the registrant;
- (b) the facts and circumstances forming the basis for the ground;

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<sup>37</sup> Section 187 (Panel may proceed in absence of party or may adjourn hearing)

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- (c) the time and place of the hearing;
- (d) that the registrant must attend the hearing;
- (e) that the board may, under section 182,<sup>38</sup> nominate a board member or other person to appear at the hearing on behalf of the board;
- (f) that the complainant, if any, may attend the hearing, unless the panel directs that the complainant must not attend before giving evidence;
- (g) that the registrant, board's nominee or complainant may be accompanied by a lawyer or another person;
- (h) if the registrant was not given a notice under section 120<sup>39</sup>—that the registrant may, within 14 days after receiving the hearing notice, elect to have the matter dealt with by the tribunal.

(3) The time for the hearing, as stated in the hearing notice, must be at least 14 days after the registrant receives the notice.

### **175 Substituted service on registrant and complainant**

(1) The secretary may order substituted service of a hearing notice on a registrant or complainant about the panel's intention to conduct a hearing, if the secretary is satisfied service can not be effected on the registrant or complainant.

(2) Substituted service may be effected in any way ordered, including, for example, by facsimile or telephone.

(3) If the registrant or complainant is served with the hearing notice as ordered by the secretary under subsection (1), the notice is taken to have been given to the registrant or complainant under section 174.

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38 Section 182 (Appearance and attendance at hearing)

39 Section 120 (Board must give notice about investigation to registrant and other persons)

### **176 Pre-hearing conference**

(1) The panel may, before the hearing starts, hold a conference for considering, or giving directions about, any matter or proceeding within its jurisdiction.

(2) Without limiting subsection (1), the panel may give directions requiring the parties to make discovery or allow inspection of evidentiary material.

(3) At or after the conference, the panel may give the directions about the matter or proceeding that it considers appropriate.

(4) A conference may be held, and directions given, on the application of a party or on the panel's own initiative.

(5) A conference may be conducted, and directions given, by telephone, video link or another form of communication.

(6) The panel may, using any form of communication, delegate the power to hold a pre-hearing conference to a panel member or the secretary.

### **177 Registrant may require referral to tribunal**

(1) This section applies if the registrant was not—

- (a) the subject of an investigation under the investigation part; and
- (b) given a notice under section 120.<sup>40</sup>

(2) The registrant may elect to have the disciplinary matter dealt with by the tribunal by, within 14 days after receiving the hearing notice, giving the panel written notice of the election.

(3) As soon as practicable after receiving a notice under subsection (2), the panel must direct the registrant's board to refer the matter under section 126<sup>41</sup> for hearing by the tribunal.

(4) As soon as practicable after receiving a direction under subsection (3), the board must comply with the direction.

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40 Section 120 (Board must give notice about investigation to registrant and other persons)

41 Section 126 (How disciplinary proceedings may be started)

### **178 Powers of panel to direct referral of matter to tribunal etc.**

(1) In conducting a hearing for a disciplinary matter relating to a registrant, a panel must direct the board to immediately refer the matter under section 126 for hearing by the tribunal if the panel reasonably believes the matter may provide a ground for suspending or cancelling the registrant's registration.

- (2) Also, the panel may, if it considers it appropriate, direct the board—
- (a) to refer the matter under section 126 for hearing by the tribunal;  
or
  - (b) to deal with the matter under the impairment part.

*Example for subsection (2)(a)—*

A panel may consider it appropriate to refer a disciplinary matter to the tribunal if the panel becomes aware that another complaint about the registrant has been referred to, or is being heard by, the tribunal.

(3) However, the panel need not act under subsection (1) if it reasonably believes the matter will not be substantiated.

(4) If the panel directs the board to refer the disciplinary matter for hearing by the tribunal—

- (a) the panel must prepare a statement stating why it considers the matter must be referred to the tribunal; and
- (b) the panel may prepare any comment or other information about the matter it considers appropriate; and
- (c) the board must refer the matter under section 126 for hearing by the tribunal as soon as practicable.

(5) If the panel directs the board to deal with the disciplinary matter under the impairment part—

- (a) the panel must give the board a statement stating why it considers the matter must be dealt with under the impairment part; and
- (b) the panel may give the board any comment or other information about the matter it considers appropriate; and
- (c) the board must deal with the matter under the impairment part as soon as practicable.

(6) Also, the secretary must give notice that the panel has directed the board to refer the disciplinary matter for hearing by the tribunal, or to deal with the matter under the impairment part, to—



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- (a) the registrant; and
- (b) the complainant, if the disciplinary proceedings relate to a complaint; and
- (c) the commissioner.

(7) The referral notice for a referral under subsection (4)(c) must be accompanied by the statement of reasons, and any comments or other information, about the matter prepared by the panel.

### **179 Procedure for hearing by panel**

(1) When conducting a hearing, a panel—

- (a) must comply with natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it; and
- (c) is not bound by the rules of evidence; and
- (d) may inform itself of anything in the way it considers appropriate.

(2) The chairperson of the panel may decide the procedures to be followed for the hearing.

(3) However, the panel must comply with this division.

(4) Also, the panel must—

- (a) tell the parties to the disciplinary proceedings—
  - (i) the facts and circumstances forming the basis for the ground for disciplinary action against the registrant; and
  - (ii) what possible disciplinary action the panel may take under section 201 or 203;<sup>42</sup> and
- (b) if asked to do so by a party—explain to the party any aspect of the panel's procedures, or decisions or rulings, relating to the hearing; and
- (c) ensure the parties have the fullest opportunity practicable to be heard.

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<sup>42</sup> Section 201 (Decision about disciplinary action relating to registrant) or 203 (Decision about disciplinary action relating to former registrant)

### **180 Time and place of hearing**

A hearing conducted by a panel must be conducted at the times and places the chairperson of the panel decides.

### **181 Hearing not open to the public**

A hearing before a panel is not open to the public.

### **182 Appearance and attendance at hearing**

(1) The board may nominate a board member or other person (the “board’s nominee”) to appear at the hearing on behalf of the board.

(2) However, the board’s nominee must not be a lawyer.

(3) At the hearing, the registrant or board’s nominee may be accompanied by a lawyer or another person but the lawyer or other person is not entitled to appear on behalf of the registrant or nominee.

(4) Also, the complainant may attend the hearing and may be accompanied by a lawyer or other person.

(5) The panel may, if it considers it appropriate or necessary, allow a person, other than a lawyer, to address the panel on behalf of the registrant or the board’s nominee.

### **183 Panel may exclude complainant from hearing**

(1) This section applies if a complainant is to give evidence at the hearing.

(2) The panel may direct that the complainant be excluded from a part or all of the hearing until the complainant gives evidence if the panel reasonably believes the attendance of the complainant before giving evidence would seriously prejudice the fairness of the hearing.

### **184 Panel may exclude disruptive person from hearing**

The panel may direct a person attending the hearing, other than the registrant, to leave if the person is disrupting the hearing.

### **185 Secretary or other person may assist panel**

(1) A panel may be assisted by the secretary or a person appointed by the secretary to assist the panel at the hearing.

(2) A person appointed by the secretary may be a lawyer.

(3) The secretary or other person may advise the panel about procedural matters relevant to the hearing but may not ask questions of the parties or other persons appearing at the hearing.

### **186 Witnesses**

(1) The secretary may, by written notice given to a person (an “**attendance notice**”), require the person to attend the hearing at a stated reasonable time and place—

(a) to give evidence or answer questions; or

(b) to produce a stated thing.

(2) A party may apply to the secretary, in the approved form, for an attendance notice to be given to a person.

(3) The secretary must give the attendance notice to the person unless the secretary reasonably believes it is unnecessary or inappropriate to do so.

### **187 Panel may proceed in absence of party or may adjourn hearing**

(1) At a hearing, the panel may proceed in the absence of a party if it reasonably believes the party has been given notice of the hearing.

(2) The panel may adjourn the hearing from time to time.

### **188 Questions to be decided by majority of panel**

(1) A question before the panel must be decided by a majority vote of the members of the panel and, if the votes are equal, the chairperson of the panel has a casting vote.

(2) A vote on the question may be taken using any form of communication.

### **189 Procedure if panel member absent etc.**

(1) This section applies if—

- (a) a panel has started to hear disciplinary proceedings relating to a registrant but has not made its decision under subdivision 4;<sup>43</sup> and
- (b) a member of the panel ceases to be a member or, for any other reason, is unable to take further part in the disciplinary proceedings.

(2) The remaining members of the panel may, if the registrant to whom the disciplinary proceedings relate consents, constitute the panel for completing the proceedings and making a decision under subdivision 4.

(3) If the registrant does not consent to the remaining members of the panel constituting the panel, the secretary must establish a new panel to hear the disciplinary proceedings.

(4) A member of the panel first established to hear the disciplinary proceedings may be appointed to the new panel.

(5) If the member of the panel mentioned in subsection (1)(b) is the chairperson of the panel and the remaining members of the panel constitute the panel for completing the proceedings, the secretary must appoint another member of the panel to be the chairperson of the panel.

### **190 Interim orders**

(1) This section applies if—

- (a) a panel is hearing a disciplinary matter relating to a registrant; and
- (b) the panel reasonably believes it is necessary to make an order (an “**interim order**”) exercising any power conferred on the panel under section 201,<sup>44</sup> pending its final decision.

(2) The panel may make the interim order.

(3) The interim order must be the least onerous order the panel considers necessary in the circumstances.

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43 Subdivision 4 (Decision on completion of disciplinary proceedings)

44 Section 201 (Decision about disciplinary action relating to registrant)

(4) The interim order has effect from the time it is made and ends when the first of the following happens—

- (a) the proceedings in which the order is made end;
- (b) the time stated in the order for it to end arrives;
- (c) the panel revokes the order.

(5) For the interim order, the panel may direct the registrant's board to include details of the order in the board's register.

(6) The registrant's board must give effect to the interim order and comply with the panel's directions.

### **191 Inspection of things**

(1) If a thing is produced to a panel at a hearing, the panel may inspect it.

(2) The panel may do all or any of the following if the panel reasonably believes the thing may be relevant to the hearing—

- (a) photograph the thing;
- (b) for a document—make a copy of, or take an extract from, it;
- (c) keep the thing while it is necessary for the hearing;
- (d) give the thing to the secretary to keep while it is necessary for any appeal relating to the hearing.

(3) If the panel or secretary keeps the thing, it must permit a person otherwise entitled to possession of the thing to—

- (a) for a document—inspect, make a copy of, or take an extract from, the document, at the reasonable time and place the panel or secretary decides; and
- (b) for another thing—inspect or photograph the thing, at the reasonable time and place the panel or secretary decides.

### **192 Evidence and findings etc. in other proceedings may be received or adopted**

During the hearing, the panel may—

- (a) receive in evidence a transcript, or part of a transcript, of evidence taken in a proceeding before a disciplinary body or a

court, tribunal or other entity constituted under the law of the State, the Commonwealth, another State or a foreign country, and draw conclusions of fact from the evidence that it considers appropriate; or

- (b) adopt, as it considers appropriate, decisions, findings, judgments, or reasons for judgment, of a disciplinary body, court, tribunal or other entity that may be relevant to the hearing.

### **193 Allowance to witnesses**

(1) A witness who appears at a hearing before a panel is entitled to be paid the allowance prescribed under a regulation for attendance at the hearing.

- (2) The allowance must be paid by the party calling the witness.

### **194 Panel to keep record of disciplinary proceedings**

(1) A panel must keep, in the way it considers appropriate, a record of evidence given to it in relation to disciplinary proceedings.

(2) However, a panel is not required to keep a transcript of disciplinary proceedings conducted before it unless it is asked to do so by a party.

(3) If a party or parties to the disciplinary proceedings ask the panel to keep a transcript of proceedings, the cost of the transcription must be paid by—

- (a) the party making the request; or
- (b) if more than 1 party makes the request or asks for a copy of the transcript—the parties making the request or asking for the copy, in equal amounts.

***Subdivision 3—Offences relating to disciplinary proceedings dealt with by panel***

**195 Offences about attending hearing, answering questions and related matters**

(1) A registrant given a hearing notice or a notice under section 321,<sup>45</sup> or a person given an attendance notice, must not fail, without reasonable excuse—

- (a) to attend as required by the notice; or
- (b) to continue to attend as required by the chairperson of the panel until excused from further attendance.

Maximum penalty—60 penalty units.

(2) At a hearing, a registrant or a person appearing as a witness must not—

- (a) fail to take an oath or make an affirmation when required by the chairperson of the panel; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by a member of the panel; or
- (c) fail, without reasonable excuse, to produce a thing the person is required to produce by an attendance notice.

Maximum penalty for subsection (2)—60 penalty units.

**196 Self-incrimination**

For section 195, it is a reasonable excuse for an individual to fail to answer a question or to produce a thing, if answering the question or producing the thing might tend to incriminate the individual.

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<sup>45</sup> Under section 321, the secretary must give the parties written notice about the review panel's intention to conduct a hearing for the review.

### **197 False or misleading information**

A person must not state anything to a panel that the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

### **198 False or misleading documents**

(1) A person must not give to a panel a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the panel, to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the panel if the person has, or can reasonably obtain, the correct information.

### **199 Contempt of panel**

At a hearing before a panel, a person must not—

- (a) insult the panel or a member of the panel; or
- (b) deliberately interrupt the hearing; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the panel is conducting the hearing; or
- (d) without lawful excuse, disobey any lawful order or direction of the panel; or
- (e) do anything else that would be contempt of court if the panel were a court of record.

Maximum penalty—100 penalty units.



***Subdivision 4—Decision on completion of disciplinary proceedings***

**200 Decision about whether ground for disciplinary action established**

(1) As soon as practicable after completing the hearing of a disciplinary matter relating to a registrant, the panel must decide whether a ground for disciplinary action against the registrant is established.

(2) If the panel is making a decision about whether the registrant has behaved in a way that constitutes unsatisfactory professional conduct, the panel—

- (a) must have regard to any relevant codes of practice; and
- (b) must have regard to any relevant previous decision by a disciplinary body or the Medical Assessment Tribunal of which the panel is aware; and
- (c) may have regard to any relevant previous decisions by a foreign disciplinary body.

(3) Subsection (2) does not limit the matters the panel may consider in making its decision.

(4) For subsection (2)(b), the panel is entitled to access the previous decisions of other disciplinary bodies or the Medical Assessment Tribunal and the reasons for the decisions.

(5) This section does not apply to a review panel.

**201 Decision about disciplinary action relating to registrant**

(1) This section applies if, under section 200(1), a panel decides a ground for disciplinary action is established against a registrant who is registered at the time of the decision.

(2) The panel must decide to do 1 or more of the following—

- (a) advise, caution or reprimand the registrant;
- (b) impose conditions on the registrant's registration, including, for example, the following—
  - (i) requiring the registrant not to carry out a type of practice or procedure;

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- (ii) requiring the registrant not to provide services to a class of persons;
  - (iii) requiring the registrant to carry out the registrant's practice under supervision;
  - (iv) requiring the registrant to undertake an educational course, or a continuing professional education activity, within a stated reasonable time and report to the registrant's board after completing the course or activity;
  - (v) requiring the registrant to obtain, and act on, advice from the registrant's board or a stated person about the management of the registrant's practice;
  - (vi) requiring the registrant to report about particular aspects of the registrant's practice to the registrant's board or a stated person;
  - (vii) requiring the registrant to report to the registrant's board, within a stated reasonable time and in a stated reasonable way, about the registrant's compliance with conditions imposed by the panel;
- (c) approve an undertaking entered into, with the registrant's agreement, between the registrant and the registrant's board about the registrant's professional conduct or practice.

(3) Also, if the panel decides to impose conditions on the registrant's registration, the panel must state a period, not more than 3 years from the day the decision takes effect, within which the registrant may not apply for a review of the conditions under part 9, division 2.<sup>46</sup>

## **202 Decision about recording disciplinary action relating to registrant**

(1) In making its decision under section 201(2), the panel must also decide—

- (a) for a decision to advise, caution or reprimand the registrant—
  - (i) whether the disciplinary action must be recorded in the board's register; and

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<sup>46</sup> Part 9 (Reviews and appeals), division 2 (Review of conditions imposed under decision of panel)

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- (ii) for disciplinary action that must be recorded in the register—the period for which it must be recorded; and
- (b) for a decision to impose conditions on the registrant's registration—whether details of the conditions must be recorded in the board's register for the period for which the conditions are in force; and
- (c) for a decision to approve an undertaking entered into between the registrant and the board—whether details of the undertaking must be recorded in the board's register for the period for which the undertaking is in force.

(2) The panel must decide that details of the conditions or undertaking must be recorded in the board's register, unless it reasonably believes it is not in the interests of users of the registrant's services or the public to know the details.

### **203 Decision about disciplinary action relating to former registrant**

(1) This section applies if, under section 200(1), a panel decides a ground for disciplinary action is established against a person who was a registrant but is not registered for the relevant profession at the time of the panel's decision.

(2) The panel must decide—

- (a) to take no further action relating to the matter; or
- (b) either or both of the following—
  - (i) that a form of disciplinary action mentioned in section 201(2)(a) or (b) would have been taken if the person were still registered;
  - (ii) conditions that must be imposed on any future registration of the person as a registrant in the relevant profession.

### **204 Matters panel must consider in making decision about disciplinary action**

(1) In making its decision under section 201(2) or 203(2), the panel—

- (a) must have regard to the purposes of disciplinary action mentioned in section 123; and

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- (b) must have regard to any relevant previous decisions about the registrant by a disciplinary body or the Medical Assessment Tribunal of which the panel is aware; and
- (c) may have regard to any relevant previous decisions about the registrant by a foreign disciplinary body.

(2) For subsection (1)(b), the panel is entitled to access the previous decisions of other disciplinary bodies or the Medical Assessment Tribunal and the reasons for the decisions.

(3) Subsection (1) does not limit the matters the panel may consider in making its decision.

*Subdivision 5—Action after decision about disciplinary action*

## **205 Notification of decision of panel**

(1) As soon as practicable after the panel makes its decision under section 200, 201, 202 or 203, the secretary must give written notice of the decision to—

- (a) the parties to the disciplinary proceedings; and
- (b) the complainant, if the disciplinary proceedings relate to a complaint; and
- (c) the commissioner.

(2) The notice must state the following—

- (a) the panel's decision—
  - (i) if the notice relates to the panel's decision under section 200—about whether a ground for disciplinary action against the registrant is established; and
  - (ii) if the notice relates to the panel's decision under section 201 or 203—about the disciplinary action, if any, the panel has decided to take in relation to the disciplinary proceedings;
- (b) the reasons for the decision, including the reasons for any disciplinary action;
- (c) the panel's decisions on material questions of fact arising during the disciplinary proceedings;

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- (d) by reference or otherwise, any evidence or other material on which the panel's decisions about material questions of fact were based;
- (e) that a party may appeal against the decision to the tribunal;
- (f) how to appeal.

(3) Also, the secretary may give notice of its decision to any other person given an attendance notice for the hearing.

(4) The decision takes effect on the later of—

- (a) the day the notice is given to the registrant; or
- (b) the day of effect stated in the notice.

### **206 Additional information to be included in notice**

(1) This section applies if the panel decides, under section 200, that a ground for disciplinary action against the registrant is established.

(2) The notice under section 205 must also state—

- (a) for a decision to advise, caution or reprimand the registrant—
  - (i) whether the disciplinary action must be recorded in the board's register; and
  - (ii) if it must be recorded in the board's register—the period for which it must be recorded in the register; and
- (b) for a decision to impose conditions on the registrant's registration or approve an undertaking entered into between the registrant and the board—
  - (i) the fact that conditions have been imposed, or an undertaking entered into, must be recorded in the board's register for the period for which the conditions or undertaking are in force; and
  - (ii) if details of the conditions or undertaking must be recorded in the register—the details that must be recorded in the register for the period for which the conditions or undertaking is in force; and

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- (iii) if details of the conditions or undertaking must not be recorded—the reason why the details must not be recorded; and
- (c) for a decision to impose conditions on the registrant's registration—the period after which the registrant may apply under part 9, division 2 for a review of the conditions.

***Subdivision 6—Effect of decision***

**207 Effect of panel's decision**

A panel's decision is binding on the parties.

**208 Implementation of decisions**

(1) A board, that is a party to disciplinary proceedings, must give effect to the panel's decision unless the decision is stayed under section 329.<sup>47</sup>

(2) Without limiting subsection (1), if the notice given to the board by the secretary under section 205 states that disciplinary action relating to a registrant must be recorded in the board's register, the board must, as soon as practicable after receiving the notice, make the record in accordance with the notice.

***Subdivision 7—Miscellaneous***

**209 Authentication of documents**

A document relating to disciplinary proceedings by a panel requiring authentication by the panel is sufficiently authenticated if it is signed by the chairperson of the panel, another member of the panel or the secretary.

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47 Section 329 (Stay of operation of appealable decision)

## **210 Judicial notice of certain signatures**

Judicial notice must be taken of the signature of the chairperson of the panel, another member of the panel or the secretary if it appears on a document issued by the panel.

### *Division 6—Health Practitioners Tribunal*

#### *Subdivision 1—Jurisdiction of tribunal*

## **211 Tribunal’s jurisdiction**

(1) The tribunal has jurisdiction—

- (a) to hear all disciplinary matters referred under section 126 by a board, including matters relating to a registrant that happened while a suspended decision applied to the registrant; and
- (b) to hear appeals under part 9, division 3<sup>48</sup> from appealable decisions; and
- (c) to review reviewable decisions; and
- (d) to hear any other matter for which it is given jurisdiction under another Act.

(2) The tribunal may start or continue disciplinary proceedings relating to a registrant despite a proceeding before any court or another tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

(3) The tribunal may deal with more than 1 disciplinary matter relating to the same registrant in the same disciplinary proceedings

## **212 Additional disciplinary matters**

(1) If, during disciplinary proceedings, it appears to the tribunal that another disciplinary matter relating to the registrant exists in addition to the matter the subject of the proceedings, the tribunal may deal with it in the same proceedings.

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48 Part 9 (Reviews and appeals), division 3 (Appeals to tribunal)

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(2) If the tribunal decides to deal with an additional matter under subsection (1), the tribunal—

- (a) if the registrant agrees—may continue with the disciplinary proceedings or adjourn the proceedings for a particular period; or
- (b) otherwise—must adjourn the disciplinary proceedings for the period it considers fair in the circumstances before continuing with the proceedings.

(3) Subsection (2) does not affect the power of the tribunal under section 230(2).<sup>49</sup>

*Subdivision 2—Procedural matters*

### 213 Chairperson to allocate matters

(1) As soon as practicable after a referral notice is filed with the registrar—

- (a) the chairperson of the tribunal must choose a tribunal member to hear the disciplinary matter; and
- (b) the registrar must choose assessors to assist the tribunal.

(2) The tribunal member chosen to hear a disciplinary matter is the constituting member (the “**constituting member**”) for the matter.

### 214 Parties to disciplinary proceedings

The parties to disciplinary proceedings before the tribunal are—

- (a) the registrant to whom the proceedings relate; and
- (b) the registrant’s board; and
- (c) if the commissioner intervenes in the proceedings under the *Health Rights Commission Act 1991*, section 130, the commissioner.

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<sup>49</sup> Section 230 (Tribunal may proceed in absence of party or may adjourn hearing)



## **215 Notice of intention to conduct hearing**

(1) The registrar must give written notice (a “**hearing notice**”) of the tribunal’s intention to conduct a hearing of a disciplinary matter relating to a registrant to the following persons—

- (a) the registrant;
- (b) the registrant’s board;
- (c) the complainant, if the disciplinary proceedings relate to a complaint;
- (d) the commissioner.

(2) The hearing notice must state the following—

- (a) the ground for the disciplinary action against the registrant;
- (b) the facts and circumstances forming the basis for the ground;
- (c) the time and place of the hearing;
- (d) that the registrant must attend the hearing in person unless excused by the tribunal;
- (e) that a party may appear in person, or may have a lawyer or another person appear at the hearing on the party’s behalf;
- (f) that the complainant, if any, may attend the hearing and be accompanied by a lawyer or another person, unless the tribunal directs that the complainant must not attend before giving evidence.

(3) The time for the hearing, as stated in the hearing notice, must be at least 14 days after the registrant receives the notice.

## **216 Substituted service on registrant and complainant**

(1) The registrar may order substituted service of a hearing notice on a registrant or complainant about the tribunal’s intention to conduct a hearing, if the registrar is satisfied service can not be effected on the registrant or complainant.

(2) Substituted service may be effected in any way ordered, including, for example, by facsimile or telephone.

(3) If the registrant or complainant is served with the hearing notice as ordered by the registrar under subsection (1), the notice is taken to have been given to the registrant or complainant under section 215.

### **217 Directions conference**

(1) The tribunal may hold a conference (a “**directions conference**”) for considering, or giving directions for, any matter or proceeding within its jurisdiction.

(2) Without limiting subsection (1), the tribunal may give directions requiring the parties to make discovery or allow inspection of evidentiary material.

(3) At or after the conference, the tribunal may give the directions about the matter or proceeding that it considers appropriate.

(4) A directions conference may be held, and directions given at any time—

- (a) on the application of a party; or
- (b) by the tribunal on its own initiative.

(5) A directions conference may be conducted, and directions given, by telephone, video link or another form of communication.

(6) The assessors assisting the tribunal may take part in a directions conference if the tribunal considers it is necessary or desirable for them to take part in the conference.

(7) The tribunal may delegate the power to hold a directions conference to the registrar.

(8) For this section, the tribunal’s powers may be exercised also by a tribunal member, other than the constituting member for the matter or proceeding.

### **218 Tribunal’s powers relating to health assessment**

(1) Subsection (2) applies if—

- (a) the tribunal is hearing a disciplinary matter relating to a registrant on the ground the registrant is impaired; or

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- (b) in conducting disciplinary proceedings relating to a registrant the tribunal otherwise reasonably believes the registrant may be impaired.

(2) The tribunal may—

- (a) direct the registrant's board to establish a health assessment committee; and
- (b) direct the registrant to undergo a health assessment by the committee.

(3) Subsection (4) applies if, under section 289,<sup>50</sup> a registrant's board suspends the registrant's registration and the disciplinary matter to which the suspension relates is referred under section 126 for hearing by the tribunal.

(4) The tribunal may stay the board's decision until the tribunal decides the disciplinary matter.

### **219 Procedure for hearing by tribunal**

(1) When conducting a hearing, the tribunal—

- (a) must comply with natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it; and
- (c) is not bound by the rules of evidence; and
- (d) may inform itself of anything in the way it considers appropriate.

(2) However, the tribunal must comply with this division and any rules made under section 258 or directions issued under section 259(2).

(3) Also, the tribunal must, if asked to do so, by a party—

- (a) tell the party—
  - (i) the facts and circumstances forming the basis for the ground for disciplinary action against the registrant; and
  - (ii) what possible disciplinary action the tribunal may take under section 241 or 243; and

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50 Section 289 (Failure to comply with requirement of health assessment committee)

- (iii) the effect that section 381C or 381G, if relevant, may have on the registrant's registration; and
- (b) explain to the party any aspect of the tribunal's procedures, or decisions or rulings, relating to the hearing.

## **220 Time and place of hearing**

A hearing conducted by the tribunal must be conducted at the times and places the tribunal decides.

## **221 Evidence by telephone, video link or another form of communication**

(1) The tribunal may, in disciplinary proceedings before it, decide to receive evidence or submissions by telephone, video link or another form of communication.

(2) The tribunal may impose conditions on the receipt of evidence or submissions under subsection (1).

## **222 Hearing to be held in public**

(1) A hearing before the tribunal, other than a hearing for an impairment matter, is open to the public unless the tribunal decides, in the special circumstances of the particular hearing, it is in the public interest for the hearing, or a part of the hearing, to be closed to the public.

(2) A hearing before the tribunal for an impairment matter is not open to the public unless—

- (a) the tribunal reasonably believes it is in the public interest for it to be open to the public; or
- (b) the registrant asks for it to be open to the public.

(3) However, the closing of a hearing to the public does not prevent the complainant or the person accompanying the complainant continuing to attend the hearing.

(4) In subsection (2)—

**“impairment matter”** means a disciplinary matter for which the only ground for disciplinary action mentioned in the referral notice is that the registrant is impaired.

### **223 Tribunal may order suppression of registrant's name**

The tribunal may, by order, suppress the name of the registrant to whom the disciplinary proceedings relates.

### **224 Evidence of special witnesses**

(1) A witness in disciplinary proceedings before the tribunal may be a special witness.

(2) If a special witness is to give or is giving evidence in disciplinary proceedings, the tribunal may, of its own initiative or on application by a party to the proceedings, make 1 or more of the following orders—

- (a) that the registrant be excluded from the room in which the tribunal is sitting or be obscured from the view of the special witness while the special witness is giving evidence or is required to appear before the tribunal for any other purpose;
- (b) that, while the special witness is giving evidence, all persons other than those stated by the tribunal be excluded from the room in which it is sitting;
- (c) that the special witness give evidence in a room—
  - (i) other than the room in which the tribunal is sitting; and
  - (ii) from which all persons other than the persons stated by the tribunal are excluded;
- (d) that a person approved by the tribunal be present while the special witness is giving evidence or is required to appear before the tribunal for any other purpose, to provide emotional support to the special witness;
- (e) that a videotape of the evidence of the special witness or any portion of it be made under the conditions stated in the order and the videotaped evidence be viewed and heard in the proceedings instead of the direct testimony of the special witness.

(3) An order must not be made under subsection (2) if it appears to the tribunal that the making of the order would unfairly prejudice a party to the proceedings.

(4) Subject to any order made under subsection (5), an order must not be made under subsection (2)(a), (b) or (c) unless provision is made, by means

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of an electronic device or otherwise, for the registrant to see and hear the special witness while the special witness is giving evidence.

(5) If the making of a videotape of the evidence of a special witness is ordered under subsection (2)(e), the tribunal may further order that all persons other than the persons stated by the tribunal be excluded from the room in which the special witness is giving that evidence.

(6) However, any person entitled in the proceedings to examine or cross-examine the special witness must be given a reasonable opportunity to view any portion of the videotape relevant to the conduct of that examination or cross-examination.

(7) A videotape, made under this section, of any portion of the evidence of a special witness is admissible as if the evidence were given orally in the proceedings in accordance with the usual rules and practice of the tribunal.

(8) The room in which a special witness gives evidence under an order made under subsection (2)(c), or the room occupied by a special witness while the evidence of the witness is being videotaped, is taken to be part of the room in which the proceedings are being held.

(9) In this section—

**“special witness”** means any of the following persons—

- (a) an individual under the age of 12 years;
- (b) an individual whom the tribunal reasonably believes would, if required to give evidence in disciplinary proceedings in accordance with the usual rules and practice of the tribunal—
  - (i) be likely to be disadvantaged as a witness as a result of intellectual impairment or cultural differences; or
  - (ii) be likely to suffer severe emotional trauma; or
  - (iii) be likely to be so intimidated as to be disadvantaged as a witness.

## **225 Attendance and right of appearance**

(1) The tribunal may excuse a registrant from attending all or part of a hearing.

(2) The parties may appear at the hearing in person or have a lawyer or other person appear on their behalf.

## **226 Tribunal may exclude witnesses from hearing**

(1) This section applies if a complainant or other witness is to give evidence to the tribunal.

(2) The tribunal may direct that the complainant or other witness be excluded from a part or all of the hearing until the complainant or witness gives evidence, if the tribunal reasonably believes the attendance of the complainant or witness before giving evidence would seriously prejudice the fairness of the hearing.

## **227 Questions to be decided by constituting member**

(1) A question of law or fact arising before the tribunal must be decided by the constituting member.

(2) However, in deciding a question of fact before the tribunal, the constituting member may have regard to the views of the assessors assisting the tribunal as the member considers appropriate.

## **227A Procedure if tribunal member unable to hear matter**

(1) This section applies if—

- (a) the tribunal has not started to hear a disciplinary matter; and
- (b) the constituting member for the matter ceases to be qualified to be a tribunal member or, for another reason, is unable to hear the matter.

(2) The tribunal's chairperson must choose another tribunal member to hear the matter.

## **228 Procedure if tribunal member absent etc.**

(1) This section applies if the tribunal has started to hear disciplinary proceedings relating to a registrant but has not made its decision under subdivision 4 and—

- (a) the constituting member ceases to be qualified to be a tribunal member or, for any other reason, is unable to take further part in the proceedings; or
- (b) an assessor assisting the tribunal is, for any reason, unable to take further part in the proceedings.

(2) If the constituting member (the “**first member**”) can not continue—

- (a) the chairperson of the tribunal must appoint another tribunal member (the “**new member**”) as the constituting member to hear the disciplinary proceedings; and
- (b) the new member must start the hearing afresh.

(3) If a new member is appointed, the assessors who assisted the first member may be chosen to assist the new tribunal member.

(4) If an assessor is unable to take further part in the disciplinary proceedings, the registrar must choose another assessor in the assessor’s place.

(5) The other assessor must be chosen from the same panel of assessors from which the previous assessor was chosen.

## **229 Witnesses**

(1) The registrar may, by written notice given to a person (an “**attendance notice**”), require the person to attend a tribunal hearing at a stated reasonable time and place—

- (a) to give evidence or answer questions; or
- (b) to produce a stated thing.

(2) A party may apply to the registrar, in the approved form, for an attendance notice to be given to a person.

(3) The registrar must give the attendance notice to the person unless the tribunal reasonably believes it is unnecessary or inappropriate to do so.

## **230 Tribunal may proceed in absence of party or may adjourn hearing**

(1) At a hearing, the tribunal may proceed in the absence of a party if it reasonably believes the party has been given notice of the hearing.

(2) The tribunal may adjourn the hearing from time to time.

## **231 Interim orders**

(1) This section applies if—



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- (a) the tribunal is hearing a disciplinary matter relating to a registrant; and
  - (b) the tribunal reasonably believes it is necessary to make an order (an “**interim order**”) exercising any power conferred on the tribunal under section 241,<sup>51</sup> pending its final decision.
- (2) The tribunal may make the interim order.
- (3) The interim order must be the least onerous order the tribunal considers necessary in the circumstances.
- (4) The interim order has effect from the time it is made and ends when the first of the following happens—
- (a) the proceedings in which the order is made end;
  - (b) the time stated in the order for it to end arrives;
  - (c) the tribunal revokes the order.
- (5) For the interim order, the tribunal may direct the registrant’s board to include details of the order in the board’s register.
- (6) The registrant’s board must give effect to the interim order and comply with the tribunal’s directions.

### **232 Inspection of things**

- (1) If a thing is produced to the tribunal at a hearing, the tribunal may inspect it.
- (2) The tribunal may do all or any of the following if the tribunal considers the thing may be relevant to the hearing—
- (a) photograph the thing;
  - (b) for a document—make a copy of, or take an extract from, it;
  - (c) keep the thing while it is necessary for the hearing and any appeal relating to the hearing.
- (3) If the tribunal keeps the thing, it must permit a person otherwise entitled to possession of the thing to—

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51 Section 241 (Decision about disciplinary action relating to registrant)

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- (a) for a document—inspect, make a copy of, or take an extract from, the document at the reasonable time and place the tribunal decides; and
- (b) for another thing—inspect or photograph the thing at the reasonable time and place the tribunal decides.

**233 Evidence and findings etc. in other proceedings may be received or adopted**

During the hearing, the tribunal may—

- (a) receive in evidence a transcript, or part of a transcript, of evidence taken in a proceeding before a disciplinary body or a court, tribunal or other entity constituted under the law of the State, the Commonwealth, another State or a foreign country, and draw conclusions of fact from the evidence that it considers appropriate; or
- (b) adopt, as it considers appropriate, decisions, findings, judgments, or reasons for judgment, of a disciplinary body, court, tribunal or other entity that may be relevant to the hearing.

**234 Witness expenses and allowances**

(1) A witness who appears at a hearing before the tribunal—

- (a) may, before giving evidence, ask the tribunal to decide the amount to be paid to the witness for expenses; and
- (b) is entitled to be paid the allowance prescribed under a regulation for attendance at the hearing.

(2) The expenses and allowance must be paid by the party calling the witness.

(3) The tribunal may decide not to compel the witness to give his or her evidence until the relevant party has paid the expenses and allowance or given security to the tribunal for the expenses and allowance.

**235 Tribunal to keep record of disciplinary proceedings**

The tribunal must keep, in the way it considers appropriate, a record of evidence given to it in relation to disciplinary proceedings.

***Subdivision 3—Contempt of tribunal***

**236 Conduct constituting contempt**

(1) This section applies if—

- (a) a registrant given a hearing notice or a notice under section 332 or 342 fails, without reasonable excuse, to attend as required; or
- (b) a registrant given a direction under section 218(2)<sup>52</sup> fails, without reasonable excuse, to comply with the direction; or
- (c) a person given an attendance notice by the registrar fails, without reasonable excuse, to attend as required by the attendance notice; or
- (d) a registrant or a person given an attendance notice fails, without reasonable excuse, to continue to attend as required by the tribunal until excused from further attendance; or
- (e) a person appearing as a witness at the hearing fails to take an oath or make an affirmation when required by the tribunal; or
- (f) a person appearing as a witness fails, without reasonable excuse, to answer a question the person is required to answer by the tribunal; or
- (g) a person appearing as a witness fails, without reasonable excuse, to produce a thing the person is required to produce by an attendance notice; or
- (h) a person states anything to the tribunal that the person knows is false or misleading in a material particular; or
- (i) subject to section 238, a person gives to the tribunal a document containing information the person knows is false or misleading in a material particular; or
- (j) subject to section 238, a person publishes, in a public way, information that identifies, or is likely to identify, an individual, other than a party—
  - (i) who appears as a witness before the tribunal in the disciplinary proceedings; or

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52 Section 218 (Tribunal's powers relating to health assessment)

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- (ii) who is mentioned or otherwise involved in the proceedings;  
or
  - (k) a person publishes, in a public way, information that identifies, or is likely to identify, a registrant to whom a suppression order under section 223<sup>53</sup> relates; or
  - (l) a person insults the tribunal, the constituting member, an assessor, a party or lawyer appearing before the tribunal; or
  - (m) a person deliberately interrupts the tribunal's hearing; or
  - (n) a person creates or continues, or joins in creating or continuing, a disturbance in or near a place where the tribunal is conducting the hearing; or
  - (o) a person, without lawful excuse, disobeys a lawful order or direction of the tribunal; or
  - (p) a registrant fails to comply with an undertaking the registrant gives to the tribunal; or
  - (q) a person does anything else that would be contempt of court if the tribunal were a court of record.
- (2) The registrant or person is guilty of contempt of the tribunal.

### **237 Self-incrimination**

For section 236(1)(f) and (g), it is a reasonable excuse for an individual to fail to answer a question or to produce a thing if answering the question or producing the thing might tend to incriminate the individual.

### **238 Certain conduct not contempt**

- (1) Conduct mentioned in section 236(1)(i) does not constitute contempt if, when giving the document, the person—
- (a) informs the tribunal, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the tribunal if the person has, or can reasonably obtain, the correct information.

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53 Section 223 (Tribunal may order suppression of registrant's name)

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(2) Also, conduct mentioned in section 236(1)(j) does not constitute contempt if—

- (a) the tribunal consents to the publication of the information; or
- (b) the individual whom the information identifies, or is likely to identify, gives written consent to the publication of the information.

### **239 Punishment of contempt**

(1) A person's contempt of the tribunal may be punished under this section.

(2) The tribunal's jurisdiction to punish a contempt of the tribunal may be exercised by—

- (a) the tribunal member hearing the disciplinary proceedings to which the conduct constituting contempt relates; or
- (b) if the disciplinary proceedings have ended—the tribunal member decided by the chairperson of the tribunal.

(3) The tribunal member may issue a warrant directed to a police officer or all police officers for the arrest of the person to be brought before the tribunal member to be dealt with according to law.

(4) The tribunal member must inquire into the alleged contempt.

(5) The tribunal member must hear—

- (a) witnesses and evidence that may be produced against or for the person; and
- (b) any statement given by the person in defence.

(6) If the tribunal member is satisfied the person is guilty of contempt of the tribunal, the tribunal member may—

- (a) order that the person must be taken into custody and committed to prison for a period of not more than 2 years; or
- (b) impose on the person a fine of not more than 167 penalty units and may order that, in the event of default of payment of the fine, the person must be committed to prison for a period of not more than 2 years; or

- (c) if the person's contempt is constituted by a failure to comply with an undertaking that the person, as a registrant, has given to the tribunal and for which a financial assurance was required—order the financial assurance be forfeited and paid to the registrant's board.

***Subdivision 4—Decisions on completion of disciplinary proceedings***

**240 Decision about whether ground for disciplinary action established**

(1) As soon as practicable after completing a hearing of a disciplinary matter relating to a registrant, the tribunal must decide whether a ground for disciplinary action against the registrant is established.

(2) If the tribunal is making a decision about whether the registrant has behaved in a way that constitutes unsatisfactory professional conduct, the tribunal—

- (a) must have regard to any relevant codes of practice; and
- (b) must have regard to any relevant previous decision by a disciplinary body or the Medical Assessment Tribunal of which the tribunal is aware; and
- (c) may have regard to any relevant previous decisions by a foreign disciplinary body.

(3) If the tribunal is making a decision about whether the registrant is impaired, the tribunal—

- (a) if the matter was referred to a health assessment committee and the committee prepared an assessment report—must consider the assessment report; and
- (b) must consider any submissions made by the registrant under section 297;<sup>54</sup> and
- (c) if the registrant failed, without reasonable excuse, under section 288<sup>55</sup> to attend a health assessment or external assessment, cooperate in undergoing a health assessment or

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54 Section 297 (Registrant may make submissions about assessment report)

55 Section 288 (Power of health assessment committee to require registrant to undergo health assessments)

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external assessment or produce a stated thing—may have regard to the failure to attend or cooperate or produce the thing.

(4) For subsection (2)(b), the tribunal is entitled to access the previous decisions of other disciplinary bodies and the reasons for the decisions.

(5) Subsections (2) and (3) do not limit the matters the tribunal may consider in making its decision.

(6) This section does not apply for proceedings of the tribunal under the review and appeal part.

### **241 Decision about disciplinary action relating to registrant**

(1) This section applies if, under section 240(1), the tribunal decides a ground for disciplinary action is established against a registrant who is registered at the time of the decision.

(2) The tribunal must decide to do 1 or more of the following—

- (a) advise, caution or reprimand the registrant;
- (b) impose conditions on the registrant's registration, including, for example, the following—
  - (i) requiring the registrant not to carry out a type of practice or procedure;
  - (ii) requiring the registrant not to provide services to a class of persons;
  - (iii) requiring the registrant to carry out the registrant's practice under supervision;
  - (iv) requiring the registrant to undertake an educational course, or continuing professional education activity, within a stated reasonable time and report to the registrant's board after completing the course or activity;
  - (v) requiring the registrant to obtain, and act on, advice from the registrant's board or a stated person about the management of the registrant's practice;
  - (vi) requiring the registrant to report about particular aspects of the registrant's practice to the registrant's board or a stated person;

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- (vii) requiring the registrant to report to the registrant's board, within a stated reasonable time and in a stated reasonable way, about the registrant's compliance with conditions imposed by the tribunal;
- (c) approve an undertaking entered into, with the registrant's agreement, between the registrant and the registrant's board about the registrant's professional conduct or practice;
- (d) require the registrant to give the tribunal an undertaking;
- (e) if the registrant gives the tribunal an undertaking—order the registrant to give to the registrant's board a financial assurance for the undertaking for an amount not more than the equivalent of 6 666 penalty units in 1 or more of the following forms—
  - (i) a bank guarantee;
  - (ii) a bond;
  - (iii) an insurance policy;
  - (iv) another form of security the tribunal considers appropriate;
- (f) if a ground for the disciplinary action is that the registrant is impaired—order the registrant to attend at the reasonable times and reasonable places decided by the registrant's board for further health assessments, including, for example, random urine drug screening, blood tests or hair tests;
- (g) suspend the registrant's registration for a stated time;
- (h) if the tribunal suspends the registrant's registration—set conditions under which the registrant may practise after the end of the suspension period;
- (i) cancel the registrant's registration;
- (j) if the tribunal cancels the registrant's registration—
  - (i) set conditions under which the registrant may reapply for registration; or
  - (ii) set conditions that must be imposed on any future registration of the registrant by the board;
- (k) order the registrant to pay a fine of an amount not more than the equivalent of 1 333 penalty units;
- (l) order the registrant—



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- (i) to do anything else the tribunal considers appropriate; or
- (ii) to refrain from doing anything the tribunal considers inappropriate.

(3) If the tribunal decides to do any of the following, the tribunal must state a period, not more than 3 years from the day the decision takes effect, within which the registrant may not apply for a review of the decision under part 9, division 4 by the tribunal—

- (a) impose conditions on the registrant's registration under subsection (2)(b) or set conditions under which the registrant may practise after the end of the suspension period under subsection (2)(h);
- (b) order the registrant to attend for health assessments under subsection (2)(f);
- (c) order the registrant to do anything or refrain from doing anything under subsection (2)(l).

(4) Also, if the tribunal cancels the registrant's registration under subsection (2)(i), the tribunal must also decide the period during which the registrant must not be registered by the registrant's board.

(5) To remove any doubt, it is declared that a decision under subsection (4) may be that the registrant must never be registered by the registrant's board.

## **242 Decision about recording disciplinary action relating to registrant**

(1) In making its decision under section 241(2), the tribunal must also decide—

- (a) for a decision to impose conditions on the registrant's registration—whether details of the conditions must be recorded in the board's register for the period for which the conditions are in force; and
- (b) for a decision to enter into an undertaking with the registrant or approve an undertaking entered into between the registrant and the board—whether details of the undertaking must be recorded in the board's register for the period for which the undertaking is in force; and
- (c) for a decision to suspend the registrant's registration—

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- (i) whether the record of the suspension must remain in the register after the suspension ends; and
  - (ii) if the record of the suspension must remain in the register after suspension ends—the period for which it must be recorded; and
- (d) for a decision to take another form of disciplinary action under section 241(2)—
- (i) whether the disciplinary action must be recorded in the board’s register; and
  - (ii) if the disciplinary action must be recorded in the register—the period for which the disciplinary action must be recorded.

(2) The tribunal must decide that details of the conditions or undertaking, other than conditions imposed or an undertaking entered into for an impairment matter, must be recorded in the board’s register unless the tribunal reasonably believes it is not in the interests of users of the registrant’s services or the public to know the details.

(3) For conditions imposed, or an undertaking entered into, for an impairment matter, the tribunal must decide that details of the conditions or the undertaking must not be recorded in the register unless it reasonably believes it is in the interests of users of the registrant’s services or the public to know the details.

(4) In this section—

**“impairment matter”** means a disciplinary matter for which the only ground for disciplinary action established under section 240(1) is that the registrant is impaired.

### **243 Decision about disciplinary action relating to former registrant**

(1) This section applies if, under section 240(1), the tribunal decides a ground for disciplinary action is established against a person who was a registrant but is not registered for the relevant profession at the time of the tribunal’s decision.

(2) The tribunal must decide—

- (a) to take no further action relating to the matter; or
- (b) 1 or more of the following—

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- (i) to order the person to pay a fine of an amount not more than the equivalent of 1 333 penalty units;
- (ii) conditions under which the person may reapply for registration in the relevant profession;
- (iii) conditions that must be imposed on any future registration of the person in the relevant profession;
- (iv) to order the person to do anything else the tribunal reasonably considers appropriate;
- (v) to order the person to refrain from doing anything the tribunal reasonably considers inappropriate;
- (vi) to indicate another form of disciplinary action mentioned in section 241(2) would have been taken if the person were registered.

(3) If the tribunal indicates under subsection (2)(b)(vi) that if the person were currently registered it would have cancelled the person's registration, the tribunal must also decide the period during which the person must not again be registered by the person's board.

(4) To remove any doubt, it is declared that a decision under subsection (3) may be that the person must never be registered as a registrant in the relevant profession.

**244 Matters tribunal must consider in making decision about disciplinary action**

- (1) In making its decision under section 241(2) or 243(2), the tribunal—
- (a) must have regard to the purposes of disciplinary action mentioned in section 123; and
  - (b) must have regard to any relevant previous decisions about the registrant by a disciplinary body or the Medical Assessment Tribunal of which the tribunal is aware; and
  - (c) may have regard to any relevant previous decisions about the registrant by a foreign disciplinary body.

(2) For subsection (1)(b), the tribunal is entitled to access the previous decisions of other disciplinary bodies and the Medical Assessment Tribunal and the reasons for the decisions.

(3) Subsection (1) does not limit the matters the tribunal may consider in making its decision.

***Subdivision 5—Action after decision about disciplinary action***

**245 Notification of decision of tribunal**

(1) As soon as practicable after the tribunal makes its decision under section 240, 241, 242 or 243, the registrar must give written notice of the tribunal's decision to—

- (a) the parties to the disciplinary proceedings; and
- (b) the complainant, if the disciplinary proceedings relate to a complaint; and
- (c) the commissioner.

(2) The notice must state the following—

- (a) the tribunal's decision—
  - (i) if the notice relates to the tribunal's decision under section 240—about whether a ground for disciplinary action against the registrant is established; and
  - (ii) if the notice relates to the tribunal's decision under section 241 or 243—about the disciplinary action, if any, the tribunal has decided to take in relation to the disciplinary proceedings;
- (b) the reasons for the decision, including the reasons for any disciplinary action;
- (c) the tribunal's decisions on material questions of fact arising during the disciplinary proceedings;
- (d) by reference or otherwise, any evidence or other material on which the tribunal's decisions about material questions of fact were based;
- (e) that a party may appeal on a question of law to the Court of Appeal about the decision;
- (f) how to appeal.

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(3) Also, the registrar may give notice of the tribunal's decision to any other person given an attendance notice for the hearing.

(4) The decision takes effect on the day the tribunal makes its decision or, if the tribunal's decision is to take effect on a later day, on the later day.

(5) If the registrant or the registrant's representative is not present when the tribunal makes its decision, the decision takes effect on the later of—

- (a) the day the notice is given to the registrant; or
- (b) the day of effect stated in the notice.

### **246 Additional information to be included in notice**

(1) This section applies if the tribunal decides, under section 240(1), that a ground for disciplinary action against the registrant is established.

(2) The notice under section 245 must also state—

- (a) for a decision to impose conditions on the registrant's registration—
  - (i) the fact that conditions have been imposed must be recorded in the board's register for the period for which the conditions are in force; and
  - (ii) if details of the conditions must be recorded in the register—the details that must be recorded in the register for the period for which the conditions are in force; and
  - (iii) for an impairment matter—if details of the conditions must be recorded, the reason why the details must be recorded; and
  - (iv) for another matter—if details of the conditions must not be recorded, the reason why the details must not be recorded; and
- (b) for a decision to require the registrant to give the tribunal an undertaking or approve an undertaking entered into between the registrant and the registrant's board—
  - (i) the fact that the registrant has given the tribunal an undertaking, or the registrant and the board have entered into an undertaking, must be recorded in the board's register for the period for which the undertaking is in force; and

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- (ii) whether details of the undertaking must be recorded in the register for the period for which the undertaking is in force; and
  - (iii) for an impairment matter—if details of the undertaking must be recorded, the reason why the details must be recorded; and
  - (iv) for another matter—if details of the undertaking must not be recorded, the reason why the details must not be recorded; and
- (c) for a decision to suspend the registrant's registration—
- (i) the suspension must be recorded in the board's register for the period for which the suspension is in force; and
  - (ii) whether the record of the suspension must remain in the register after the suspension ends; and
  - (iii) if the record must remain in the register after the suspension period ends—the period for which it must remain; and
- (d) for a decision to take another form of disciplinary action—
- (i) whether the disciplinary action must be recorded in the board's register; and
  - (ii) if the disciplinary action must be recorded in the board's register—
    - (A) the details that must be recorded in the register; and
    - (B) the period for which the details must be recorded in the register; and
  - (iii) for an impairment matter—if details of the disciplinary action must be recorded, the reason why the details must be recorded; and
  - (iv) for another matter—if details of the disciplinary action must not be recorded, the reason why the details must not be recorded; and
- (e) for a decision to impose conditions on the registrant's registration under section 241(2)(b) or set conditions under which the registrant may practise after the end of the suspension period under section 241(2)(h), or a decision under section 241(2)(l) to order a registrant to do anything or refrain from doing

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anything—the period after which the registrant may apply under part 9, division 4 for a review of the conditions or order.

(3) In subsection (2)—

**“impairment matter”** means a disciplinary matter for which the only ground for disciplinary action established under section 240(1) is that the registrant is impaired.

*Subdivision 6—Suspended decisions*

**247 Decision may be suspended**

(1) If the tribunal makes a decision mentioned in 1 of the following provisions, it may order that the decision is suspended—

- section 241(2)(b)
- section 241(2)(g)
- section 241(2)(i)
- section 241(2)(k)
- section 241(2)(l)(i).<sup>56</sup>

(2) However, the tribunal may order the decision is suspended only if it is satisfied that it is appropriate to do so in the circumstances.

(3) The tribunal may suspend the whole or a part of the decision.

(4) The tribunal must state a period during which the registrant must not be the subject of disciplinary action by the tribunal if the registrant is to avoid being dealt with under section 250 for the decision suspended under subsection (1) (the **“suspended decision”**).

(5) The period starts on the day the order is made and must be not more than 5 years.

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<sup>56</sup> Section 241 (Decision about disciplinary action relating to registrant)

### **248 Effect of suspended decision**

A registrant for whom an order under section 247 is made must comply with the suspended decision or the relevant part of the decision only if the tribunal makes a decision under section 250(5)(b)(i).

### **249 Consequences if other disciplinary action while suspended decision**

(1) This section applies if—

- (a) a board refers a disciplinary matter under section 126 (the “**current matter**”) to the tribunal; and
- (b) the referral notice for the current matter states that the current matter happened during the period the registrant was subject to an order made under section 247 for a suspended decision in relation to a previous disciplinary matter.

(2) The chairperson of the tribunal must nominate a tribunal member to deal with the current matter and the fact that the current matter happened during the period of the suspended decision.

### **250 Power of tribunal to deal with suspended decision**

(1) This section applies if the tribunal is dealing with—

- (a) the current matter; and
- (b) the fact that the current matter happened during the period of the suspended decision.

(2) The tribunal must hear and decide the current matter under this division.

(3) If the tribunal decides that a ground exists for disciplinary action for the current matter, the tribunal must ask the parties to make submissions in relation to the suspended decision.

(4) If the tribunal considers it appropriate to do so in the circumstances, the tribunal may ask for the submissions to be made in writing.

(5) After considering any submissions made to it, the tribunal may—



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- (a) for the current matter—take any of the actions mentioned in section 241;<sup>57</sup> and
- (b) for the suspended decision—either—
  - (i) impose the suspended decision, or a part of the decision, on the registrant; or
  - (ii) if the tribunal considers the imposition of the suspended decision under subparagraph (i) unfair—extend the period of the suspended decision by a period of not more than 1 year.

(6) In deciding whether it would be unfair to impose the suspended decision on the registrant, the tribunal must have regard to—

- (a) the facts and circumstances that provided the grounds for the current matter or the suspended decision; and
- (b) any relevant previous decisions about the registrant by a disciplinary body, the Medical Assessment Tribunal or a foreign disciplinary body; and
- (c) the length of time since the suspended decision was made and the registrant's conduct since the decision was made; and
- (d) any submissions made by the parties about the suspended decision; and
- (e) anything else the tribunal considers relevant.

### **251 Tribunal must give notice**

(1) If the tribunal makes a decision under section 250 relating to the suspended decision, the registrar must give written notice of the decision—

- (a) to the registrant; and
- (b) to the registrant's board; and
- (c) to the commissioner.

(2) The notice must state the following—

- (a) the tribunal's decision;

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<sup>57</sup> Section 241 (Decision about disciplinary action relating to registrant)

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(b) the reasons for the decision.

(3) The decision takes effect on the day the tribunal makes its decision or, if the tribunal's decision is to take effect on a later day, on the later day.

(4) If the registrant or the registrant's representative is not present when the tribunal makes its decision, the decision takes effect on the later of—

(a) the day the notice is given to the registrant; or

(b) the day of effect stated in the notice.

*Subdivision 7—Effect of decision*

## **252 Effect of tribunal's decision**

A decision of the tribunal in disciplinary proceedings is binding on the parties to the proceedings.

## **253 Implementation of decisions**

(1) A board must give effect to and implement a decision of the tribunal for disciplinary proceedings to which it has been a party unless the decision is stayed under section 329.<sup>58</sup>

(2) Without limiting subsection (1), the board must, if the notice given to the board by the registrar under section 245<sup>59</sup> states—

(a) that the registrant's registration is cancelled—remove the registrant's name from the board's register; or

(b) that disciplinary action relating to a registrant must be recorded in the board's register—as soon as practicable after receiving the notice, make the record in the board's register in accordance with the notice.

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58 Section 329 (Stay of operation of appealable decision)

59 Section 245 (Notification of decision of tribunal)

## **254 Recovery of fine**

A fine imposed on a registrant by the tribunal is a debt due to the registrant's board and may be recovered by the board in a court of competent jurisdiction.

### *Subdivision 8—Miscellaneous*

## **255 Costs**

(1) The tribunal may make any order about costs it considers appropriate for disciplinary proceedings.

(2) However, the costs allowable are only—

- (a) the costs that would be allowable if the disciplinary proceedings were proceedings in the District Court;<sup>60</sup> and
- (b) if the board conducted an investigation of the registrant before referring the matter for hearing by the tribunal—the cost to the board of conducting the investigation.

(3) Without limiting subsection (1), in making a decision about an order for costs, the tribunal—

- (a) must take into consideration the cost of any investigation for the matter the subject of the proceedings; and
- (b) must not take into consideration the amount of a fine, if any, imposed on a registrant in the proceedings.

## **256 Authentication of documents**

A document relating to disciplinary proceedings requiring authentication by the tribunal is sufficiently authenticated if it is signed by the constituting member of the tribunal for the proceedings or the registrar.

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<sup>60</sup> See the *Uniform Civil Procedure Rules 1999*, schedule 2 (Scale of costs—District Court).

### **257 Judicial notice of certain signatures**

Judicial notice must be taken of the signature of a constituting member or the registrar if it appears on a document issued by the tribunal.

### **258 Rule-making power**

(1) The Governor in Council, with the consent of the chairperson of the tribunal, may make rules not inconsistent with this Act about the practices and procedures of the tribunal.

(2) A rule is subordinate legislation.

### **259 Practice directions**

(1) To the extent a matter about the tribunal's procedure is not provided for by this Act or the rules, the matter may be dealt with by directions under this section.

(2) The chairperson of the tribunal may issue directions of general application about the tribunal's procedures.

(3) Subject to directions issued under subsection (2), the constituting member for a disciplinary matter, or another tribunal member, may issue directions about the matter.

## ***Division 7—Dissemination of information***

### ***Subdivision 1—Purpose***

### **260 Purpose of div 7**

(1) The purpose of this division is to provide information to relevant entities, registrants and the public about decisions relating to disciplinary proceedings about registrants.

(2) The purposes of providing the information includes—

- (a) to inform and educate registrants about unsatisfactory professional conduct and acceptable professional conduct or practice; and

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- (b) to promote high standards of professional conduct or practice by registrants; and
- (c) to deter unsatisfactory professional conduct by registrants; and
- (d) to inform the public about unsatisfactory professional conduct and acceptable professional conduct or practice by registrants; and
- (e) to give information to other entities which have an interest in the professional conduct or practice of registrants.

***Subdivision 2—Notification of disciplinary proceedings and  
disciplinary action***

**261 Board may notify other entities**

(1) This section applies if—

- (a) a registrant's board or a disciplinary committee decides under this part to take disciplinary action against the registrant; or
- (b) a registrant's board is given notice by the registrar or secretary that a panel or the tribunal has decided under this part to take disciplinary action against the registrant.

(2) The board must, as soon as practicable after making the decision or receiving the notice, give notice of the decision to interstate regulatory authorities with which the board is aware the registrant is registered.

(3) Also, the board may give notice of the decision about the registrant to any of the following—

- (a) the chief executive;
- (b) foreign regulatory authorities;
- (c) professional colleges of which the registrant is eligible to be a member;
- (d) professional associations of which the registrant is eligible to be a member;
- (e) an employer of the registrant;
- (f) the Health Insurance Commission;
- (g) the Minister;

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(h) any other entity relevant to the registrant's practice as a registrant.

(4) However, the board must not give a notice about the decision to an entity under subsection (3) unless the board reasonably believes that—

- (a) the entity needs to know about the decision; and
- (b) giving the entity notice of the decision will assist in achieving the objects of this Act.

(5) A notice under this section may include the information the board reasonably believes is appropriate in the circumstances.

### **262 Board may notify other registrants**

(1) A registrant's board may, after it or another disciplinary body makes a decision relating to disciplinary proceedings about the registrant, inform other registrants about the nature and outcome of the proceedings, including, for example, in its annual report or a newsletter.

(2) However, the board must not disclose the identity of the registrant unless—

- (a) the decision relates to a matter about the registrant that has been heard by the tribunal in public, or part of which has been heard in public; and
- (b) the tribunal has not made a suppression order relating to the identity of the registrant.

(3) This section does not effect the board's power to record details of any conditions imposed on a registrant in the board's register.

### ***Subdivision 3—Records of disciplinary proceedings***

### **263 Records to be kept and made publicly available**

(1) A record of all decisions about disciplinary proceedings, and the reasons for the decisions, made by a disciplinary body under this Act must be kept by—

- (a) if the disciplinary body is a board or disciplinary committee—the executive officer; and

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- (b) if the disciplinary body is a panel—the secretary; and
- (c) if the disciplinary body is the tribunal—the registrar.

(2) The record must be kept in the way the person responsible for keeping it considers appropriate.

(3) The secretary or registrar must give a copy of a record kept by the secretary or registrar under subsection (1) to the executive officer within 7 days after notice of the decision is given to the registrant to whom the disciplinary proceedings related.<sup>61</sup>

(4) The executive officer must keep a copy of all records required to be kept by, or given to, the executive officer under this section in the way the executive officer considers appropriate, including, for example, in an electronic form.

(5) The records must be kept—

- (a) for records relating to matters dealt with by a board, disciplinary committee or panel—in a way that does not disclose the identity of persons involved in the matters; or
- (b) for records relating to matters dealt with by the tribunal—in a way that complies with any order made by the tribunal suppressing details that identify persons involved in the matters.

(6) The executive officer must—

- (a) keep the records open for inspection at the office by members of the public during ordinary office hours; and
- (b) allow a person to take extracts from the records or, on payment of the appropriate fee by a person, give the person a copy of a record.

(7) The fee for a copy of a record is the amount that—

- (a) the executive officer considers to be reasonable; and
- (b) is not more than the reasonable cost of making the copy.

(8) The fee for a copy of a record is payable to the board established under the health practitioner registration Act under which the registrant, to which the record relates, is or was registered.

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<sup>61</sup> See sections 168 (Notification of decision), 205 (Notification of decision of panel) and 253 (Implementation of decisions).

### ***Subdivision 4—Reports***

#### **264 Matters to be included in board's annual report**

(1) Each board's annual report under the *Financial Administration and Audit Act 1977* for a financial year must include the following—

- (a) statistical information about the number of complaints received by the board under this Act in the financial year, including the number of complaints referred by the commissioner to the board;
- (b) statistical information about the number of complaints referred by the board to the commissioner under this Act in the financial year;
- (c) the nature of the complaints received by the board under this Act in the financial year;
- (d) statistical information about the number of investigations conducted under this Act in the financial year;
- (e) details of the nature of the investigations conducted under this Act;
- (f) statistical information about the number of disciplinary proceedings started by the board under this Act in the financial year;
- (g) details of the nature of the disciplinary proceedings started by the board under this Act in the financial year;
- (h) details of the results of disciplinary proceedings that were finished in the financial year;
- (i) details of the amount of the board's funds spent, in the financial year, on investigations by the board under this Act;
- (j) details of the amount of the board's funds spent, in the financial year, on health assessments under this Act.

(2) A board's annual report under subsection (1) must not disclose the identity of a registrant unless—

- (a) the registrant has been the subject of disciplinary proceedings heard by the tribunal in public, or part of which has been heard in public; and



- (b) the tribunal has not made a suppression order relating to the identity of the registrant.

### **265 Secretary to give report to Minister**

(1) As soon as practicable after the end of each financial year, the secretary must give to the Minister a report about the activities of the panels.

(2) The report must include—

- (a) statistical information about the number of disciplinary proceedings heard by panels under this Act in the financial year for each profession; and
- (b) details of the amount of the funds spent for panels in the financial year; and
- (c) any other information required by the Minister.

## **PART 7—MANAGEMENT OF IMPAIRED REGISTRANTS BY BOARDS**

### *Division 1—Preliminary*

#### **266 Purpose of pt 7**

The purpose of this part is to provide an alternative to disciplinary proceedings for dealing with impaired registrants.

#### **267 How purpose is achieved**

To achieve the purpose, this part—

- (a) states the processes to deal with impaired registrants; and
- (b) provides for the establishment of health assessment committees.

## **268 Application of pt 7**

(1) If a registrant's board reasonably believes, because of a complaint or for another reason, the registrant may be impaired (the “**suspected matter**”), the board may decide to deal with the registrant under this part and not under the investigation part.

(2) However, if at any time the registrant's board reasonably believes the suspected matter may provide a ground for suspending or cancelling the registrant's registration, the board must not deal with, or continue to deal with, the registrant under this part but must—

- (a) investigate the matter under the investigation part; or
- (b) refer the matter under section 126 for hearing by the tribunal.

(3) Subsection (1) does not prevent the board from taking action under the investigation part or disciplinary proceedings part against the registrant who may be impaired if the board considers it more appropriate.

### *Division 2—Informal management of impaired registrants*

#### *Subdivision 1—Preliminary*

## **269 Purpose of div 2**

The purpose of this division is to allow a registrant's board to collect information about, and assess, the registrant, with the registrant's full cooperation, if the board reasonably believes the registrant may be impaired.

### *Subdivision 2—Health assessments and boards' powers*

## **270 Board may request information**

(1) This section applies if a registrant's board reasonably believes the registrant may be impaired.

(2) The board may ask the registrant or another person for information relevant to helping the board in its assessment of whether the registrant is impaired.

(3) However, the board can not, under this subdivision, compel the registrant or other person to give it information.

### **271 Notice to be given to registrant**

(1) If a registrant's board reasonably believes the registrant may be impaired, it may give the registrant a notice asking the registrant to agree to undergo a health assessment.

(2) The notice must state the following—

- (a) the reasons the board is asking for the health assessment;
- (b) that the board wants the registrant to agree to undergo a health assessment by a mutually agreed—
  - (i) medical practitioner; or
  - (ii) medical practitioner and another appropriately qualified person;
- (c) that the assessment may only be conducted with the registrant's cooperation and that the registrant can not be compelled, under this division, to undergo the assessment;
- (d) the consequences under section 272 of failing to undergo or to cooperate in undergoing a health assessment.

(3) In subsection (2)(b)(ii)—

**“appropriately qualified”**, for a person conducting a health assessment, includes having the qualifications, and the experience, knowledge or skills, appropriate to conduct the health assessment.

### **272 Powers of board if registrant does not undergo health assessment etc.**

(1) This section applies if a registrant is given a notice under section 271 and—

- (a) the registrant does not agree to undergo a health assessment; or
- (b) the registrant and board can not agree on the medical practitioner or other person to conduct the assessment; or
- (c) the registrant agrees to undergo the assessment but in undergoing the assessment does not fully cooperate to the medical

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practitioner's or person's reasonable satisfaction with the assessment.

(2) The board may decide to do 1 of the following—

- (a) refer the suspected matter to a health assessment committee under division 3;
- (b) conduct an investigation of the suspected matter under the investigation part;
- (c) refer the suspected matter under section 126 for hearing by a panel or the tribunal.

### **273 Procedure for health assessment**

(1) This section applies if—

- (a) the registrant agrees to undergo a health assessment; and
- (b) the registrant and the board agree on who is to conduct the assessment.

(2) The assessment must be conducted, at the board's expense, as soon as practicable after agreement is reached.

(3) The person who conducts the assessment must, as soon as practicable after conducting the assessment, prepare a report about the assessment (an **“assessment report”**).

(4) The assessment report must include—

- (a) the person's findings as to whether the registrant is impaired; and
- (b) if the person finds the registrant is impaired—
  - (i) the nature and extent of the registrant's impairment; and
  - (ii) the person's recommendations as to any action, including, for example, the imposition of conditions on the registrant's registration, that needs to be taken to protect the wellbeing of vulnerable persons.

(5) Also, if more than 1 person conducted the assessment and the findings or recommendations are not unanimous, the assessment report must include—

- (a) the different views of the persons; and
- (b) the basis for each person's views.

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**(6)** The person must—

- (a) give the assessment report to the board; and
- (b) give a copy of the assessment report to the registrant or, if it appears to the person that giving a copy of the report to the registrant may be prejudicial to the physical or psychological health or wellbeing of the registrant, a medical practitioner nominated by the registrant; and
- (c) if a copy of the assessment report is given to a medical practitioner, give the registrant written notice that the copy has been given to the medical practitioner.

**(7)** The registrant may nominate a medical practitioner under subsection (6)(b) only if the medical practitioner has agreed to be nominated.

**(8)** If a registrant does not nominate a medical practitioner for subsection (6)(b), the person who conducted the assessment may—

- (a) refuse to give a copy of the assessment report to the registrant; or
- (b) give the registrant a summary only of the findings in the report.

**(9)** A medical practitioner who has been given a report under subsection (6)(b) must, within 14 days after receiving the report—

- (a) give the registrant the information from the report that the medical practitioner reasonably considers appropriate in the circumstances; or
- (b) decide that, in the circumstances, it is not appropriate to give the registrant any information from the report.

**(10)** As soon as practicable after the medical practitioner gives the registrant information from the report or decides not to give the registrant any information, the medical practitioner must, by written notice given to the board, advise the board—

- (a) whether or not the information was given to the registrant; and
- (b) if information was given to the registrant—
  - (i) what information was given; and
  - (ii) when the information was given.

### **274 Registrant may make submissions about assessment report**

(1) A registrant given a copy of an assessment report or a summary under section 273 may, within 14 days after receiving the copy or summary, make a written submission relating to the report or summary to the board.

(2) A registrant given information by a medical practitioner under section 273(9) may, within 14 days after receiving the information, make a written submission about the information to the board.

(3) Also, the registrant may give to the board a copy of a report about any other recent and relevant health assessment the registrant has undergone.

(4) If the registrant gives a copy of a report to the board under subsection (3), the copy must be a complete copy of the report.

### **275 Decision about impairment**

(1) After considering the assessment report, any submission made by the registrant and any other health assessment report given to the board under section 274(3), the board must decide whether the registrant is impaired.

(2) Subsection (1) does not limit the matters the board may consider in making the decision.

### **276 Decision about action to be taken for impaired registrant**

(1) This section applies if the board decides, under section 275(1), the registrant is impaired.

(2) The board must decide to do 1 of the following—

- (a) with the registrant's agreement, enter into an undertaking with the registrant about the registrant's professional conduct or practice, including, for example, that the registrant will—
  - (i) carry out the registrant's practice under supervision; or
  - (ii) attend counselling or a rehabilitation service; or
  - (iii) attend at the reasonable times and reasonable places decided by the board for further health assessments, including, for example, random urine drug screening, blood tests or hair tests;

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- (b) conduct an investigation of the registrant under the investigation part;
- (c) refer the matter under section 126 for hearing by a panel or the tribunal;
- (d) take no further action relating to the matter.

(3) However, the board may enter into an undertaking with the registrant under subsection (2) only if the board—

- (a) is satisfied the registrant is competent to enter into the undertaking; and
- (b) has advised the registrant that a failure to comply with the undertaking is a ground for disciplinary action.

(4) If, after deciding to enter into an undertaking with the registrant, the registrant and the board can not agree in relation to the undertaking or the registrant is not competent to enter into an undertaking, the board must decide to refer the matter to a health assessment committee under division 3.

(5) If the board decides to enter into an undertaking with the registrant under subsection (2), it must also decide whether details of the undertaking must be recorded in the board's register for the period the undertaking is in force.

(6) The board must decide not to record details of the undertaking in its register unless it reasonably believes it is in the interests of users of the registrant's services or the public to know the details.

### **277 Decision about action to be taken for registrants who are not impaired**

(1) This section applies if, under section 275(1), the board decides the registrant is not impaired.

(2) If the board reasonably believes another ground for disciplinary action exists in relation to the registrant, the board may—

- (a) conduct an investigation of the registrant under the investigation part; or
- (b) deal with the matter by taking disciplinary proceedings under part 6, division 4; or

- (c) refer the matter under section 126 for hearing by a panel or the tribunal.

### **278 Notification of board's decision**

(1) As soon as practicable after making its decision under section 275, 276 or 277, the board must give written notice of the decision to the registrant.

(2) The notice must state the following—

- (a) the board's decision—
  - (i) if the notice relates to the board's decision under section 275—about whether the registrant is impaired; and
  - (ii) if the notice relates to the board's decision under section 276 or 277—about the action, if any, the board has decided to take in relation to the matter;
- (b) the reasons for the decision, including the reasons for any proposed action.

(3) The decision takes effect on the later of—

- (a) the day the notice is given to the registrant; or
- (b) the day of effect stated in the notice.

### **279 Additional information to be included in notice**

(1) This section applies if the board decides, under section 275, that a registrant is impaired.

(2) If the board decides to enter into an undertaking with the registrant, the notice under section 278 must also state—

- (a) the fact that the registrant and the board have entered into an undertaking must be recorded in the board's register for the period for which the undertaking is in force; and
- (b) for a decision that details of the undertaking must be recorded in the register—the details that must be recorded in the register for the period for which the undertaking is in force; and
- (c) for a decision that details of the undertaking must be recorded—the reason why the details must be recorded.



***Subdivision 3—Miscellaneous***

**280 Payment of person conducting assessment**

A person who conducts a health assessment and prepares an assessment report for a board is entitled to be paid for his or her work by the board.

**281 Use of assessment report**

(1) An assessment report is not admissible in any proceedings, other than proceedings under this Act.

(2) A person can not be compelled to produce the report, or to give evidence relating to the report or its contents, in any proceedings, other than proceedings under this Act.

(3) Subsections (1) and (2) do not apply if the report is admitted or produced, or evidence relating to the report or its contents is given, with the consent of the person who prepared the report and the registrant to which the report relates.

(4) In this section—

“**assessment report**” includes a copy of the report, or a part of the report or copy.

“**proceedings under this Act**” includes a health assessment by a health assessment committee but does not include proceedings for an offence against this Act.

***Division 3—Health assessment committees***

***Subdivision 1—Establishment of health assessment committee***

**282 Establishment of health assessment committee**

(1) Subsection (2) applies if—

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- (a) the tribunal directs a board to establish a health assessment committee under section 218;<sup>62</sup> or
- (b) a registrant gives the registrant's board a notice under section 306(2) asking the board to arrange another health assessment of the registrant; or
- (c) a board decides under section 276(4)<sup>63</sup> to refer a matter to a health assessment committee.

(2) As soon as practicable after the board receives the direction or notice or making the decision, the board must establish a health assessment committee to conduct a health assessment of the registrant.

(3) Also, a registrant's board may establish a health assessment committee to conduct a health assessment of the registrant if the board decides under section 272(2)(a)<sup>64</sup> to refer a suspected matter to a health assessment committee.

### **283 Composition of health assessment committee**

(1) A health assessment committee is to consist of appropriately qualified members appointed by the board, but must include at least—

- (a) 1 medical practitioner; and
- (b) a person who is—
  - (i) a registrant in the same profession as the registrant to be assessed; or
  - (ii) registered, licensed or otherwise authorised in another State to practise the same profession as the registrant.

(2) Before appointing a person under subsection (1), the board must be satisfied the person does not have a personal or professional connection with the registrant to whom the health assessment relates that may prejudice the way in which the person performs the person's functions as a committee member.

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62 Section 218 (Tribunal's powers relating to health assessment)

63 Section 276 (Decision about action to be taken for impaired registrant)

64 Section 272 (Powers of board if registrant does not undergo health assessment etc.)

(3) To remove any doubt, it is declared that the board may appoint an appropriately qualified board member as a member of the health assessment committee.

(4) In this section—

**“appropriately qualified”**, for a member of a health assessment committee, includes having the qualifications, and the experience, knowledge or skills, to fulfil the role of a member of the committee.

### **284 Remuneration of health assessment committee members etc.**

(1) A member of a health assessment committee is entitled to be paid the remuneration and allowances decided by the Governor in Council.

(2) The remuneration and allowances are payable by the board that established the committee.

### *Subdivision 2—Functions of health assessment committee*

### **285 Functions of health assessment committee**

(1) The functions of the health assessment committee are—

- (a) to assess whether the registrant is impaired; and
- (b) to give the relevant body the committee’s findings; and
- (c) if the committee finds the registrant is impaired, give the relevant body—
  - (i) information about the nature and extent of the impairment; and
  - (ii) recommendations about actions that needs to be taken to protect vulnerable persons.

(2) In subsection (1)(b) and (c)—

**“relevant body”** means—

- (a) if the committee is established at the tribunal’s direction—the tribunal; or
- (b) otherwise—the board.

***Subdivision 3—Assessment procedures and committees’ powers***

**286 Notice about establishment of health assessment committee**

(1) As soon as practicable after a registrant’s board establishes a health assessment committee to conduct a health assessment of the registrant, the board must give written notice to the registrant about the committee’s establishment.

(2) The notice must include the following—

- (a) the reasons for the health assessment;
- (b) the names and qualifications of the members of the health assessment committee;
- (c) the procedures to be followed under this division, including, for example, the registrant’s right to make written or oral submissions to the health assessment committee.

**287 Registrant may make submissions to health assessment committee**

(1) The registrant may make written or oral submissions to the health assessment committee.

(2) Also, the registrant may give to the health assessment committee a copy of a report about any other recent and relevant health assessment the registrant has undergone.

(3) If the registrant gives a copy of the report to the health assessment committee the copy must be a complete copy of the report.

**288 Power of health assessment committee to require registrant to undergo health assessments**

(1) A health assessment committee may, by written notice given to a registrant, require the registrant to do 1 or both of the following—

- (a) attend before the committee to undergo a health assessment;
- (b) as part of the health assessment conducted by the committee, undergo a health assessment (an “**external assessment**”) by an appropriately qualified person other than a member of the committee (an “**external assessor**”).

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(2) The notice must state—

- (a) a reasonable time and place for the registrant to undergo the health assessment or external assessment; and
- (b) for an external assessment—
  - (i) the reasons for the assessment; and
  - (ii) the name and qualifications of the external assessor; and
- (c) advice to the registrant of the terms of section 289(1).

(3) If the registrant is required to attend before the health assessment committee, the registrant may be accompanied by a lawyer or another person but the lawyer or other person is not entitled to address the committee on the registrant's behalf.

(4) The registrant must not fail, without reasonable excuse—

- (a) to attend as required by the notice; and
- (b) to continue to attend as required by the health assessment committee until excused from further attendance; and
- (c) to cooperate with the committee or external assessor in the conduct of a health assessment or external assessment.

(5) In this section—

**“appropriately qualified”**, for an external assessor, includes having the qualifications, experience, skills or knowledge appropriate to conduct the external assessment.

### **288A Appointment of external assessor**

(1) This section applies if a health assessment committee decides to require the registrant to undergo an external assessment.

(2) The committee may appoint 1 or more external assessors to conduct the assessment.

(3) Before appointing a person as an external assessor, the committee must be satisfied the person does not have a personal or professional connection with the registrant that may prejudice the way in which the person conducts the assessment.

### **289 Failure to comply with requirement of health assessment committee**

(1) If the registrant contravenes section 288(5), the board may do 1 or more of the following—

- (a) suspend the registrant's registration;
- (b) conduct an investigation of the registrant under the investigation part;
- (c) refer the matter under section 126 for hearing by a panel or the tribunal.

(2) As soon as practicable after deciding to take action under subsection (1), the board must give written notice of the decision—

- (a) to the registrant; and
- (b) to the commissioner.

(3) If the board suspends the registrant's registration—

- (a) the registrant may, by written notice given to the board, ask the board to refer the matter under section 126 for hearing by the tribunal; and
- (b) the board must, if asked to do so, refer the matter under section 126 for hearing by the tribunal; and
- (c) the board must record in its register, for the period for which the suspension is in force, that the registrant's registration has been suspended.

(4) The suspension continues until the first of the following happens—

- (a) the registrant attends for a health assessment, cooperates in the conduct of the health assessment and the assessment is completed;
- (b) the matter is referred for hearing by the tribunal and the tribunal—
  - (i) stays the board's decision to suspend the registrant's registration; or
  - (ii) decides the matter.

## **290 Other powers of health assessment committee**

(1) For conducting a health assessment, a health assessment committee may, by written notice given to a person other than the registrant, require the person—

- (a) to give stated information to the committee within a stated reasonable time and in a stated reasonable way; or
- (b) to attend before the committee at a stated reasonable time and place—
  - (i) to answer questions; or
  - (ii) to produce a stated thing.

(2) Also, for conducting a health assessment, a health assessment committee may, by written notice, require the registrant to attend before the committee at a stated reasonable time and place to produce a stated thing.

## **291 Offences**

(1) A person required to give stated information to a health assessment committee under section 290(1) must not fail, without reasonable excuse, to give the information as required by the notice.

Maximum penalty—60 penalty units.

(2) A person given a notice under section 290(1) to attend before a health assessment committee must not fail, without reasonable excuse—

- (a) to attend as required by the notice; or
- (b) to continue to attend as required by the committee until excused from further attendance; or
- (c) to answer a question the person is required to answer by the committee; or
- (d) to produce a thing the person is required to produce by the notice.

Maximum penalty—60 penalty units.

(3) A registrant given a notice under section 290(2) to attend before a health assessment committee and produce a stated thing must not fail,

without reasonable excuse to attend and produce the thing as required by the notice.

Maximum penalty for subsection (3)—60 penalty units.

### **292 Self-incrimination**

For section 291, it is a reasonable excuse for an individual to fail to give stated information, answer a question or to produce a thing if giving the information, answering the question or producing the thing might tend to incriminate the individual.

### **293 Inspection of things**

(1) If a thing is produced to a health assessment committee, whether under a notice under section 290 or otherwise, the committee may inspect it.

(2) The health assessment committee may do all or any of the following if the committee reasonably believes the thing may be relevant to the assessment being conducted by the committee—

- (a) photograph the thing;
- (b) for a document—make a copy of, or take an extract from, it;
- (c) keep the thing while it is necessary for the assessment.

(3) If the health assessment committee keeps the thing, the committee must permit a person otherwise entitled to possession of the thing—

- (a) for a document—inspect, make a copy of, or take an extract from, the document, at the reasonable time and place the committee decides; and
- (b) for another thing—inspect or photograph the thing, at the reasonable time and place the committee decides.

### **294 False or misleading information**

A person must not state anything or give information to a health assessment committee that the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.



## **295 False or misleading documents**

(1) A person must not give to a health assessment committee a document containing information the person knows is false or misleading in a material particular.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the health assessment committee, to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the committee if the person has, or can reasonably obtain, the correct information.

## **295A External assessor to prepare report about external assessment**

(1) An external assessor who conducts an external assessment must, as soon as practicable after conducting the assessment, prepare a report about the assessment (an “**external assessment report**”).

(2) The external assessment report must include—

- (a) the external assessor's findings about whether the registrant is impaired; and
- (b) if the external assessor finds the registrant is impaired—
  - (i) the nature and extent of the registrant's impairment; and
  - (ii) the external assessor's recommendations about any action that needs to be taken to protect the wellbeing of vulnerable persons including, for example, the imposition of conditions on the registrant's registration.

(3) Also, if more than 1 external assessor conducted the external assessment and the findings or recommendations are not unanimous, the external assessment report must include—

- (a) the different views of the assessors; and
- (b) the basis for each view.

(4) The external assessor must give the external assessment report to the health assessment committee.

## **296 Health assessment committee to prepare report**

(1) The health assessment committee must prepare a report about its assessment of the registrant (an “**assessment report**”) after conducting its assessment and considering the following—

- (a) any external assessment report about the registrant;
- (b) any submission made by the registrant under section 287(1);
- (c) any health assessment report given by the registrant to the committee under section 287(2).

(2) The assessment report must include—

- (a) the health assessment committee’s findings as to whether the registrant is impaired; and
- (b) if the committee finds the registrant is impaired—
  - (i) the nature and extent of the registrant’s impairment; and
  - (ii) the committee’s recommendations as to any action, including, for example, the imposition of conditions on the registrant’s registration, that needs to be taken to protect the wellbeing of vulnerable persons; and
- (c) any external assessment report about the registrant.

(3) Also, if the health assessment committee’s findings or recommendations are not unanimous, the assessment report must include—

- (a) the different views of the committee members; and
- (b) the basis for the different views.

(4) The health assessment committee must give the report—

- (a) if the committee was established on the board’s own initiative—to the board; or
- (b) if the committee was established at the direction of the tribunal—to the tribunal.

(5) Also, the health assessment committee must—

- (a) give a copy of the report to the registrant or, if it appears to the committee that giving a copy of the assessment report to the registrant may be prejudicial to the physical or psychological health or wellbeing of the registrant, a medical practitioner nominated by the registrant; and

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- (b) if a copy of the assessment report is given to a medical practitioner, give the registrant written notice that a copy of the report has been given to the medical practitioner.

(6) The registrant may nominate a medical practitioner only if the medical practitioner has agreed to be nominated.

(7) If a registrant does not nominate a medical practitioner for subsection (5)(a), the health assessment committee may—

- (a) refuse to give a copy of the report to the registrant; or
- (b) give the registrant only a summary of the report's findings.

(8) A medical practitioner who has been given a copy of an assessment report under subsection (5)(a) must, within 14 days after receipt of the report—

- (a) give the registrant the information from the report that the medical practitioner reasonably considers appropriate in the circumstances; or
- (b) decide that, in the circumstances, it is not appropriate to give the registrant any information from the report.

(9) As soon as practicable after the medical practitioner gives the registrant information from the report or decides not to give the registrant any information, the medical practitioner must give to the board or, if the committee was established at the tribunal's direction, the tribunal, written notice advising the board or tribunal—

- (a) whether or not the information was given to the registrant; or
- (b) if information was given to the registrant—
  - (i) what information was given; and
  - (ii) when the information was given.

### **297 Registrant may make submissions about assessment report**

(1) A registrant given a copy of an assessment report or a summary under section 296 may, within 14 days after receiving the copy or summary, make a written submission relating to the report or summary—

- (a) if the committee was established at the tribunal's direction—to the tribunal; or

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(b) otherwise—to the board.

(2) A registrant given information by a medical practitioner under section 296(8) may, within 14 days after receiving the information, make a written submission about the information—

(a) if the committee was established at the tribunal's direction—to the tribunal; or

(b) otherwise—to the board.

(3) Also, the registrant may give a copy of a report about any other recent and relevant health assessment the registrant has undergone—

(a) if the committee was established at the tribunal's direction—to the tribunal; or

(b) otherwise—to the board.

(4) If the registrant gives a copy of a report to the tribunal or board under subsection (3), the copy must be a complete copy of the report.

*Division 4—Decision by board about impairment*

### **298 Decision about impairment**

(1) After considering the assessment report, any submission made by the registrant and any other health assessment report given to it under section 297(3), the board must decide whether the registrant is impaired.

(2) Subsection (1) does not limit the matters the board may consider in making the decision.

### **299 Decision about action to be taken for impaired registrant**

(1) This section applies if the board decides, under section 298(1), the registrant is impaired.

(2) The board must decide to do 1 or more of the following—

(a) impose conditions on the registrant's registration, including, for example—

(i) requiring the registrant to carry out the registrant's practice under supervision; or

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- (ii) requiring the registrant to attend counselling or a rehabilitation service;
- (b) order the registrant to attend at the reasonable times and reasonable places decided by the board for further health assessments, including, for example, random urine drug screening, blood tests or hair tests;
- (c) with the registrant's agreement, enter into an undertaking with the registrant about the registrant's professional conduct or practice;
- (d) conduct an investigation of the registrant under the investigation part;
- (e) refer the matter under section 126 for hearing by a panel or the tribunal;
- (f) take no further action relating to the matter.

**(3)** However, the board may enter into an undertaking with the registrant under subsection (2) only if the board—

- (a) is satisfied the registrant is competent to enter into the undertaking; and
- (b) has advised the registrant that a failure to comply with the undertaking is a ground for disciplinary action.

**(4)** If the board decides to impose conditions on the registrant's registration or enter into an undertaking with the registrant, it must also decide whether details of the conditions or undertaking must be recorded in the board's register for the period for which the conditions or undertaking is in force.

**(5)** The board must decide not to record details of the conditions or undertaking in its register unless it reasonably believes it is in the interests of users of the registrant's services or the public to know the details.

**(6)** Also, if the board's decision is to impose conditions on the registrant's registration or make an order under subsection (2)(b), the board must decide the period, not more than 3 years from the day the decision takes effect, after which the registrant may ask for another health assessment under section 306.

### **300 Decision about action to be taken for registrants who are not impaired**

(1) This section applies if, under section 298(1), the board decides the registrant is not impaired.

(2) If the board reasonably believes another ground for disciplinary action exists in relation to the registrant, the board may—

- (a) conduct an investigation of the registrant under the investigation part; or
- (b) deal with the matter by taking disciplinary proceedings under part 6, division 4; or
- (c) refer the matter under section 126 for hearing by a panel or the tribunal.

#### *Division 5—Action after decision about impairment*

### **301 Notification of board's decision**

(1) As soon as practicable after making its decision under section 298, 299 or 300, the board must give written notice of the decision to the registrant.

(2) The notice must state the following—

- (a) the board's decision—
  - (i) if the notice relates to the board's decision under section 298—about whether the registrant is impaired; and
  - (ii) if the notice relates to the board's decision under section 299 or 300—about the action, if any, the board has decided to take in relation to the matter;
- (b) the reasons for the decision, including the reasons for any proposed action;
- (c) for a decision that the registrant is impaired or a decision under section 299(2)(a) or (b), (4) or (6)—that the registrant may appeal against the decision to the tribunal and how to appeal;
- (d) for a decision ordering the registrant to attend for further health assessments—that the health assessments must be conducted at the registrant's expense.

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- (3) The decision takes effect on the later of—
- (a) the day the notice is given to the registrant; or
  - (b) the day of effect stated in the notice.

**302 Additional information to be included in notice**

(1) This section applies if the board decides, under section 298, that a registrant is impaired.

- (2) The notice under section 301 must also state—
- (a) for a decision to impose conditions on the registrant's registration—
    - (i) the fact that conditions have been imposed must be recorded in the board's register for the period for which the conditions are in force; and
    - (ii) if details of the conditions must be recorded in the register—the details that must be recorded in the register for the period for which the conditions are in force; and
    - (iii) if details of the conditions must be recorded—the reason why the details must be recorded; and
    - (iv) the period after which the registrant may ask for another health assessment under section 306; and
  - (b) for a decision to enter into an undertaking with the registrant—
    - (i) the fact that the registrant and the board have entered into an undertaking must be recorded in the board's register for the period for which the undertaking is in force; and
    - (ii) if details of the undertaking must be recorded in the register—the details that must be recorded in the register for the period for which the undertaking is in force; and
    - (iii) if details of the undertaking must be recorded—the reason why the details must be recorded.

### **303 Conditions and undertakings to be recorded in board's register**

(1) This section applies if the board made a decision under section 299 to impose conditions on a registrant's registration, or a decision under section 276 or 299 to enter into an undertaking with a registrant.

(2) As soon as practicable after imposing the conditions or entering into the undertaking, the board must record in its register, for the period for which the conditions or undertaking is in force—

- (a) the fact that conditions have been imposed on the registrant's registration or an undertaking entered into with the registrant; and
- (b) if the board decides under section 276(5) or 299(4) to record details of the conditions or undertaking in its register—the details.

### **304 Notification of other entities**

(1) As soon as practicable after a board makes a decision under section 275, 276, 277, 298, 299 or 300 relating to a registrant, a board must give a written notice about the decision to—

- (a) the commissioner; and
- (b) the complainant, if the matter relates to a complaint.

(2) However, the board must give notice to the commissioner only if the matter is a result of—

- (a) a complaint made to the commissioner and referred to the board; or
- (b) a complaint made to the board by a user of the registrant's services or an entity acting on behalf of a user of the registrant's services.

(3) The notice to the commissioner must include the information given to the registrant in the notice under section 278 or 301.

(4) The notice to the complainant must only include the following information—

- (a) a statement that the matter has been dealt with by the board;



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- (b) whether conditions have been imposed on the registrant's registration or an undertaking entered into between the registrant and the board;
- (c) if details of the conditions or undertaking must be recorded in the board's register—the details of the conditions or undertaking that must be recorded while the conditions or undertaking is in force.

***Division 6—Miscellaneous***

**305 Conditions or order in force until further decision made**

(1) This section applies if, under section 299(2), a board decides—

- (a) to impose conditions on a registrant's registration; or
- (b) to order the registrant to attend for further health assessments.

(2) Subject to any appeal against the board's decision, the conditions or order remains in force until—

- (a) the registrant asks for another health assessment (the “**further assessment**”) to be conducted; and
- (b) the board makes a decision under section 298 and, if relevant, section 299 about the further assessment.

**306 Registrant may request further health assessment**

(1) This section applies if—

- (a) a board imposes conditions on a registrant's registration or makes an order in relation to a registrant under section 299(2); and
- (b) the period stated by the board under section 299(6) during which the registrant may not ask for a further assessment has ended.

(2) The registrant may, by written notice to the board, ask the board to arrange a further assessment of the registrant.

### **307 Use of assessment report**

(1) An assessment report is not admissible in any proceedings, other than proceedings under this Act.

(2) A person can not be compelled to produce the report, or to give evidence relating to the report or its contents, in any proceedings, other than proceedings under this Act.

(3) Subsections (1) and (2) do not apply if the report is admitted or produced, or evidence relating to the report or its contents is given, with the consent of the person who prepared the report and the registrant to whom the report relates.

(4) In this section—

**“assessment report”** means the following and includes a copy of the report, or a part of the report or copy—

- (a) an assessment report prepared under section 296(1);
- (b) an external assessment report.

**“proceedings under this Act”** includes a health assessment by a health assessment committee but does not include proceedings for an offence against this Act.

### **308 Board must pay cost of assessments**

If a board establishes a health assessment committee, the board must pay the costs of—

- (a) the health assessment conducted by the committee; and
- (b) an external assessment required by the committee.

## **PART 8—POWERS RESULTING FROM ACTION UNDER FOREIGN LAW**

### *Division 1—Preliminary*

#### **309 Purpose of pt 8**

The purpose of this part is to protect the public by enabling disciplinary action taken under a foreign law to be applied to a registrant's registration without taking disciplinary proceedings under this Act.

#### **310 Definition for pt 8**

In this part—

“**foreign law**”, in relation to a registrant's registration, means—

- (a) for a medical practitioner—a law applying in a foreign country providing for the registration, licensing or certification of registrants under an authority established by a law applying in the country; or
- (b) for another type of registrant—a law applying in a foreign country, other than New Zealand, providing for the registration, licensing or certification of registrants under an authority established by a law applying in the country.

### *Division 2—Action taken by board on basis of foreign law*

#### **311 Board may take action on basis of foreign law**

(1) This section applies if—

- (a) after a registrant is registered under the health practitioner registration Act establishing the registrant's board—
  - (i) the registrant's registration, licence or certification under a foreign law relating to the registrant's profession is suspended or cancelled for a reason relating to a matter for which disciplinary action could be taken under this Act; or

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- (ii) conditions are imposed on the registrant's registration, licence or certification under a foreign law relating to the registrant's profession for a reason relating to a matter for which disciplinary action could be taken under this Act; and
  - (b) the board reasonably believes that, to achieve the objects of this Act, it is necessary for the registrant's registration in Queensland to be affected in the same way.
- (2) The board must give the registrant a written notice that states the following—
- (a) the board intends to suspend or cancel, or impose conditions on, the registrant's registration (the **“proposed action”**);
  - (b) the ground for the proposed action;
  - (c) an invitation to the registrant to show, by written submission given to the board within a stated time of at least 14 days after the registrant receives the notice, why the proposed action should not be taken.
- (3) The board must consider any submission made under subsection (2) and decide whether or not to take the proposed action.
- (4) As soon as practicable after the board makes the decision, the board must give written notice of the decision to the registrant and the commissioner (the **“decision notice”**).
- (5) If the board decides to take the proposed action, the decision notice must state the following—
- (a) the reasons for the decision;
  - (b) that the registrant may appeal against the decision to the tribunal;
  - (c) how the registrant may appeal.
- (6) A decision to take the proposed action takes effect on the later of—
- (a) the day the decision notice is given to the registrant; or
  - (b) the day of effect stated in the notice.
- (7) Also, as soon as practicable after taking the proposed action, the board must give the commissioner written notice of the decision.
- (8) This section does not limit the disciplinary action a disciplinary body may take under this Act.

### **312 Further action by board relating to proposed action**

(1) Subsection (2) applies if the registrant's board takes the proposed action.

(2) The board must—

- (a) if the board suspends the registrant's registration—decide to end the suspension if the suspension under the foreign law is ended; and
- (b) if the board cancels the registrant's registration—decide to reinstate the registrant's registration if the registrant's registration, licence or certification under the foreign law is reinstated; and
- (c) if the board imposes conditions on the registrant's registration and the conditions under the foreign law are removed—remove the conditions; and
- (d) if the board imposes conditions on the registrant's registration and the conditions under the foreign law are changed—change the conditions in the same way.

(3) As soon as practicable after the board makes the decision the board must give written notice of the decision to the registrant and the commissioner.

(4) The decision takes effect on the later of—

- (a) the day the notice is given to the registrant; or
- (b) the day of effect stated in the notice.

(5) This section does not limit the disciplinary action a disciplinary body may take under this Act.

### ***Division 3—Records***

### **313 Record to be made in register**

(1) This section applies if—

- (a) a registrant's registration is suspended or cancelled under section 311; or

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- (b) conditions are imposed on a registrant's registration under section 311, or conditions on a registrant's registration are changed under section 312(2)(d); or
- (c) a person's registration is reinstated under section 312(2)(b).

(2) As soon as practicable after the event mentioned in subsection (1) happens, the board must—

- (a) if the registrant's registration is cancelled—remove the registrant's name from its register; and
- (b) if the registrant's registration is suspended—record in its register for the period for which the suspension is in force that the registrant's registration is suspended; and
- (c) if conditions are imposed on the registrant's registration—record in its register for the period for which the conditions are in force—
  - (i) that the registrant's registration is subject to conditions; and
  - (ii) details of the conditions; and
- (d) if the person's registration is reinstated—again register the person.

## **PART 9—REVIEWS AND APPEALS**

### *Division 1—Preliminary*

#### **314 Purposes of pt 9**

The purposes of this part are to provide for—

- (a) the review of certain decisions under this Act; and
- (b) appeals from certain decisions under this Act to the tribunal or the Court of Appeal.

***Division 2—Review of conditions imposed under decision of panel***

**315 Reviews of conditions imposed under decision of panel**

Conditions imposed on a registrant's registration under section 201(2)(b) or 324<sup>65</sup> by a panel may be reviewed under this division.

**316 Who may have conditions reviewed**

(1) The registrant to whom the conditions relate may have the conditions reviewed.

(2) However, the registrant may not have the conditions reviewed—

- (a) during the period stated in the panel's decision under section 201(3) or 324(3); or
- (b) while an appeal to the tribunal about the decision is pending.

**317 How to start a review**

(1) A review is started by the registrant filing a notice in the approved form (a “**notice of review**”) with the secretary.

(2) The notice of review must require the registrant to state—

- (a) that the registrant believes the conditions are no longer appropriate; and
- (b) the reasons for the registrant's belief.

**318 Secretary to give notice of review to particular persons**

(1) The secretary must, within 14 days after the notice of review is filed, give written notice—

- (a) to the registrant's board; and
- (b) to the commissioner.

(2) The secretary's notice must—

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<sup>65</sup> Section 201 (Decision about disciplinary action relating to registrant) or 324 (Powers of review panel on review)

- (a) state that a notice of review of the conditions relating to the registrant has been filed; and
- (b) be accompanied by a copy of the notice of review.

### **319 Secretary to establish panel**

(1) As soon as practicable after the notice of review is filed, the secretary must establish a panel to review the conditions (a “**review panel**”).

(2) Part 2, division 3, subdivision 2<sup>66</sup> applies to the establishment of a review panel as if the review panel were being established to hear a disciplinary matter referred by a board under section 126.

(3) To remove any doubt, it is declared that a member of the review panel may be a person who was a member of the panel that made the decision to impose the conditions (the “**original panel**”).

### **320 Review may be by hearing or written submission**

(1) The review panel must decide whether it—

- (a) will conduct a hearing for the review; or
- (b) will conduct the review on the basis of written submissions.

(2) The review panel may decide to conduct the review on the basis of written submissions only if the panel reasonably believes it is appropriate and fair to do so in the circumstances.

### **321 Notice about hearing**

(1) The secretary must give the parties written notice about the review panel’s intention to conduct a hearing for the review.

(2) The notice must state the following—

- (a) the time and place of the hearing;
- (b) that the registrant must attend the hearing;

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66 Part 2 (Administration), division 3 (Professional conduct review panels), subdivision 2 (Membership of panels)



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- (c) that the registrant's board may, under section 182,<sup>67</sup> nominate a board member or other person to appear at the hearing on behalf of the board;
- (d) that the registrant or board's nominee may be accompanied by a lawyer or another person.

(3) The time of the hearing stated in the notice under subsection (2)(a) must be at least 14 days after the registrant receives the notice.

### **322 Review by hearing**

(1) The procedure for the hearing for a review must be in accordance with part 6, division 5, subdivision 2, other than sections 174, 175, 177 and 178.<sup>68</sup>

(2) In conducting the hearing, the review panel may have regard—

- (a) to any evidence or other material considered by the original panel; and
- (b) to any decisions, including the reasons for the decisions, made by the original panel.

(3) Subsection (2) does not limit the matters to which the review panel may have regard in making its decision.

### **323 Review by written submissions**

(1) If the review panel decides to conduct the review on the basis of written submissions—

- (a) the panel must decide a reasonable time within which it will accept written submissions; and
- (b) the secretary must give the parties written notice that the review is to be conducted on the basis of written submissions.

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67 Section 182 (Appearance and attendance at hearing)

68 Part 6 (Disciplinary proceedings), division 5 (Professional conduct review panels), subdivision 2 (Procedural matters)

Sections 174 (Notice of intention to conduct hearing), 175 (Substituted service on registrant and complainant), 177 (Registrant may require referral to tribunal) and 178 (Powers of panel to direct referral of matter to tribunal etc.)

(2) The notice must state the time, decided under subsection (1)(a), within which the review panel will accept written submissions.

(3) In conducting the review, the review panel may have regard—

- (a) to any evidence or other material considered by the original panel; and
- (b) to any decisions, including the reasons for the decisions, made by the original panel.

(4) Subsection (3) does not limit the matters to which the review panel may have regard.

### **324 Powers of review panel on review**

(1) After reviewing the conditions imposed by the original panel, the review panel must decide—

- (a) to confirm the conditions; or
- (b) to remove the conditions; or
- (c) to change the conditions; or
- (d) to remove the conditions and replace the conditions with another action a panel may take under section 201(2).<sup>69</sup>

(2) In making its decision under subsection (1), section 204<sup>70</sup> applies to the review panel as if the panel's decision on the review were a decision made under section 201(2).

(3) If the review panel's decision under subsection (1) (the “**review decision**”) imposes conditions on the registrant's registration, section 201(3) applies as if the review decision were a decision under section 201(2).

(4) If the review decision is of a type mentioned in section 201(2), section 202 applies as if the review decision were a decision made under section 201(2).

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<sup>69</sup> Section 201 (Decision about disciplinary action relating to registrant)

<sup>70</sup> Section 204 (Matters panel must consider in making decision about disciplinary action)

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(5) Part 6, division 5, subdivision 5<sup>71</sup> applies to a review decision as if it were a decision made under section 201(2).

***Division 3—Appeals to tribunal***

**325 Appealable decisions for tribunal**

(1) Each of the following decisions of a board is an appealable decision for this division—

- (a) a decision under section 59(2)<sup>72</sup> to suspend, or impose conditions on, a registrant's registration;
- (b) a decision under section 298(1)<sup>73</sup> that a registrant is impaired;
- (c) a decision—
  - (i) under section 299(2)<sup>74</sup> to impose conditions on a registrant's registration or order a registrant to attend for further health assessments; or
  - (ii) under section 299(4) to record details of conditions or an undertaking in the board's register; or
  - (iii) under section 299(6) about the period after which a registrant may ask for another health assessment;
- (d) a decision under section 311<sup>75</sup> to suspend or cancel, or impose conditions on, a registrant's registration.

(2) Each of the following decisions of a panel is an appealable decision for this division—

- (a) a decision under section 200(1)<sup>76</sup> about whether a ground for disciplinary action against a registrant is established;

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71 Part 6 (Disciplinary proceedings), division 5 (Professional conduct review panels), subdivision 5 (Action after decision about disciplinary action)

72 Section 59 (Immediate suspension or imposition of conditions on registration)

73 Section 298 (Decision about impairment)

74 Section 299 (Decision about action to be taken for impaired registrant)

75 Section 311 (Board may take action on basis of foreign law)

76 Section 200 (Decision about whether ground for disciplinary action established)

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- (b) a decision under section 201(2) or 203(2)(b) to take disciplinary action against a registrant;
- (c) a decision under section 201(3) or 324(3)<sup>77</sup> about the period within which a registrant may not apply for a review of a decision;
- (d) a decision under section 202(1) to record that a registrant has been given advice or a caution or reprimand and the period for which it is to be recorded, or to record details of conditions or an undertaking;
- (e) a decision under section 324 to confirm, remove or change conditions, or remove conditions and replace the conditions with another action a panel may take under section 201(2).

### **326 Who may appeal**

The following persons may appeal to the tribunal against an appealable decision—

- (a) the registrant to whom the appealable decision relates;
- (b) the registrant's board, if the appealable decision was made by a panel.

### **327 How to start an appeal**

(1) An appeal is started by filing a notice in the approved form (a “**notice of appeal**”) with the registrar.

(2) The notice of appeal must require the appellant to state fully the grounds for the appeal and the facts relied on.

(3) The notice of appeal must be filed within 28 days after the day the appellant receives notice of the appealable decision.

(4) The tribunal may, at any time, extend the period for filing a notice of appeal.

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<sup>77</sup> Section 201 (Decision about disciplinary action relating to registrant) or 203 (Decision about disciplinary action relating to former registrant) or 324 (Powers of review panel on review)

### **328 Registrar to give notice of appeal to particular persons**

(1) The registrar must, within 14 days after the notice of appeal is filed, give written notice—

- (a) if the appellant is the registrant—to the registrant’s board and the commissioner; and
- (b) if the appellant is the registrant’s board—to the registrant and the commissioner.

(2) The registrar’s notice must—

- (a) state that a notice of appeal has been filed; and
- (b) be accompanied by a copy of the notice.

(3) If a registrant or board is given a notice of appeal under subsection (1), the registrant or board is the respondent for the appeal.

### **329 Stay of operation of appealable decision**

(1) If a registrant files, or has filed, a notice of appeal and makes an application to the tribunal for a stay of the appealable decision to secure the effectiveness of the appeal, the tribunal may grant the stay if it considers it appropriate.

(2) However, the tribunal must not grant a stay of a decision by a board under section 59(2)<sup>78</sup> to suspend, or impose conditions on, a registrant’s registration.

(3) The stay may be granted on conditions the tribunal considers appropriate and has effect for the period stated by the tribunal.

(4) However, the period of the stay must not extend past the time when the tribunal decides the appeal.

(5) An appeal against an appealable decision does not affect the operation or carrying out of the decision unless the decision is stayed by the tribunal.

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<sup>78</sup> Section 59 (Immediate suspension or imposition of conditions on registration)

### **330 Appeal against immediate suspension etc. to be decided quickly**

(1) This section applies if a registrant files a notice of appeal against a decision by the registrant's board under section 59(2) to suspend, or impose conditions on, the registrant's registration.

(2) The tribunal must decide the appeal as quickly as possible.

### **331 Appeal is by way of rehearing**

(1) An appeal under this division is by way of rehearing on the evidence or other material (the "**original evidence**") before the board or panel that made the appealable decision.

(2) However, the tribunal may give leave to adduce fresh, additional or substituted evidence (the "**new evidence**") if the tribunal is satisfied—

- (a) the party asking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the time the appealable decision was made; or
- (b) in the special circumstances of the case, it would be unfair not to allow the party to adduce the new evidence.

(3) If the tribunal gives leave under subsection (2), the appeal is—

- (a) by way of rehearing on the original evidence; and
- (b) on the new evidence adduced.

### **332 Notice about conduct of hearing**

(1) The registrar must give the parties written notice of the tribunal's intention to conduct a hearing for the appeal.

(2) The notice must state the following—

- (a) the time and place of the hearing;
- (b) that the registrant must attend the hearing;
- (c) that a party may appear in person or may have a lawyer or another person appear at the hearing on the party's behalf.

(3) The time for the hearing stated in the notice under subsection (2)(a) must be at least 14 days after the registrant receives the notice.

### **333 Appeals by hearing**

(1) The procedure for the hearing of an appeal must be in accordance with part 6, division 6, subdivision 2, other than section 215.<sup>79</sup>

(2) However, for subsection (1)—

- (a) a reference in section 213<sup>80</sup> to a referral notice is taken to be a reference to a notice of appeal; and
- (b) a reference in section 216<sup>81</sup> to a hearing notice is taken to be a reference to a notice under section 332; and
- (c) a reference in section 222 to an impairment matter is taken to be a reference to an appealable decision mentioned in section 325(1)(b) or (c).<sup>82</sup>

### **334 Appeal may be by written submissions**

(1) Despite sections 332 and 333, the tribunal may decide to conduct the appeal entirely on the basis of written submissions.

(2) However, the tribunal may decide to conduct the appeal on the basis of written submissions only if the tribunal considers it appropriate and fair to do so in the circumstances.

### **335 Appeals by written submissions**

(1) If the tribunal decides to conduct the appeal entirely on the basis of written submissions—

- (a) the tribunal must decide a reasonable time within which it will accept written submissions; and
- (b) the registrar must give the parties written notice that the appeal is to be decided on the basis of written submissions.

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79 Part 6 (Disciplinary proceedings), division 6 (Health Practitioners Tribunal), subdivision 2 (Procedural matters)

Section 215 (Notice of intention to conduct hearing)

80 Section 213 (Chairperson to allocate matters)

81 Section 216 (Substituted service on registrant and complainant)

82 Sections 222 (Hearing to be held in public) and 325 (Appealable decisions for tribunal)

(2) The notice must state the time, decided under subsection (1)(a), within which the tribunal will accept written submissions.

### **336 Powers of tribunal on appeal etc.**

(1) In deciding the appeal, the tribunal may—

- (a) for an appealable decision mentioned in section 325(1)(a)<sup>83</sup>—  
confirm or set aside the appealable decision; or
- (b) otherwise—
  - (i) confirm the appealable decision; or
  - (ii) set aside the appealable decision; or
  - (iii) change the appealable decision in the way the tribunal considers appropriate; or
  - (iv) set aside the appealable decision and replace it with a decision the tribunal may make under section 241 or 243.<sup>84</sup>

(2) A changed decision that results from the tribunal acting under subsection (1)(b)(iii) may be any decision mentioned in section 241(2) or 243(2) but must not be another decision.

(3) If the tribunal makes a decision under subsection (1)(a), the registrar must give written notice of the decision and the reasons for the decision to the registrant, the registrant's board and the commissioner.

(4) In making its decision under subsection (1)(b) (an “**appeal decision**”), section 240(2) or (3) or 244 applies as if the appeal decision were a decision made under section 240(1), 241(2) or 243(2).<sup>85</sup>

(5) If the appeal decision is a decision of a type mentioned in section 241(3), that subsection applies as if the appeal decision were a decision made under section 241(2).

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83 Section 325 (Appealable decisions for tribunal)

84 Section 241 (Decision about disciplinary action relating to registrant) or 243 (Decision about disciplinary action relating to former registrant)

85 Section 240 (Decision about whether ground for disciplinary action established) or 244 (Matters tribunal must consider in making decision about disciplinary action)



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(6) If the appeal decision is a decision of a type mentioned in section 241(2), section 242<sup>86</sup> applies as if the appeal decision were a decision made under section 241(2).

(7) Part 6, division 6, subdivisions 6 and 7 apply to an appeal decision as if it were a decision made under section 240(1) or section 241(2) or 243(2).

*Division 4—Review of certain tribunal decisions*

### **337 Decisions that may be reviewed**

Each of the following decisions of the tribunal (a “**reviewable decision**”) is a decision that may be reviewed by the tribunal under this division—

- (a) a decision under section 240(1) if the decision is that a registrant is impaired;
- (b) a decision under section 241(2)(b) to impose conditions on a registrant’s registration or under section 241(2)(h) to set conditions under which the registrant may practise after the end of the suspension period;
- (c) a decision under section 241(2)(f) to order a registrant to attend for further health assessments;
- (d) a decision under section 241(2)(l) to order a registrant to do something or refrain from doing something;
- (e) a decision under section 336 or 345 of a type mentioned in paragraphs (a) to (d);
- (f) a decision that is a reviewable decision under section 353(2).<sup>87</sup>

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86 Section 242 (Decision about recording disciplinary action relating to registrant)

87 Sections 240 (Decision about whether ground for disciplinary action established), 241 (Decision about disciplinary action relating to registrant), 336 (Powers of tribunal on appeal etc.), 345 (Powers of tribunal on review) and 353 (Powers of court on appeal)

### **338 Who may have decision reviewed**

(1) The registrant to whom the reviewable decision relates may have the decision reviewed.

(2) However, the registrant may not have the decision reviewed—

- (a) during the period stated in the tribunal's decision under section 241(3), 336(5) or 345(4); or
- (b) during the period stated in the Court of Appeal's decision under section 353(3); or
- (c) while an appeal to the Court of Appeal about the decision is pending.

### **339 How to start a review**

(1) A review is started by the registrant filing a notice in the approved form (a “**notice of review**”) with the registrar.

(2) The notice of review must require the registrant to state—

- (a) that the registrant believes the reviewable decision is no longer appropriate; and
- (b) the reasons for the registrant's belief.

### **340 Registrar to give notice of review to particular persons**

(1) The registrar must, within 14 days after filing the notice of review, give written notice—

- (a) to the registrant's board; and
- (b) to the commissioner.

(2) The registrar's notice must—

- (a) state that a notice of review has been filed; and
- (b) be accompanied by a copy of the notice.

### **341 Review may be by hearing or written submission**

(1) The tribunal must decide whether it—

- (a) will conduct a hearing for the review; or

(b) will conduct the review on the basis of written submissions.

(2) However, the tribunal may decide to conduct the review on the basis of written submissions only if the tribunal considers it appropriate and fair to do so in the circumstances.

### **342 Notice about hearing**

(1) The registrar must give the parties written notice about the tribunal's intention to conduct a hearing for the review.

(2) The notice must state the following—

- (a) the time and place of the hearing;
- (b) that the registrant must attend the hearing;
- (c) that a party may appear in person or may have a lawyer or another person appear at the hearing on the party's behalf.

(3) The time for the hearing, as stated in the notice under subsection (2)(a), must be at least 14 days after the registrant receives the notice.

### **343 Review by hearing**

(1) The procedure for the hearing for a review must be in accordance with part 6, division 6, subdivision 2, other than section 215.<sup>88</sup>

(2) However, for subsection (1)—

- (a) a reference in section 213 to a referral notice is taken to be a reference to a notice of review; and
- (b) a reference in section 216 to a hearing notice is taken to be a reference to a notice under section 342; and
- (c) a reference in section 222 to an impairment matter is taken to be a reference—
  - (i) to a reviewable decision mentioned in section 337(a); or

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<sup>88</sup> Part 6 (Disciplinary proceedings), division 6 (Health Practitioners Tribunal), subdivision 2 (Procedural matters)  
Section 215 (Notice of intention to conduct hearing)

(ii) a reviewable decision mentioned in section 337(e) if the decision is that a registrant is impaired.<sup>89</sup>

(3) In conducting the hearing, the tribunal may have regard—

- (a) to any evidence or other material considered by the tribunal in making the reviewable decision; and
- (b) to any decisions, including the reasons for the decisions, made by the tribunal in making the reviewable decision.

(4) Subsection (3) does not limit the matters to which the tribunal may have regard.

### **344 Review by written submissions**

(1) If the tribunal decides to conduct the review on the basis of written submissions—

- (a) the tribunal must decide a reasonable time within which it will accept written submissions; and
- (b) the registrar must give the parties written notice that the review is to be conducted on the basis of written submissions.

(2) The notice must state the time, decided under subsection (1)(a), within which the tribunal will accept written submissions.

(3) In conducting the review, the tribunal may have regard—

- (a) to any evidence or other material considered by the tribunal in making the reviewable decision; and
- (b) to any decisions, including the reasons for the decisions, made by the tribunal in making the reviewable decision.

(4) Subsection (3) does not limit the matters to which the tribunal may have regard.

### **345 Powers of tribunal on review**

(1) After reviewing the reviewable decision, the tribunal must decide—

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<sup>89</sup> Sections 213 (Chairperson to allocate matters), 216 (Substituted service on registrant and complainant), 342 (Notice about hearing), 222 (Hearing to be held in public) and 337 (Decisions that may be reviewed)

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- (a) to confirm the reviewable decision; or
- (b) to set aside the reviewable decision; or
- (c) to change the reviewable decision in the way the tribunal considers appropriate; or
- (d) to set aside the reviewable decision and replace it with another decision.

(2) For subsection (1)(c) or (d), the tribunal may only make a decision it could have made at the time the reviewable decision was made.

(3) In making its decision under subsection (1) (the “**decision on review**”)—

- (a) if the reviewable decision is that the registrant is impaired—section 240(3) applies as if the decision on review were a decision made under section 240(1); and
- (b) otherwise—section 244 applies as if the decision on review were a decision made under section 241(2) or 243(2).<sup>90</sup>

(4) If the decision on review is a decision of a type mentioned in section 241(3), that subsection applies as if the decision on review were a decision made under section 241(2).

(5) If the decision on review is a decision under subsection (1)(c) or (d), the tribunal must also make a decision under section 242 as if the decision on review were a decision made under section 241(2).<sup>91</sup>

(6) Part 6, division 6, subdivisions 6 and 7<sup>92</sup> apply to a decision on review as if it were a decision made under section 240(1) or section 241(2) or 243(2).

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90 Sections 240 (Decision about whether ground for disciplinary action established), 241 (Decision about disciplinary action relating to registrant), 243 (Decision about disciplinary action relating to former registrant) and 244 (Matters tribunal must consider in making decision about disciplinary action)

91 Section 242 (Decision about recording disciplinary action relating to registrant)

92 Part 6 (Disciplinary proceedings), division 6 (Health Practitioners Tribunal), subdivisions 6 (Suspended decisions) and 7 (Effect of decision)

### ***Division 5—Appeals to Court of Appeal from decisions of tribunal***

#### **346 Tribunal decisions that are appealable**

Each of the following decisions of the tribunal is an appealable decision for this division—

- (a) a decision under section 240(1) about whether a ground for disciplinary action against a registrant is established;
- (b) a decision under section 241(2) or 243(2) to take disciplinary action against a registrant;
- (c) a decision under section 345.<sup>93</sup>

#### **347 Who may appeal**

The following persons may appeal to the Court of Appeal against an appealable decision—

- (a) the registrant to whom the appealable decision relates;
- (b) the registrant’s board.

#### **348 Appeal to Court of Appeal on questions of law only**

An appeal to the Court of Appeal against an appealable decision may be made only on a question of law.

#### **349 How to start an appeal**

(1) An appeal is started by—

- (a) filing a notice in the approved form (a “**notice of appeal**”) with the registrar of the Court of Appeal; and
- (b) complying with the rules of court applicable to the appeal.

(2) The notice of appeal must require the appellant to state fully the grounds for the appeal and the facts relied on.

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93 Section 345 (Powers of tribunal on review)

(3) The notice of appeal must be filed within 28 days after the day the appellant receives notice of the appealable decision.

(4) The court may, at any time, extend the period for filing a notice of appeal.

### **350 Appellant to give notice of appeal to particular persons**

(1) Within 14 days after filing the notice of appeal, the appellant must give a copy of the notice—

- (a) if the appellant is the registrant—to the registrant’s board and the commissioner; or
- (b) if the appellant is the registrant’s board—to the registrant and the commissioner.

(2) If a registrant or a board is given a copy of the notice of appeal under subsection (1), the registrant or board is the respondent for the appeal.

### **351 Stay of operation of appealable decision**

(1) If an appellant files, or has filed, a notice of appeal and makes an application to the Court of Appeal for a stay of the appealable decision to secure the effectiveness of the appeal, the court may grant the stay if it considers it appropriate.

(2) The stay may be granted on conditions the court considers appropriate and has effect for the period stated by the court.

(3) However, the period of the stay must not extend past the time when the court decides the appeal.

(4) An appeal against an appealable decision does not affect the operation or carrying out of the decision unless the decision is stayed by the court.

### **352 Hearing procedures**

The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with the directions of the Court of Appeal.

### **353 Powers of court on appeal**

(1) In deciding the appeal, the Court of Appeal may—

- (a) confirm the appealable decision; or
- (b) set aside the appealable decision; or
- (c) change the appealable decision in the way the court considers appropriate; or
- (d) send the matter back to the tribunal and give the directions the court considers appropriate; or
- (e) set aside the appealable decision and replace it with a decision the court considers appropriate.

(2) Also, the court may decide that its decision is a reviewable decision for section 337.

(3) If the court decides that its decision is a reviewable decision, it must state a period in which the decision is not reviewable under division 4.<sup>94</sup>

## **PART 10—INSPECTORS**

### *Division 1—Preliminary*

#### **354 Purpose of pt 10**

The purpose of this part is to provide for—

- (a) the function and powers of inspectors; and
- (b) the appointment of inspectors to enforce compliance with this Act.

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94 Division 4 (Review of certain tribunal decisions)



***Division 2—Inspectors’ function and powers***

**355 Function of inspector**

An inspector has the function of conducting investigations to enforce compliance with this Act.

**356 Powers of inspector**

For this Act, an inspector has the powers given to the person under this Act.

**357 Limitation on powers of inspector**

The powers of an inspector may be limited under a condition of appointment.

***Division 3—Appointment of inspectors and other matters***

**358 Who may be appointed as inspector**

(1) A board may appoint the following persons as an inspector—

- (a) a member of the board;
- (b) the executive officer;
- (c) with the agreement of the executive officer—a member of the office’s staff the board considers has the necessary expertise or experience to be an inspector;
- (d) another person the board considers has the necessary expertise or experience to be an inspector.

(2) Also, the secretary is an inspector for the purposes of this Act.

(3) A person appointed as an investigator may also be appointed as an inspector.

### **359 Inspector's appointment conditions**

(1) An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector, other than the secretary—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice of resignation given to the board.

### **360 Inspector's identity card**

(1) A board must give an identity card to each inspector the board appoints.

(2) The chief executive must give an identity card to the secretary.

(3) The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be signed by the inspector; and
- (c) identify the person as an inspector for this Act; and
- (d) include an expiry date.

(4) This section does not prevent the issue of a single identity card to a person—

- (a) if the person is appointed as an inspector for this Act by more than 1 board; or
- (b) for this Act and other Acts.

### **361 Failure to return identity card**

A person who ceases to be an inspector must give the person's identity card—

- (a) for an inspector other than the secretary—to the executive officer within 7 days after the person ceases to be an inspector, unless the person has a reasonable excuse; or

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- (b) for the secretary—to the chief executive with 7 days after the person ceases to be the secretary, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **362 Display of inspector’s identity card**

(1) An inspector may exercise a power in relation to someone else (the “**other person**”) only if the inspector—

- (a) first produces the inspector’s identity card for the other person’s inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for the other person’s inspection at the first reasonable opportunity.

### *Division 4—Particular powers of inspectors*

### **363 Power to require information**

(1) This section applies if an inspector reasonably believes—

- (a) an offence against this Act has been committed; and
- (b) a person may be able to give information about the offence.

(2) The inspector may, by written notice given to the person, require the person to give information, including a document, about the offence to the inspector at a stated reasonable time and place.

(3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—50 penalty units.

### **364 Self-incrimination**

For section 363, it is a reasonable excuse for an individual to fail to give stated information if giving the information might tend to incriminate the individual.

### **365 False or misleading information**

(1) A person must not give information to an inspector that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

(2) If the information given is a document, subsection (1) does not apply if the person, when giving the document—

- (a) informs the inspector to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the inspector if the person has, or can reasonably obtain, the correct information.

### **366 Inspection of produced document**

(1) If an inspector reasonably believes a document produced to the inspector may be relevant to an investigation being conducted by the inspector, the inspector may—

- (a) make a copy of, or take an extract from, it; or
- (b) keep the document while it is necessary for the investigation.

(2) If the inspector keeps the document, the inspector must permit a person otherwise entitled to possession of it to inspect, make a copy of, or take an extract from, the document, at the reasonable time and place decided by the inspector.

## ***Division 5—Impersonation of inspectors***

### **367 Impersonation**

A person must not pretend to be an inspector.

Maximum penalty—50 penalty units.

## **PART 11—LEGAL PROCEEDINGS**

### *Division 1—Evidence*

#### **367A Application of div 1**

This division applies to a proceeding under this Act.

#### **367B Appointments and authority**

(1) It is not necessary to prove—

- (a) a relevant person’s appointment; or
- (b) the authority of a relevant person to do anything under this Act.

(2) In this section—

“**relevant person**” means any of the following—

- (a) a member of a board or a disciplinary committee;
- (b) a member of a panel;
- (c) an assessor;
- (d) a member of a panel of assessors;
- (e) an investigator or inspector;
- (f) the executive officer or a member of the staff of the office;
- (g) the secretary or registrar;
- (h) the commissioner;
- (i) a member of a health assessment committee;
- (j) a person appointed under section 108 to conduct a health assessment.

#### **367C Signatures**

A signature purporting to be the signature of the Minister, an investigator, an inspector, the executive officer or a member of the staff of the office is evidence of the signature it purports to be.

### **367D Evidentiary provisions**

(1) A certificate purporting to be signed by the executive officer and stating any of the following matters is evidence of the matter—

- (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
  - (i) an appointment, approval or decision;
  - (ii) a notice, direction, requirement or order;
  - (iii) a record, or an extract from a record;
- (b) a stated document is an undertaking given, entered into or approved under this Act;
- (c) a stated document is a complaint made under this Act or further information given about a complaint;
- (d) a stated document is a complaint made under the *Health Rights Commission Act 1991* and referred to a board, or further information given about a complaint;
- (e) a stated document is another document kept under this Act;
- (f) a stated document is a certificate of registration;
- (g) a stated document is a register, or an extract from a register, kept under a health practitioner registration Act;
- (h) a stated document is a copy of a thing mentioned in paragraph (a), (b), (c), (d), (e), (f) or (g);
- (i) on a stated day, or during a stated period, a stated person was or was not a registrant;
- (j) on a stated day, or during a stated period, a registration—
  - (i) was or was not in force; or
  - (ii) was or was not subject to a stated condition;
- (k) on a stated day, a registration was cancelled;
- (l) on a stated day, or during a stated period, an undertaking was or was not in force;
- (m) on a stated day, or during a stated period, an appointment of a person as an investigator or inspector was, or was not, in force;

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- (n) on a stated day, a stated person was given a stated notice or direction under this Act;
- (o) on a stated day, a stated requirement was made of a stated person;
- (p) on a stated day, a code of practice or a provision of a code of practice, was, or was not, in force.

(2) A statement, in a complaint forming the basis for disciplinary proceedings under this Act, of the date on which the matter of the complaint came to the knowledge of the complainant is evidence that the matter came to the knowledge of the complainant on that date.

***Division 2—Proceedings***

**368 Indictable and summary offences**

- (1) An offence against section 389 or 391<sup>95</sup> is an indictable offence.
- (2) Any other offence against this Act is a summary offence.

**369 Proceedings for indictable offences**

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
  - (a) by way of summary proceeding under the *Justices Act 1886*; or
  - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
  - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
  - (b) the magistrate considers the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
  - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and

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95 Section 389 (Offence for taking reprisal) or 391 (False or misleading information)

- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).<sup>96</sup>

### **370 Limitation on who may summarily hear indictable offence**

(1) The proceeding must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of a person on a charge for an indictable offence; or
- (b) for an examination of witnesses for a charge for an indictable offence.

(2) However, if the proceeding is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **371 Limitation on time for starting summary proceedings**

A proceeding for a summary offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

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<sup>96</sup> *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)



### **372 Allegations of false or misleading information or documents**

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, ‘false or misleading’.

### **373 Penalties to be paid to board**

All penalties recovered as a result of proceedings for offences against this Act brought by a board must be ordered to be paid to the board.

## **PART 12—GENERAL**

### *Division 1—Codes of practice*

#### **374 Board may develop code of practice**

(1) A board may develop codes of practice, or adopt another entity’s code of practice, to provide guidance to its registrants as to appropriate professional conduct or practice.

(2) In developing or amending a code of practice, or before adopting a code of practice, the board must consult with—

- (a) the commissioner; and
- (b) community groups and other entities in the State that the board considers have an interest in consumer health issues; and
- (c) professional associations in the State that the board considers are representative of the profession for which the board is established; and
- (d) universities and training institutions that—
  - (i) are established in Queensland; and
  - (ii) are engaged in the education of students for the profession for which the board is established; and

(e) professional colleges established in Australia that the board considers are relevant to the profession for which the board is established; and

(f) any other entity the Minister directs the board to consult with.

(3) A code of practice, or an amendment of a code of practice, has no effect until it is approved by the Minister by gazette notice.

(4) The board must review its codes of practice on a regular basis.

### **375 Inspection of code etc.**

(1) The executive officer must keep copies of approved codes of practice open for inspection at the office by members of the public during ordinary office hours.

(2) Also, the board must ensure that its registrants are notified of the approval of a code of practice and any amendment of the code.

### **376 Use of code of practice in disciplinary proceedings**

(1) A code of practice developed or adopted by a board and approved under section 374 is admissible as evidence in disciplinary proceedings brought by the board against 1 of its registrants under this Act.

(2) The code may only be used to provide evidence, in the disciplinary proceedings, of appropriate professional conduct or practice for the profession.

### *Division 2—Investigations and certain disciplinary proceedings and disciplinary action*

### **377 Certain investigations not to be conducted or continued**

(1) A board may decide not to conduct or continue an investigation of a registrant if the registrant ceases to be a registrant.

(2) In making the decision, the board must have regard to the objects of this Act.

(3) A board must not conduct or continue an investigation of a former registrant who is dead or a registrant or former registrant who dies during the investigation.

### **378 Certain disciplinary proceedings not to be conducted or continued**

(1) A disciplinary body may decide not to conduct or continue disciplinary proceedings relating to a registrant if the registrant ceases to be a registrant.

(2) In making the decision, the disciplinary body must have regard to the objects of this Act.

(3) A disciplinary body must not conduct or continue disciplinary proceedings relating to a former registrant who is dead or a registrant or former registrant who dies during the proceedings.

### **379 Undertakings**

(1) Subsections (2) and (3) apply if a registrant's board intends to enter into an undertaking with the registrant under this Act.

(2) Before entering into the undertaking, the board must advise the registrant about the consequences of failing to comply with the undertaking, including, for example, that disciplinary action may be taken for a contravention of the undertaking.

(3) Also, the undertaking must state the period, not more than 3 years from the day the undertaking starts, for which it is in force.

(4) Subsection (5) applies if a registrant's board enters into an undertaking with the registrant or the tribunal requires a registrant to give the tribunal an undertaking under this Act.

(5) The registrant's board must give the commissioner a copy of the undertaking if it relates to a complaint—

- (a) made to the commissioner and referred to the board; or
- (b) made to a board by a user of the registrant's services or an entity acting on behalf of a user of the registrant's services.

### **380 Registrant must comply with conditions**

The registrant must comply with conditions imposed under this Act on the registrant's registration.

Maximum penalty—100 penalty units.

### **381 Effect of suspension**

(1) If a registrant's registration is suspended under this Act, the registrant is, during the period of the suspension, taken not to be registered under the relevant health practitioner registration Act.

(1A) Despite subsection (1), action relating to the registrant may be taken under this Act and for that purpose the registrant continues to be a registrant under the relevant health practitioner registration Act.

(2) Subject to any other decision of the tribunal, at the end of the period of suspension, the registrant is registered on the same conditions, and in the same type of registration, that applied to the registrant before the suspension of the registrant's registration.

(3) Subsection (2) is subject to—

- (a) the registrant paying the registration fee or specialist registration fee prescribed under the relevant health practitioner registration Act; and
- (b) any conditions imposed on the registrant's registration under this Act or the health practitioner registration Act.

(4) The registrant's board must, immediately after the suspension ends—

- (a) return to the registrant the registrant's certificate of registration; or
- (b) if the board does not consider it practicable to return the registrant's certificate of registration—issue another certificate of registration to the registrant to replace the certificate returned to the board.

***Division 2A—Provisions about certain registrants***

***Subdivision 1—Preliminary***

**381A Definitions for div 2A**

In this division—

**“dental prosthetist”** means a person registered under the *Dental Technicians and Dental Prosthetists Registration Act 2001* in the dental prosthetics profession.

**“dental technician”** means a person registered under the *Dental Technicians and Dental Prosthetists Registration Act 2001* in the dental technology profession.

**“general registrant”** means a person registered under a health practitioner registration Act as a general registrant.

**“relevant action”** means—

- (a) disciplinary action; or
- (b) the suspension of, or imposition of conditions on, a registrant’s registration under section 59(2); or
- (c) action taken under section 118(1)(c)(iv); or
- (d) action taken under section 276(2)(a); or
- (e) action taken under section 299(2)(a), (b) or (c).<sup>97</sup>

**“specialist registrant”** means a person registered under a health practitioner registration Act as a specialist registrant.

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<sup>97</sup> Section 59 (Immediate suspension or imposition of conditions on registration), 118 (Decision on investigation), 276 (Decision about action to be taken for impaired registrant) or 299 (Decision about action to be taken for impaired registrant)

***Subdivision 2—Provisions about registrants who are general and specialist registrants***

**381B Application of relevant action to registrants who are general and specialist registrants**

(1) This section applies if—

- (a) a registrant is registered as a general registrant and a specialist registrant in a profession; and
- (b) a disciplinary body or the Court of Appeal decides to take relevant action in relation to the registrant's registration.

(2) The disciplinary body or Court of Appeal may decide to take the relevant action in relation to either or both of the registrant's general registration or specialist registration.

(3) This section is subject to section 381C(2).

**381C Effect on specialist registration if general registration suspended or cancelled**

(1) This section applies if—

- (a) a registrant is registered as a general registrant and a specialist registrant in a profession; and
- (b) the registrant's registration as a general registrant is cancelled or suspended under an Act, other than a health practitioner registration Act.

(2) The registrant's specialist registration—

- (a) if the registrant's general registration is cancelled—is taken to be cancelled on the same day; or
- (b) if the registrant's general registration is suspended—is taken to be suspended during the period the general registration is suspended.

(3) If the cancellation or suspension of the registrant's general registration is set aside, the cancellation or suspension of the registrant's specialist registration is also set aside.

### **381D Notice to be given about change to specialist registration**

(1) This section applies if, under section 381C(2), a registrant's specialist registration is cancelled or suspended because of the cancellation or suspension of the registrant's general registration.

(2) As soon as practicable after the registrant's specialist registration is cancelled or suspended, the registrant's board must give the registrant written notice about the cancellation or suspension.

(3) The notice must—

- (a) state that there is no appeal in relation to the cancellation or suspension of the registrant's specialist registration; and
- (b) include a direction to the registrant to return the registrant's certificate of specialist registration within 14 days after the registrant's receipt of the notice.

### **381E Decision about recording suspension**

(1) This section applies if, under section 381C(2), a registrant's specialist registration is suspended because of the suspension of the registrant's general registration.

(2) The decision made about recording details of the suspension of the registrant's general registration applies in the same way to the suspension of the registrant's specialist registration.

### ***Subdivision 3—Provisions about registrants who are dental technicians and dental prosthetists***

### **381F Application of relevant action to registrants who are dental technicians and dental prosthetists**

(1) This section applies if—

- (a) a registrant is registered as a dental technician and a dental prosthetist; and
- (b) a disciplinary body or the Court of Appeal decides to take relevant action in relation to the registrant's registration.

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(2) The disciplinary body or Court of Appeal may decide to take the relevant action in relation to either or both of the registrant's registration as a dental technician or the registrant's registration as a dental prosthetist.

(3) This section is subject to section 381G(2).

**381G Effect on specialist registration if general registration suspended or cancelled**

(1) This section applies if—

- (a) a registrant is registered as a dental technician and a dental prosthetist; and
- (b) the registrant's registration as a dental technician is cancelled or suspended under an Act, other than a health practitioner registration Act.

(2) The registrant's registration as a dental prosthetist—

- (a) if the registrant's registration as a dental technician is cancelled—is taken to be cancelled on the same day; or
- (b) if the registrant's registration as a dental technician is suspended—is taken to be suspended during the period the registration as a dental technician is suspended.

(3) If the cancellation or suspension of the registrant's registration as a dental technician is set aside, the cancellation or suspension of the registrant's registration as a dental prosthetist is also set aside.

**381H Notice to be given about change to registration as dental prosthetist**

(1) This section applies if, under section 381G(2), a registrant's registration as a dental prosthetist is cancelled or suspended because of the cancellation or suspension of the registrant's registration as a dental technician.

(2) As soon as practicable after the registrant's registration as a dental prosthetist is cancelled or suspended, the registrant's board must give the registrant written notice about the cancellation or suspension.

(3) The notice must—



- (a) state that there is no appeal in relation to the cancellation or suspension of the registration as a dental prosthetist; and
- (b) include a direction to the registrant to return the registrant's certificate of registration as a dental prosthetist within 14 days after the registrant's receipt of the notice.

### **381I Decision about recording suspension**

(1) This section applies if, under section 381G(2), a registrant's registration as a dental prosthetist is suspended because of the suspension of the registrant's registration as a dental technician.

(2) The decision made about recording details of the suspension of the registrant's registration as a dental technician applies in the same way to the suspension of the registrant's registration as a dental prosthetist.

### ***Division 2B—Certificates of registration***

### **381J Return of certificate of registration to board if registration suspended or cancelled**

(1) This section applies if, under this Act, a registrant's registration is suspended or cancelled.

(2) The registrant must return the registrant's certificate of registration to the registrant's board within 14 days after receiving notice about the suspension or cancellation, unless the registrant has a reasonable excuse.

Maximum penalty—10 penalty units.

### **381K Amendment or replacement of certificate of registration**

(1) This section applies if, under this Act—

- (a) conditions are imposed on, or removed from, a registrant's registration; or
- (b) a board or the tribunal enters into an undertaking with a registrant; or
- (c) an undertaking entered into by a registrant with the registrant's board or the tribunal ends.

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(2) The registrant must return the certificate of registration to the registrant's board within 14 days after the action mentioned in subsection (1) takes effect, unless the registrant has a reasonable excuse.

Maximum penalty—10 penalty units.

(3) On receiving the certificate, the board must—

- (a) amend the certificate in an appropriate way and return the amended certificate to the registrant; or
- (b) if the board does not consider it practicable to amend the certificate—issue another certificate of registration to the registrant to replace the certificate returned to the board.

*Division 3—Giving information and notices*

**382 Board member or executive officer may give chief executive certain information**

(1) This section applies if, in performing functions under this Act, a board member or the executive officer acquires information about a person that is relevant to whether the person is a suitable person to hold, or to continue to hold, an authority or approval under the *Health (Drugs and Poisons) Regulation 1996*.

(2) The board member or executive officer may disclose the information to the chief executive.

**383 Board to give notice to commissioner at end of dealing with complaint**

(1) This section applies if—

- (a) a complaint about a registrant is being dealt with by the registrant's board or a disciplinary body under this Act; and

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- (b) the commissioner has, under the *Health Rights Commission Act 1991*, section 74(6), 77(3) or 85(8), advised the registrant's board that the commissioner intends to conciliate, or continue to conciliate, the complaint.

(2) As soon as practicable after the complaint has finished being dealt with under this Act, the registrant's board must give the commissioner notice that no further action is to be taken about the complaint under this Act.

### **384 Board may notify other entities**

(1) This section applies if—

- (a) a registrant's board suspends, or imposes conditions on, the registrant's registration under section 59(2); or
- (b) a registrant's board enters into an undertaking with the registrant under section 118(1)(c)(iv), 276(2)(a) or 299(2)(c); or
- (c) a registrant's board takes action relating to the registrant under section 299(2)(a) or (b); or
- (d) a registrant's registration is affected under the foreign law part by a decision of the registrant's board; or
- (e) a registrant's registration is affected under the review and appeal part by a decision of a panel, the tribunal or the Court of Appeal.<sup>98</sup>

(2) As soon as practicable after the event in subsection (1) happens, the board must give notice about it to interstate regulatory authorities with which the board is aware the registrant is registered.

(3) Also, the board may give notice about the event to any of the following—

- (a) the chief executive;
- (b) foreign regulatory authorities;
- (c) professional colleges of which the registrant is eligible to be a member;

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<sup>98</sup> Section 59 (Immediate suspension or imposition of conditions on registration), 118 (Decision on investigation), 276 (Decision about action to be taken for impaired registrant) or 299 (Decision about action to be taken for impaired registrant)

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- (d) professional associations of which the registrant is eligible to be a member;
- (e) an employer of the registrant;
- (f) the Health Insurance Commission;
- (g) the Minister;
- (h) any other entity relevant to the registrant's practice as a registrant.

(4) However, the board must not give a notice about the event to an entity under subsection (3) unless the board reasonably believes that—

- (a) the entity needs to know about the event; and
- (b) giving the entity notice about the event will assist in achieving the objects of this Act.

(5) A notice under this section may include the information the board considers appropriate in the circumstances.

### **385 Court or coroner may notify board**

(1) This section applies if—

- (a) a registrant is convicted by a court of an indictable offence; or
- (b) a coroner makes a finding about a matter relevant to a registrant's practice as a registrant.

(2) The registrar or other appropriate officer of the court may give a certificate of conviction to the registrant's board.

(3) The coroner may give a transcript of evidence before the coroner, and the coroner's findings about the matter, to the registrant's board.

### **385A Registrant to give notice of certain convictions to board**

(1) This section applies if a registrant—

- (a) is convicted of an indictable offence; or
- (b) is convicted of an offence against a corresponding law.

(2) The registrant must, within 30 days after the conviction, give the registrant's board notice of the conviction.

Maximum penalty—50 penalty units.

(3) The notice must be in the approved form.

(4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.

### **385B Registrant to give board notice of certain judgments and settlements**

(1) This section applies if—

- (a) a registrant is a party to proceedings in a court, brought by another party against the registrant, claiming damages or other compensation for alleged negligence by the registrant in the practice of the registrant's profession; and
- (b) there is—
  - (i) a judgment in relation to the proceedings; or
  - (ii) a settlement of the proceedings, or part of the proceedings.

(2) The registrant must give the registrant's board notice of the judgment or settlement within 30 days after the date of the judgment or settlement.

Maximum penalty—50 penalty units.

(3) The notice must be in the approved form.

(4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.

(5) To remove doubt, it is declared that subsections (2) and (3) apply despite any agreement entered into by the parties to the settlement.

(6) Subsection (2) does not apply to a settlement of proceedings under an agreement reached in conciliation under the *Health Rights Commission Act 1991*, part 6<sup>99</sup> or a relevant interstate law.

(7) In this section—

**“relevant interstate law”** means a law of another State that provides for the same matter as the *Health Rights Commission Act 1991*, part 6.

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99 *Health Rights Commission Act 1991*, part 6 (Conciliation)

### **385C Registrant to give board notice about certain events**

(1) This section applies if—

- (a) a person is registered under a health practitioner registration Act and is also registered, licensed or certified under a corresponding law to practise the same profession; and
- (b) after the registrant is registered under the health practitioner registration Act, the registrant's registration, licence or certification under the corresponding law is affected by disciplinary action or is otherwise cancelled, suspended or made subject to a condition or undertaking (the “**relevant action**”).

(2) The registrant must, within 30 days after the registration, licence or certification is affected by the relevant action, give the registrant's board notice about the relevant action.

Maximum penalty—50 penalty units.

(3) The notice must be in the approved form.

(4) Information in the notice must, if the approved form requires, be verified by a statutory declaration.

### ***Division 4—Protections***

### **386 Protection of members, legal representatives and witnesses etc.**

(1) A tribunal member has, in the performance of his or her duties for the tribunal, the same protection and immunity as a District Court judge performing the functions of a judge.

(2) Members of a panel have, in the performance of their duties as members, the same protection and immunity as a District Court judge performing the functions of a judge.

(3) Members of a board have, in the performance of their duties in carrying out disciplinary proceedings, the same protection and immunity as a District Court judge performing the functions of a judge.

(4) An assessor assisting the tribunal has, in the performance of the assessor's duties for the tribunal, the same protection and immunity as a District Court judge performing the functions of a judge.

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(5) A party appearing before the tribunal, a panel or a board has the same protection and immunity as the party would have if the proceedings were being heard before the District Court.

(6) A person appearing before the tribunal, a panel or a board as a witness, has the same protection and immunity as a witness attending before the District Court.

(7) In this section—

“**party**” includes a party’s lawyer or agent.

### **386A Protection of officials from liability**

(1) An official is not civilly liable for an act done or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to—

- (a) for an official who is a member of a board—the board of which the official is a member; or
- (b) for an official who is a member of a health assessment committee or who is asked to prepare an assessment report or expert’s report—the board that appointed the official or asked the official to prepare a report; or
- (c) for an official who is an investigator or inspector—the board that appointed the official; or
- (d) for an official who is a person acting under the direction or authority of an investigator—the board that appointed the investigator; or
- (e) for an official who is the executive officer—the board on whose behalf the official is acting.

(3) In this section—

“**official**” means—

- (a) a member of a board, other than when the member is performing the member’s duties in carrying out disciplinary proceedings; or
- (b) a member of a health assessment committee; or

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- (c) a person who is asked by a board to prepare an assessment report or an expert's report; or
- (d) an investigator; or
- (e) an inspector; or
- (f) a person acting under the direction or authority of an investigator; or
- (g) the executive officer.

**387 Protection for person making complaint or otherwise giving information**

(1) This section applies to a person who, honestly and on reasonable grounds, gives information to a relevant entity—

- (a) for the purpose of making a complaint relating to a registrant; or
- (b) in the course of an investigation; or
- (c) for another purpose under this Act.

(2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.

(3) Without limiting subsection (2)—

- (a) in a proceeding for defamation the person has a defence of absolute privilege for publishing the information; and
- (b) if the person would otherwise be required to maintain confidentiality about the given information under an Act, oath, rule of law or practice, the person—
  - (i) does not contravene the Act, oath, rule of law or practice by giving the information; and
  - (ii) is not liable to disciplinary action for giving the information.

(4) In this section—

**“relevant entity”** means 1 of the following—

- (a) a board;
- (b) a panel;
- (c) the tribunal;



- (d) an investigator;
- (e) an investigation committee;
- (f) a disciplinary committee;
- (g) a health assessment committee;
- (h) an inspector.

### **388 Reprisal and grounds for reprisals**

(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, anybody—

- (a) has made, or may make, a complaint to a board relating to a registrant; or
- (b) has provided, or may provide, assistance to a board, a disciplinary committee, a health assessment committee, an inspector, an investigator, an investigation committee, a panel or the tribunal.

(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

### **389 Offence for taking reprisal**

A person who takes a reprisal commits an offence.

Maximum penalty—167 penalty units or 2 years imprisonment.

### **390 Damages entitlement for reprisal**

(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to any person who suffers detriment as a result.

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(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.

(3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

***Division 5—False or misleading information and confidentiality***

**391 False or misleading information**

A person commits an offence if the person—

- (a) makes a statement to a board with the intent that it be acted on as a complaint under this Act or with the intent that it be acted on under section 63;<sup>100</sup> and
- (b) in the statement, or in the course of an investigation into the statement, intentionally gives information that is false or misleading in a material particular to the board or an investigation committee or investigator.

Maximum penalty—167 penalty units or 2 years imprisonment.

**392 Confidentiality**

(1) This section applies to a relevant person who, in performing functions under this Act, acquires or acquired information about another person's affairs.

(2) The relevant person must not disclose the information to anyone else.

Maximum penalty—100 penalty units.

(3) However, the relevant person may disclose the information to someone else—

- (a) to the extent necessary to perform the person's functions under or relating to this Act or a health practitioner registration Act; or
- (b) if the disclosure is to a disciplinary body; or

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<sup>100</sup> Section 63 (When investigation of registrant may be conducted on board's initiative)

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- (ba) if the disclosure is to a foreign regulatory authority and the disclosure is necessary for the authority to perform its functions; or
- (c) if the disclosure is authorised under this Act or another Act; or
- (d) if the disclosure is otherwise required or permitted by law; or
- (e) if the person to whom the information relates agrees to the disclosure; or
- (f) if the disclosure is in a form that does not disclose the identity of a person; or
- (g) if the information relates to disciplinary proceedings before the tribunal and the proceedings are or were open to the public; or
- (h) if the information is, or has been, accessible to the public, including, for example, because it is or was recorded in a board's register; or
- (i) if the disclosure is to the Minister to allow the Minister to act under paragraph (j); or
- (j) if the Minister considers the disclosure is in the public interest and authorises the person to disclose the information.

(4) If the Minister authorises information to be disclosed under subsection (3)(j) about a matter concerning a registrant, the Minister must inform the registrant's board of the authorisation and its purpose.

(5) In this section—

**“relevant person”** means a person who is or was—

- (a) a member of a board; or
- (b) a member of a panel; or
- (c) a member of the tribunal; or
- (d) an assessor; or
- (e) a member of a panel of assessors; or
- (f) an investigator; or
- (g) asked by a board to prepare an assessment report or expert's report; or
- (h) an inspector; or

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- (i) the executive officer, a member of the office’s staff, the secretary or the registrar; or
- (j) a member of a health assessment committee; or
- (ja) an external assessor; or
- (k) otherwise involved in the administration of this Act.

### **393 Board’s annual report must disclose authorisation**

(1) This section applies if a board is given information under section 392(4) in a financial year about an authorisation.

(2) The board must include a statement about the authorisation in its annual report under the *Financial Administration and Audit Act 1977* for the financial year.

(3) The statement must include general details about—

- (a) the nature of the information disclosed under the authorisation; and
- (b) the purpose for which the information was disclosed.

(4) However, the statement must not identify any person.

### *Division 6—Miscellaneous*

### **394 Board etc. may give combined notice**

(1) This section applies if a board or the secretary or registrar is required under this Act to give a person notices under more than 1 provision.

(2) The board, secretary or registrar may give the person a combined notice for the provisions.

### **395 Notices if complainant has not revealed identity**

(1) This section applies if—

- (a) a provision of this Act requires a board or disciplinary committee or the secretary or registrar (the “**relevant person**”) to give a complainant notice of a matter; and

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(b) the complainant, when making the complaint—

- (i) does not identify himself or herself; or
- (ii) does not provide the complainant's address.

(2) If the complainant does not identify himself or herself, the relevant person is not required to give the complainant the notice.

(3) If the complainant does not provide the complainant's address, the relevant person is not required to give the complainant the notice if, after making reasonable inquiries, the relevant person can not find the complainant.

(4) Subsection (3) does not require the relevant person to make inquiries if it would be unreasonable to make inquiries to find the complainant.

### **397 Forms**

(1) The chairperson of the tribunal may approve forms for use by the tribunal under this Act.

(2) The secretary may approve forms for use by panels under this Act.

(3) A board may approve forms for use, under this Act, in relation to the board.

### **398 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may be made about the practice and procedures of a panel.

## PART 13—TRANSITIONAL PROVISIONS

### *Division 1—Provisions for Health Practitioners (Professional Standards) Act 1999*

#### **399 Definitions for pt 13**

In this part—

**“commencement day”** means the day this part commences.

**“health practitioner registration Act”** means a health practitioner registration Act within the meaning of this Act on the commencement day.

#### **400 Existing complaints and disciplinary proceedings**

(1) Subsection (2) applies to the following matters—

- (a) a complaint made under a health practitioner registration Act but not finally dealt with before the commencement day;
- (b) a matter referred to, or being heard by, the Medical Assessment Tribunal but not finally dealt with before the commencement day;
- (c) an inquiry being conducted by a board but not completed before the commencement day;
- (d) an appeal from a decision of a board or the Medical Assessment Tribunal under a health practitioner registration Act that has been started but not completed before the commencement day;
- (e) an application for review made under the *Medical Act 1939*, section 32 but not finally dealt with before the commencement day;
- (f) any other investigation or other proceeding relating to the disciplining of a registrant started under a health practitioner registration Act but not completed before the commencement day.

(2) Each matter may continue to be dealt with, and any appeal relating to the matter may be dealt with, under the relevant health practitioner registration Act as if this Act, including part 14,<sup>101</sup> had not commenced.

(3) If, immediately before the commencement day, a person had a right of appeal under a health practitioner registration Act, the person's right continues as if this Act, including part 14, had not commenced.

#### **401 Complaints or other information known to boards after commencement day**

(1) This section applies if—

- (a) after the commencement day a registrant's board receives a complaint or other information about an aspect of the registrant's conduct or practice or another matter relating to the registrant; and
- (b) the subject matter of the complaint or other information happened before the commencement day.

(2) The board may take action in relation to the aspect or matter under this Act.

(3) However, the board may not take the action unless the board could have taken action relating to the aspect or matter under the health practitioner registration Act under which the board is established.

(4) In deciding whether subsection (3) applies, the health practitioner registration Act applies as if part 14 had not commenced.

#### **402 Things to establish pattern of conduct or practice**

(1) In deciding whether there is a pattern of conduct or practice relating to a registrant, the registrant's board may take into consideration anything relating to the registrant's conduct or practice of which the board was aware, because of a complaint or otherwise, before the commencement day (the "**previous thing**").

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101 Part 14, at the time when section 400 commenced, provided for consequential and other amendments of Acts relating to health practitioners. That part 14 has been omitted.

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(2) However, the board may not consider the previous thing unless the board could have started proceedings for disciplining the registrant for the previous thing under the health practitioner registration Act under which the board is established.

### **403 Saving of existing orders made by boards or Medical Assessment Tribunal**

(1) If, immediately before the commencement day, a registrant's registration was subject to a final order, the order continues to have effect as if it were an order or decision by the tribunal under this Act.

(2) If a final order is made under section 400 after the commencement day, the final order has effect as if it were a decision or order by the tribunal under this Act.

(3) A person can not appeal under this Act against a final order that has effect as if it were an order or decision by the tribunal.

(3A) If a final order mentioned in subsection (1) or (2) was an order or decision of the Medical Assessment Tribunal imposing conditions on a registrant's registration, the order may be reviewed under part 9, division 4, as if the final order were a decision made by the Health Practitioners Tribunal under section 241(2)(b) to impose conditions on the registrant's registration.

(3B) If a final order mentioned in subsection (1) or (2) was an order made under the *Medical Act 1939*, section 30K, imposing conditions on a registrant's registration—

- (a) for an order imposing conditions relating to a registrant's competency to practise because of an impairment—the registrant may give the registrant's board a notice under section 306 to arrange a further health assessment of the registrant as if the conditions had been imposed under section 299(2) and the period during which the registrant may not ask for a further assessment had ended; or
- (b) for another order—the order may be reviewed under part 9, division 2, as if the order were a decision made by a panel under section 201(2)(b) to impose conditions on the registrant's registration.

(4) In this section—



**“final order”** means—

- (a) if an order of a board at the end of an inquiry conducted by the board, or an order or decision of the Medical Assessment Tribunal, is affected by an order of a court on appeal—the order of the court; or
- (b) otherwise—an order of a board at the end of an inquiry or an order or decision of the Medical Assessment Tribunal.

#### **404 Records of Medical Assessment Tribunal transferred to Health Practitioners Tribunal**

(1) As soon as practicable after the commencement day, all records of the Medical Assessment Tribunal held by the registrar of that tribunal immediately before that day must be given to the registrar of the Health Practitioners Tribunal to hold for that tribunal.

(2) The records given to the registrar under subsection (1) are taken to be acquired by the registrar in the performance of the registrar’s functions under this Act.

#### ***Division 2—Provisions for Health Practitioners Legislation Amendment Act 2001***

#### **405 Transitional provision about health practitioner registration Act**

For the purpose of this Act continuing to apply—

- (a) to a person who was registered under a repealed health practitioner registration Act and who, on the repeal of that Act, continued to be a registrant under this Act; or
- (b) in relation to something done or omitted by the person before the repeal of the repealed Act;

a reference in this Act to a registrant or a health practitioner registration Act is taken to include a reference to the person or the repealed Act.

## **PART 14—VALIDATION PROVISION**

### **406 Validation of certain tribunal decisions**

(1) This section applies if, before the commencement of this section—

- (a) the tribunal made a decision under section 241 in relation to a person; and
- (b) at the time the decision was made the person was taken under section 381(1) not to be registered under the relevant health practitioner registration Act.

(2) The tribunal's decision is taken to have been validly made, and to continue to have effect, to the same extent as if section 381(1A) were in force at all relevant times.

## SCHEDULE

### DICTIONARY

section 3

**“approved form”** means—

- (a) for a panel—a form approved by the secretary under section 397(2); or
- (b) for the tribunal—a form approved by the chairperson of the tribunal under section 397(1); or
- (c) for a board—a form approved by the board under section 397(3).

**“assessment report”** means—

- (a) for part 5, division 5, subdivision 7—see section 109; or
- (b) for part 7, division 2, subdivision 2—see section 273; or
- (c) for part 7, division 3, subdivision 3—see section 296.

**“assessor”** means a person chosen, under section 31 or 228, by the registrar from a panel of assessors to assist the tribunal.

**“attendance notice”** means—

- (a) for the board or a disciplinary committee—see section 143; or
- (b) for a panel—see section 186; or
- (c) for the tribunal—see section 229.

**“board”** means a board established under a health practitioner registration Act.

**“board’s nominee”** see section 182(1).

**“certificate of registration”** means a certificate of registration issued under a health practitioner registration Act.

**“certificate of specialist registration”** means a certificate of specialist registration issued under a health practitioner registration Act.

SCHEDULE (continued)

**“chairperson”**, of a board, means the chairperson of the board appointed under the health practitioner registration Act that establishes the board.

**“code of practice”** means a code of practice approved by the Minister under section 374(3).

**“commissioner”** means the Health Rights Commissioner appointed under the *Health Rights Commission Act 1991*, section 9.<sup>102</sup>

**“complainant”** means—

- (a) a person or other entity who makes a complaint under this Act; or
- (b) a person or other entity who makes a complaint under the *Health Rights Commission Act 1991* that is referred to a board by the commissioner.

**“complaints part”** means part 3.

**“constituting member”**, in relation to the tribunal, means the member constituting the tribunal under section 213(2).

**“convicted”**, for an offence, includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

**“copy”**, of a report, includes a reproduction and duplicate.

**“corresponding law”** means a law applying in another State, the Commonwealth or a foreign country that provides for the same matter as this Act or a health practitioner registration Act.

**“current matter”** see section 249(1)(a).

**“detriment”** includes—

- (a) personal injury or prejudice to safety; and
- (b) property damage or loss; and
- (c) intimidation or harassment; and
- (d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and
- (e) threats of detriment; and

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<sup>102</sup> *Health Rights Commission Act 1991*, section 9 (Appointment of commissioner)

SCHEDULE (continued)

(f) financial loss from detriment.

**“disciplinary action”**, for a registrant, means any action that a disciplinary body may take at the end of disciplinary proceedings and includes a decision that a disciplinary body may make at the end of disciplinary proceedings relating to a person who was a registrant but is not registered at the time of the decision.

**“disciplinary body”** means—

- (a) a board; or
- (b) a disciplinary committee; or
- (c) a panel; or
- (d) the tribunal.

**“disciplinary committee”** see section 128(1)(b).

**“disciplinary matter”** means a matter—

- (a) that may provide a ground for disciplinary action to be taken against a registrant under the disciplinary proceedings part; or
- (b) that is the subject of a review or appeal under the review and appeal part.

**“disciplinary proceedings”** means proceedings conducted by—

- (a) a disciplinary body under the disciplinary proceedings part; or
- (b) a review panel or the tribunal under the review and appeal part.

**“disciplinary proceedings part”** means part 6.

**“entity acting on behalf of a user”** means—

- (a) an entity chosen by the user to act on the user’s behalf; or
- (b) if it would be difficult or impossible for the user to choose an entity to act on the user’s behalf—an entity that has a sufficient interest in the health or welfare of the user.

**“executive officer”** means the executive officer appointed under the *Health Practitioner Registration Boards (Administration) Act 1999*.

**“expert’s report”** see section 111(1).

**“external assessment”** see section 288(1)(b).

SCHEDULE (continued)

**“external assessment report”** see section 295A(1).

**“external assessor”** see section 288(1)(b).

**“facsimile warrant”** see section 86(4).

**“foreign disciplinary body”** means an entity established under the law applying in another State or a foreign country having functions similar to the functions of a disciplinary body.

**“foreign law”**, for part 8, see section 310.

**“foreign law part”** means part 8.

**“foreign regulatory authority”** means—

- (a) an interstate regulatory authority; or
- (b) an entity established under the law applying in a foreign country, other than New Zealand, having functions similar to the functions of a board under this Act or the health practitioner registration Act under which the board is established.

**“further assessment”** see section 305(2)(a).

**“ground for disciplinary action”** means a ground mentioned in section 124.

**“health assessment”**, in relation to a registrant, includes—

- (a) a physical, medical, psychiatric or psychological examination or test of the registrant; and
- (b) asking questions for assessing whether the registrant is impaired.

**“health assessment committee”** means a committee established under section 282 to conduct a health assessment of a registrant.

**“Health Insurance Commission”** means the Health Insurance Commission established under the *Health Insurance Commission Act 1973* (Cwlth), section 4.<sup>103</sup>

**“health practitioner registration Act”** means any 1 of the following Acts—

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<sup>103</sup> *Health Insurance Commission Act 1973* (Cwlth), section 4 (Establishment of Health Insurance Commission)

SCHEDULE (continued)

- *Chiropractors Registration Act 2001*
- *Dental Practitioners Registration Act 2001*
- *Dental Technicians and Dental Prosthetists Registration Act 2001*
- *Medical Practitioners Registration Act 2001*
- *Medical Radiation Technologists Registration Act 2001*
- *Occupational Therapists Registration Act 2001*
- *Optometrists Registration Act 2001*
- *Osteopaths Registration Act 2001*
- *Pharmacists Registration Act 2001*
- *Physiotherapists Registration Act 2001*
- *Podiatrists Registration Act 2001*
- *Psychologists Registration Act 2001*
- *Speech Pathologists Registration Act 2001.*

**“Health Practitioners Tribunal”** means the tribunal established under section 26.

**“health professions”** means the professions regulated under the health practitioner registration Acts.

**“health service provider”** means any of the following—

- acupuncturist
- ambulance officer
- audiologist
- audiometrist
- child guidance therapist
- dental hygienist or school dental therapist
- dietitian
- medical imaging technologist, nuclear medicine technologist or radiation therapist

## SCHEDULE (continued)

- naturopath
- nurse
- optical dispenser
- orthoptist
- psychotherapist
- social worker engaged in the provision of a health service
- therapeutic counsellor
- traditional chinese medicine practitioner.

**“hearing notice”** means—

- (a) for part 6, division 4, subdivision 2—see section 131; or
- (b) for part 6, division 5, subdivision 2—see section 174; or
- (c) for part 6, division 6, subdivision 2—see section 215.

**“immediate suspension part”** means part 4.

**“impairment”**, of a registrant, means the registrant has a physical or mental impairment, disability, condition or disorder that detrimentally affects, or is likely to detrimentally affect, the registrant’s physical or mental capacity to perform the registrant’s profession and includes substance abuse or dependence.

**“impairment part”** means part 7.

**“impose”** a condition, includes change the condition.

**“inspection part”** means part 10.

**“inspector”** means a person appointed as an inspector under section 358(1) or is an inspector under section 358(2).

**“interstate regulatory authority”** means an entity established under the law of another State or New Zealand having functions similar to the functions of a board under this Act or the health practitioner registration Act under which it is established.

**“investigation committee”** means a committee established under section 64(1)(a).

**“investigation part”** means part 5.



SCHEDULE (continued)

**“investigator”** means a person appointed as an investigator under section 73.

**“Medical Assessment Tribunal”** means the tribunal under the *Medical Act 1939* as in force before the commencement of section 26.

**“notice of appeal”** means—

- (a) for part 9, division 3—see section 327(1); or
- (b) for part 9, division 5—see section 349(1)(a).

**“notice of review”** means—

- (a) for part 9, division 2—see section 317(1); or
- (b) for part 9, division 3—see section 339(1).

**“nurse”** see *Nursing Act 1992*, section 4.<sup>104</sup>

**“office”** means the Office of Health Practitioner Registration Boards established under the *Health Practitioner Registration Boards (Administration) Act 1999*.

**“original panel”** see section 319(3).

**“panel”** means a professional conduct review panel.

**“panels of assessors”** means both of the following—

- (a) the professional panels of assessors;
- (b) the public panel of assessors.

**“place”** includes premises and vacant land.

**“place of seizure”** see section 93(a).

**“preliminary report”** see section 114(1).

**“premises”** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) land where a building or other structure is situated; and

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<sup>104</sup> *Nursing Act 1992*, section 4—

**“nurse”** means a registered or enrolled nurse.

SCHEDULE (continued)

(d) a vehicle.

**“profession”**, for a registrant, means the following—

- (a) for a registrant registered under the *Chiropractors Registration Act 2001*—the chiropractic profession;
- (b) for a registrant registered under the *Dental Practitioners Registration Act 2001*—the dental profession;
- (c) for a registrant who is a dental prosthetist under the *Dental Technicians and Dental Prosthetists Registration Act 2001*—the dental prosthetics profession;
- (d) for a registrant who is a dental technician under the *Dental Technicians and Dental Prosthetists Registration Act 2001*—the dental technology profession;
- (e) for a registrant registered under the *Medical Practitioners Registration Act 2001*—the medical profession;
- (ea) for a registrant registered under the *Medical Radiation Technologists Registration Act 2001*—the medical imaging technology profession, nuclear medicine technology profession or radiation therapy profession;
- (f) for a registrant registered under the *Occupational Therapists Registration Act 2001*—the occupational therapy profession;
- (g) for a registrant registered under the *Optometrists Registration Act 2001*—the optometry profession;
- (ga) for a registrant registered under the *Osteopaths Registration Act 2001*—the osteopathic profession;
- (h) for a registrant registered under the *Pharmacists Registration Act 2001*—the pharmacy profession;
- (i) for a registrant registered under the *Physiotherapists Registration Act 2001*—the physiotherapy profession;
- (j) for a registrant registered under the *Podiatrists Registration Act 2001*—the podiatry profession;
- (k) for a registrant registered under the *Psychologists Registration Act 2001*—the psychology profession;

SCHEDULE (continued)

(1) for a registrant registered under the *Speech Pathologists Registration Act 2001*—the speech pathology profession.

**“professional conduct review panel”** means a professional conduct review panel established under section 15.

**“professional panel of assessors”** means a panel of assessors mentioned in section 39(b).

**“proposed action”** see section 311(2)(a).

**“public panel of assessors”** means the panel of assessors mentioned in section 39(a).

**“reasonably”** means on grounds that are reasonable in the circumstances.

**“referral notice”** see section 126(2).

**“register”**, of a board, means a register kept by the board under the health practitioner registration Act under which the board is established.

**“registered”** means registered under a health practitioner registration Act.

**“registrant”** means a person registered under a health practitioner registration Act.

**“registrant’s board”**, for a registrant, means the board established under the health practitioner registration Act under which the registrant is registered.

**“registrar”** means the registrar of the tribunal.

**“relevant professional panel of assessors”**, for a registrant, means the professional panel of assessors consisting of members of the registrant’s profession.

**“repealed health practitioner registration Act”** means any of the following Acts after the Act is repealed—

- *Chiropractors and Osteopaths Act 1979*
- *Dental Act 1971*
- *Dental Technicians and Dental Prosthetists Act 1991*
- *Medical Act 1939*
- *Occupational Therapists Act 1979*
- *Optometrists Act 1974*

SCHEDULE (continued)

- *Pharmacy Act 1976*
- *Physiotherapists Act 1964*
- *Podiatrists Act 1969*
- *Psychologists Act 1977*
- *Speech Pathologists Act 1979.*

**“reprisal”** see section 388.

**“reviewable decision”** see section 337.

**“review and appeal part”** means part 9.

**“review panel”** see section 319(1).

**“secretary”** means the person appointed under section 23(1).

**“suspected matter”** see section 268(1).

**“suspended decision”** see section 247(4).

**“tribunal”** means the Health Practitioners Tribunal.

**“tribunal member”** means a member of the tribunal under section 27(1).

**“unsatisfactory professional conduct”**, for a registrant, includes the following—

- (a) professional conduct that is of a lesser standard than that which might reasonably be expected of the registrant by the public or the registrant’s professional peers;
- (b) professional conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgment or care, in the practise of the registrant’s profession;
- (c) infamous conduct in a professional respect;
- (d) misconduct in a professional respect;
- (e) conduct discreditable to the registrant’s profession;
- (f) providing a person with health services of a kind that are excessive, unnecessary or not reasonably required for the person’s wellbeing;
- (g) influencing, or attempting to influence, the conduct of another registrant in a way that may compromise patient care;

## SCHEDULE (continued)

- (h) fraudulent or dishonest behaviour in the practise of the registrant's profession;
- (i) other improper or unethical conduct.

**“user”**, of a service provided by a registrant, includes a person who used the service.

**“warrant form”** see section 86(5)(b).

**“wellbeing of vulnerable persons”**, in relation to a registrant, means the life, physical or psychological health, safety or welfare of anyone, including the following—

- (a) users of the registrant's services;
- (b) any other class of persons that may be affected by the registrant;
- (c) the registrant.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 22 October 2003. Future amendments of the Health Practitioners (Professional Standards) Act 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Health Practitioners (Professional Standards)  
Act 1999*

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### 3 Key

**Key to abbreviations in list of legislation and annotations**

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	7 February 2000	7 February 2000
1A	to 2000 Act No. 46	25 October 2000	7 November 2000
1B	to 2001 Act No. 16	20 August 2001	31 August 2001
1C	to 2001 Act No. 78	15 November 2001	29 November 2001
1D	to 2001 Act No. 78	1 January 2002	14 January 2002
1E	to 2001 Act No. 78	1 February 2002	8 February 2002
1F	to 2001 Act No. 78	1 March 2002	7 March 2002
1G	to 2001 Act No. 78	1 May 2002	1 May 2002
1H	to 2001 Act No. 78	12 May 2002	24 May 2002
			(Column discontinued)
			Notes
1I	to 2003 Act No. 9	28 March 2003	R1I withdrawn, see R2
2	to 2003 Act No. 9	28 March 2003	
2A	to 2003 Act No. 68	22 October 2003	

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1, 2

## 6 List of legislation

### **Health Practitioners (Professional Standards) Act 1999 No. 58**

date of assent 18 November 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 7 February 2000 (1999 SL No. 327)

amending legislation—

### **Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

### **Chiropractors Registration Act 2001 No. 3 ss 1–2, 241 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 73)

### **Dental Practitioners Registration Act 2001 No. 4 ss 1–2, 267 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 258)

### **Dental Technicians and Dental Prosthetists Registration Act 2001 No. 5 ss 1–2, 247 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 74)

### **Health Practitioners Legislation Amendment Act 2001 No. 6 pts 1, 3**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

ss 6, 9–15, 17–22, 24(2), 25 (other than to the extent it ins new pt 12 div 2A), 26–28, 30, 32, 34(2) (other than to the extent it ins new defs “certificate of specialist registration”, “chairperson” and “repealed health practitioner registration Act”), 34(3)–(5) commenced 20 August 2001 (2001 SL No. 140)

ss 8, 23, 24(1), 25 (to the extent it ins new pt 12, div 2A, sdivs 1 hdgs, s 381A defs “general registrant”, “relevant action”, “special registrant” and sdiv 2), 31, 33, 34(1), 34(2) (to the extent it is not in force) commenced 1 January 2002 (2001 SL No. 257)

remaining provisions commenced 1 May 2002 (2002 SL No. 78)



*Health Practitioners (Professional Standards)  
Act 1999*

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**Medical Practitioners Registration Act 2001 No. 7 ss 1–2, 302 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

sch 2, amdt 1 commenced 12 May 2002 (automatic commencement under AIA s 15DA(2) (amdt could not be given effect))

remaining provisions commenced 1 March 2002 (2002 SL No. 30)

**Medical Radiation Technologists Registration Act 2001 No. 8 ss 1–2, 237 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 12 May 2002 (automatic commencement under AIA s 15DA(2))

**Occupational Therapists Registration Act 2001 No. 9 ss 1–2, 239 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 259)

**Optometrists Registration Act 2001 No. 10 ss 1–2, 237 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 260)

**Pharmacists Registration Act 2001 No. 12 ss 1–2, 245 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 261)

**Physiotherapists Registration Act 2001 No. 13 ss 1–2, 242 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 262)

**Podiatrists Registration Act 2001 No. 14 ss 1–2, 238 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 76)

**Psychologists Registration Act 2001 No. 15 ss 1–2, 255 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 2002 (2002 SL No. 77)

**Speech Pathologists Registration Act 2001 No. 16 ss 1–2, 236 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2002 (2001 SL No. 263)

**Health Legislation Amendment Act 2001 No. 78 s 1 pt 7**

date of assent 15 November 2001

commenced on date of assent

**Health and Other Legislation Amendment Act 2003 No. 9 s 1, pt 4, s 67 sch**

date of assent 28 March 2003

commenced on date of assent

**Health Legislation Amendment Act 2003 No. 68 ss 1, 2(1)(a), pt 6**

date of assent 22 October 2003

ss 1–2 commenced on date of assent

ss 42–44, 48 not yet proclaimed into force (see s 2(1)(a))

remaining provisions commenced on date of assent

## 7 List of annotations

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**Restrictions on membership of panel**

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**Procedure if tribunal member unable to hear matter**

s 227A     ins 2003 No. 9 s 15

**Interim orders**

s 231      amd 2001 No. 6 s 17

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            sub 2001 No. 78 s 69**Appointment of external assessor**

s 288A      ins 2001 No. 78 s 69

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*Health Practitioners (Professional Standards)  
Act 1999*

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**div hdg** om R1 (see RA s 7(1)(k))

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**ss 531–532** om R1 (see RA s 40)

**Division 15—Amendment of Psychologists Act 1977**

**div hdg** om R1 (see RA s 7(1)(k))

**ss 533–538** om R1 (see RA s 40)

**Division 16—Amendment of Speech Pathologists Act 1979****div hdg** om R1 (see RA s 7(1)(k))**ss 539–544** om R1 (see RA s 40)**SCHEDULE—DICTIONARY**

- def “**approved form**” amd 2001 No. 6 s 34(3)
- def “**certificate of registration**” ins 2001 No. 6 s 34(2)
- def “**certificate of specialist registration**” ins 2001 No. 6 s 34(2)
- def “**chairperson**” amd 2001 No. 4 s 267 sch 2; 2001 No. 7 s 302 sch 2 (amdt could not be given effect)  
sub 2001 No. 6 s 34(1)–(2)
- def “**corresponding law**” ins 2001 No. 6 s 34(2)
- def “**disciplinary matter**” amd 2003 No. 9 s 67 sch
- def “**disciplinary proceedings**” amd 2003 No. 9 s 67 sch
- def “**external assessment**” ins 2001 No. 78 s 78
- def “**external assessment report**” ins 2001 No. 78 s 78
- def “**external assessor**” ins 2001 No. 78 s 78
- def “**foreign disciplinary body**” amd 2001 No. 6 s 34(4)
- def “**foreign regulatory authority**” amd 2000 No. 46 s 3 sch; 2001 No. 6 s 34(5)
- def “**health practitioner registration Act**” amd 2001 No. 3 s 241 sch 2; 2001 No. 4 s 267 sch 2; 2001 No. 5 s 247 sch 2; 2001 No. 7 s 302 sch 2; 2001 No. 8 s 237 sch 2; 2001 No. 9 s 239 sch 2; 2001 No. 10 s 237 sch 2; 2001 No. 12 s 245 sch 2; 2001 No. 13 s 242 sch 2; 2001 No. 14 s 238 sch 2; 2001 No. 15 s 255 sch 2; 2001 No. 16 s 236 sch 2
- def “**health service provider**” amd 2001 No. 8 s 237 sch 2
- def “**profession**” amd 2001 No. 3 s 241 sch 2; 2001 No. 4 s 267 sch 2; 2001 No. 5 s 247 sch 2; 2001 No. 7 s 302 sch 2; 2001 No. 8 s 237 sch 2; 2001 No. 9 s 239 sch 2; 2001 No. 10 s 237 sch 2; 2001 No. 12 s 245 sch 2; 2001 No. 13 s 242 sch 2; 2001 No. 14 s 238 sch 2; 2001 No. 15 s 255 sch 2; 2001 No. 16 s 236 sch 2
- def “**repealed health practitioner registration Act**” ins 2001 No. 6 s 34(2)

**8 List of forms notified or published in the gazette****Form DHPPS385A Version March 2002—Notice of Conviction**

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**Form DHPPS385B Version March 2002—Notice of Certain Judgements and Settlements**

pubd gaz 8 March 2002 p 932

**Form DHPPS385C Version March 2002—Notice of Certain Events Concerning Dental Registration in Other Jurisdiction**

pubd gaz 8 March 2002 p 932

**Form Opt HPPS385A Version February 2002—Notice of Conviction (Optometrists)**

pubd gaz 8 February 2002 pp 439–441



**Form Opt HPPS385B Version February 2002—Notice of Certain Judgements and Settlements (Optometrists)**

pubd gaz 8 February 2002 pp 439–441

**Form Opt HPPS385C Version February 2002—Notice of Certain Events Concerning Optometrist Registration in Other Jurisdictions**

pubd gaz 8 February 2002 pp 439–441

**Form OT HPPS385A Version February 2002—Notice of Conviction (Occupational Therapists)**

pubd gaz 8 February 2002 pp 439–441

**Form OT HPPS385B Version February 2002—Notice of Certain Judgements and Settlements (Occupational Therapists)**

pubd gaz 8 February 2002 pp 439–441

**Form OT HPPS385C Version February 2002—Notice of Certain Events Concerning Occupational Therapist Registration in Other Jurisdictions**

pubd gaz 8 February 2002 pp 439–441

**Form P HPPS385A Version February 2002—Notice of Conviction (Pharmacists)**

pubd gaz 8 February 2002 pp 439–441

**Form P HPPS385B Version February 2002—Notice of Certain Judgements and Settlements (Pharmacists)**

pubd gaz 8 February 2002 pp 439–441

**Form P HPPS385C Version February 2002—Notice of Certain Events Concerning Pharmacist Registration in Other Jurisdictions**

pubd gaz 8 February 2002 pp 439–441

**Form Phy HPPS385A Version February 2002—Notice of Conviction (Physiotherapists)**

pubd gaz 8 February 2002 pp 439–441

**Form Phy HPPS385B Version February 2002—Notice of Certain Judgements and Settlements (Physiotherapists)**

pubd gaz 8 February 2002 pp 439–441

**Form Phy HPPS385C Version February 2002—Notice of Certain Events Concerning Physiotherapist Registration in Other Jurisdictions**

pubd gaz 8 February 2002 pp 439–441

**Form SP HPPS385A Version February 2002—Notice of Conviction (Speech Pathologists)**

pubd gaz 8 February 2002 pp 439–441

**Form SP HPPS385B Version February 2002—Notice of Certain Judgements and Settlements (Speech Pathologists)**

pubd gaz 8 February 2002 pp 439–441

**Form SP HPPS385C Version February 2002—Notice of Certain Events Concerning  
Speech Pathologist Registration in Other Jurisdictions**

pubd gaz 8 February 2002 pp 439–441