

Health Practitioners Competence Assurance Act 2003 Complaints and Discipline Process

The following notes have been prepared to explain the complaints process under the Health Practitioners Competence Assurance Act 2003. This process is for investigations of complaints that have **not** been commenced before the Health Practitioners Competence Assurance Act 2003 came into force on 18 September 2004. Complaints received after that date will come under this process even if the conduct complained of occurred before that date.

Complaints already under investigation are dealt with by the Preliminary Proceedings Committee under the Nurses Act 1977. An information sheet outlining that process is also available on the website or as a booklet from the Nursing Council.

1. General information

The Nursing Council is a statutory body established by the Health Practitioners Competence Assurance Act 2003. The Act sets out a number of legal functions concerning the registration of nurses and includes a disciplinary function.

2. Professional Conduct Committees

Professional Conduct Committees (“PCCs”) have the function of investigating complaints made against registered nurses, nurse practitioners, enrolled nurses or nurse assistants and making recommendations to Council or determinations about those complaints.

3. Who can make a complaint

The Nursing Council will accept a written complaint from any person.

4. Initial consideration

When a complaint is received by Council an initial assessment is made to decide whether the matter is a health or competence concern and whether or not the conduct complained of has affected a health consumer. The Council also considers all Health and Disability Commissioner (“Commissioner”) opinions to decide whether any professional issues arise which warrant further investigation by a PCC.

5. Health and Disability Commissioner

All complaints received by the Nursing Council which allege that the practice or conduct of a nurse has affected a health consumer must be referred to the Commissioner. The Commissioner decides whether or not he/she has jurisdiction in respect of the matter and/or whether that office will investigate the complaint.

6. When does a PCC investigate

A PCC investigates complaints where there was no health provider/health consumer relationship between the parties or where the Commissioner has decided that the *“appropriateness of the conduct is in doubt”* and the matter should be investigated by the Council.

A PCC will also decide whether to lay a charge where a nurse has been convicted of an offence punishable by imprisonment for 3 months or longer or for other offences set out in the Act.

7. Process for complaint

The complaint is referred to a PCC made up of:

- The Convener who is a member of Council
- A layperson

- A nurse with experience in the same general area of practice as the nurse being investigated.

Where Council considers it is appropriate, or when indicated by the parties, the PCC membership will reflect the cultural context of the complaint.

8. Conflict of interest

A copy of the letter of complaint is sent to the proposed PCC members before appointment by the Council to enable those members to declare any conflict of interest. Once a PCC is appointed the PCC membership is forwarded to the nurse and the complainant. Either person may object to the membership within 5 days of receiving that letter. Any objection must be considered by Council but Council need not comply with it.

9. Particulars of the complaint

The nurse will receive a copy of the letter of complaint or the particulars of the complaint at the same time as the intended membership. This must be 14 days after the complaint is referred to a PCC. A PCC may also investigate an additional matter where Council believes that another matter should form part of that investigation. The nurse must receive particulars of this additional matter 14 days after it has been referred to a PCC.

10. Tentative preliminary hearing date

The nurse and complainant will also be provided with a tentative preliminary hearing date. They are asked to inform the legal secretary promptly if they are unable to attend on that date.

11. Investigation

The investigation is carried out by investigators appointed by a PCC to collect information and investigate the complaint on its behalf. This will involve interviewing witnesses, taking statements and collecting clinical notes and any

other information relevant to the complaint. The investigators are nurses/lawyers. A PCC does not just accept allegations made by the complainant about the nurse or accept the results of a complainant's own investigation. A PCC may receive evidence that would not normally be admissible in a Court of Law but the information must be relevant to the complaint.

The nurse is not interviewed during this part of the investigation. The nurse is given the opportunity to respond to the information gathered during the investigation at the preliminary hearing and may provide a written response before that meeting.

The investigation generally takes place over a period of one or two days where the conduct occurred. The interviews are usually in person but are sometimes carried out by telephone. Statements are drawn up and sent to the witnesses for amendment and signature.

A PCC may require a person to produce written information. Non-compliance with such a requirement without reasonable excuse may result in summary conviction and a fine not exceeding \$10,000.

12. Investigation information - complaint

The bundle of information collected during the investigation, including witness statements and clinical files together with a notice setting out the particulars of the complaint, is sent to the nurse, complainant and PCC at least two weeks before the preliminary hearing date. A PCC may request additional information at this time. Any additional information obtained will also be sent to the nurse and complainant before the hearing.

13. Evidence - referral of conviction

The information gathered by the investigator for a referral of conviction consists of:

- A Certified copy of the conviction
- The Police summary of facts
- The sentencing notes of the Judge

14. Disclosure of information

The investigation is carried out in private. A PCC will keep confidential to those involved any information gathered during the investigation. A PCC will not make any public comment during an investigation and strongly recommends that there be no public comment from the parties during the investigation process.

15. Legal advisers

A PCC may appoint a legal adviser to advise on matters of law, procedure or evidence. The legal adviser will attend the hearing but the adviser cannot be present when a PCC deliberates.

The person who has provided legal advice to a PCC is not permitted to represent that PCC before the Tribunal at the hearing of a charge.

16. Interim suspension

If a PCC at any time during the investigation of the complaint has reason to believe that the nurse's practice poses a risk of serious harm to the public, the PCC **must** notify the Council of that belief and the reasons for it.

If a PCC is of the view that those reasons justify the suspension of practice for health, competency or conduct concerns, the PCC may recommend that the Council take appropriate action.

If the conduct raises competency or conduct concerns, the nurse will be given an opportunity to make written and oral submissions before the Council suspends practice. If a PCC notifies the Council of health concerns, interim suspension may occur without notice.

17. Preliminary hearing venues

PCCs meet in the main centres closest to where the conduct took place, or in a place agreed to by the PCC, nurse and complainant. Generally the meeting will take place in a conference room of a hotel. The Council has preferred venues which are private and appropriate for hearings.

18. The hearing – complaints

The preliminary hearing is a relatively informal process. However, as a PCC is considering whether to take action about a complaint, a certain degree of formality is required. The process must comply with the rules of natural justice. Natural justice in this context means that, in order to protect the interests of persons who may be adversely affected by a decision, those persons must be given the opportunity to put their side of the story to the decision-maker. To comply with this, a PCC, nurse and complainant all receive the same information before the preliminary hearing and have the opportunity to respond to it.

19. Procedure

The complainant will be given the opportunity to address the PCC first. The complainant may read a statement, or provide a submission. The complainant may be supported by a person nominated by the complainant and that person may, with the leave of the PCC, be heard at the hearing. This person may be a lawyer. If the PCC has called any other person to provide an oral response that person will then address the PCC. The nurse does not sit in while the complainant or any other witness speaks to the PCC. However, a transcript of the hearing is taken.

The nurse is then invited to respond to the information provided following the investigation and any additional matters which may have been raised by the complainant or any other witness. The complainant is not able to sit in while the nurse gives his or her response but could be asked to be available for any additional questions the PCC may have after hearing from the nurse.

The nurse will then be given the opportunity to provide a statement or submission to the PCC. Generally the nurse or complainant reads from his or her statement or submission and answers PCC questions as they arise. If the nurse or complainant is legally represented the lawyer may prefer to address the PCC first. The Convener will ask the lawyer or nurse or complainant how he or she wishes to proceed.

If any questions arise which the complainant may be able to address, the PCC may ask the complainant or any other witness to provide additional information. This information must then be provided to the nurse for a response before any decision is made.

At the conclusion of the meeting the PCC deliberates. The transcript of the hearing is produced approximately two weeks after the meeting. A PCC may provide an oral decision shortly after the hearing if it is in a position to do so. Fourteen days after completing the investigation a PCC must either make recommendations or determinations in relation to the complaint.

20. The hearing – convictions

The PCC's role for convictions is to decide whether the conviction reflects adversely on the nurse's fitness to practise. The nurse will be asked to make an oral and/or written submission on whether or not that is the case.

21. PCC recommendations

A PCC may recommend one **or more** of the following:

- That the Council review the competence of the nurse
- That the Council review the nurse's fitness to practice (health)
- That the Council review the nurse's scope of practice
- That the Council refer the subject matter of the investigation to the police
- That the Council counsels the nurse.

These recommendations will be referred to the Council to decide what action it will take. The Council must consider the recommendation promptly but need not comply with it. The Council may take one of the following actions.

- Competence may be reviewed by a Competence Review Panel
- The matter may be referred to the Health Committee
- The Council may decide to place conditions on a scope of practice

The nurse will be offered an opportunity to make written or oral submissions to a Competency Review Panel, the Health Committee or Council before any action is taken following these recommendations

The recommendation that the Council counsels the nurse will generally mean that a letter is sent out recommending changes to practice.

22. Determinations

A PCC may determine one of the following:

- That no further steps be taken in relation to the subject matter of the investigation;
- That a charge be brought against the nurse before the Health Practitioners Disciplinary Tribunal ("Tribunal"); or
- That the complaint be referred to conciliation.

23. Charges/no further action

A PCC is not deciding whether or not the nurse is guilty of professional misconduct. That is a matter for the Tribunal. A PCC is considering:

- Whether or not there is sufficient evidence to support the allegations in the complaint or revealed during the investigation; and
- Whether these allegations reach a threshold of seriousness to frame a charge of professional misconduct.

A PCC is also not in a position to make findings of credibility as it does not conduct a hearing where evidence is given from all witnesses on oath. Therefore where there is a conflict in evidence which cannot be resolved by further investigation the matter may be referred to the Tribunal which is able to make credibility findings.

24. Recommendations/Determinations

A PCC must give written notice of any recommendations or its determination and the reasons for it to:

- The Registrar
- The nurse
- The complainant

If a PCC decides to lay a charge against the nurse, the PCC must formulate an appropriate charge and lay it before the Tribunal.

25. Charges

The charge will generally follow the particulars of the complaint which was forwarded to the nurse before the preliminary hearing. The charge must not contain particulars which the nurse has not been given the opportunity to respond to during the investigation.

26. Conciliation

A PCC may appoint a conciliator to assist a nurse and complainant to resolve the complaint. The costs are paid by the Council.

The conciliator must provide the PCC and the Council with a written report as to whether or not the complaint has been successfully resolved by agreement, within a reasonable time after appointment.

A PCC will then consider the conciliator's report and, if it considers that the complaint has not been successfully resolved by agreement, decide whether to:

- Lay a charge before the Tribunal with the conciliator's report;
- Make a recommendation to Council; or
- Take no further steps.

A PCC is required to provide a copy of the charge to the nurse, the Council and the complainant where conciliation has failed and a charge has been laid.

27. Appeal

The decisions of PCCs are not subject to appeal. However, PCCs may appeal a decision of the Tribunal where it laid the charge.

28. Judicial review

Decisions of PCCs are subject to review in the High Court. The purpose of judicial review is to review the process the decision-maker used to come to the decision and ensure that the decision itself is within the confines of the Act and is not a clearly unreasonable decision. The question is whether a fair and reasonable process resulted in a fair and reasonable outcome.

29. Timeframe

There can be a considerable time lag between receipt of a written complaint and a preliminary hearing. Although PCCs conduct their investigations as quickly as they reasonably can, an investigation may take several months.

30. Health Practitioners Disciplinary Tribunal

The Act establishes a separate disciplinary Tribunal to hear charges laid against all health practitioners. When considering charges against a nurse the Tribunal will consist of a Chair, who is a lawyer, three professional peers of the nurse under consideration and a layperson. The hearings are in public unless there are compelling reasons for a private hearing. The Tribunal's role is to decide whether the conduct complained of is proven, whether that conduct amounts to professional misconduct and whether to impose a penalty. Information about the Tribunal and its processes will be available on its website in due course. Anyone who is required to provide evidence as a witness will meet with the lawyer who is prosecuting the charges before the hearing to discuss the process of giving evidence.

31. Inquiries

Any inquiries about the disciplinary process should be addressed to the investigators/ legal advisors and/or the Registrar of the Nursing Council.

The relevant sections of the Health Practitioners Competence Assurance Act 2003 are attached.

Health Practitioners Competence Assurance Act 2003

PART 4 - COMPLAINTS AND DISCIPLINE

Referral of complaints and interim suspensions

64. Complaints about practitioners—

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

65. Response to complaints referred by Health and Disability Commissioner—

- (1) When the Health and Disability Commissioner refers a complaint to the responsible authority under section 34(1)(a) of the Health and Disability Commissioner Act 1994, the authority must promptly assess the complaint and consider, in light of the nature and circumstances of the complaint, the action or actions that the authority should take to respond to the complaint.

- (2) Without limiting the generality of subsection (1), the authority may decide to refer the complaint to a professional conduct committee.

66. Health and Disability Commissioner must notify authority of pending complaint—

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

67. Notification of convictions—

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

- (a) an offence punishable by imprisonment for a term of 3 months or longer; or
- (b) an offence against—
 - (i) the Births, Deaths, and Marriages Registration Act 1995; or
 - (ii) the Burial and Cremation Act 1964; or
 - (iii) the Contraception, Sterilisation, and Abortion Act 1977; or
 - (iv) the Coroners Act 1988; or
 - (v) the Health Act 1956; or
 - (vi) the Health and Disability Services (Safety) Act 2001; or
 - (vii) the Human Tissue Act 1964; or
 - (viii) the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
 - (ix) the Medicines Act 1981; or

- (x) the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- (xi) the Misuse of Drugs Act 1975; or
- (xii) the Radiation Protection Act 1965.

68. Referral of complaints and notices of conviction to professional conduct committee—

- (1) If the responsible authority decides, under section 65(2), to refer a complaint to a professional conduct committee, it must do so as soon as practicable after it makes that decision.
- (2) When a notice of conviction is given under section 67 to the authority, the authority must, as soon as reasonably practicable after receiving the notice, refer the notice to a professional conduct committee.
- (3) If the responsible authority considers that information in its possession raises 1 or more questions about the appropriateness of the conduct or the safety of the practice of a health practitioner, it may refer any or all of those questions to a professional conduct committee.
- (4) If at any time, while a matter concerning a health practitioner is under consideration by a professional conduct committee, the responsible authority thinks that a further matter concerning that practitioner should form part of the committee's consideration, the authority may refer the further matter to the committee.

69. Interim suspension of practising certificate pending prosecution or investigation—

- (1) This section applies if a practitioner is alleged to have engaged in conduct that—
 - (a) is relevant to—
 - (i) a criminal proceeding that is pending against the practitioner; or
 - (ii) an investigation about the practitioner that is pending under the Health and Disability Commissioner Act 1994 or under this Act; and
 - (b) in the opinion of the responsible authority held on reasonable grounds, casts doubt on the appropriateness of the practitioner's conduct in his or her professional capacity.
- (2) If this section applies, the responsible authority may order that—
 - (a) the practising certificate of the health practitioner be suspended; or
 - (b) 1 or more conditions be included in the health practitioner's scope of practice.
- (3) The authority may not make an order under subsection (2) unless it has first—
 - (a) informed the health practitioner concerned why it may make an order under that subsection in respect of the health practitioner; and
 - (b) given the health practitioner a reasonable opportunity to make written submissions and be heard on the question, either personally or by his or her representative.
- (4) The authority must revoke an order under subsection (2) as soon as practicable after—

- (a) the authority is satisfied that the appropriateness of the practitioner's conduct in his or her professional capacity is no longer in doubt; or
 - (b) the criminal proceeding on which the practitioner's suspension is based is disposed of otherwise than by his or her conviction; or
 - (c) if the criminal proceeding on which the practitioner's suspension is based results in his or her conviction, the authority is satisfied that no disciplinary action is to be taken or continued in respect of that conviction under the Health and Disability Commissioner Act 1994 or under this Act; or
 - (d) if the investigation on which the practitioner's suspension is based has been completed, the authority is satisfied that the practitioner will not be charged as a result of the investigation.
- (5) An order under subsection (2) or subsection (4) takes effect immediately, and the authority must ensure that the practitioner is notified as soon as practicable.

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

- (1) When, in accordance with section 64, an authority notifies the Health and Disability Commissioner of a complaint or, in accordance with section 66, the Health and Disability Commissioner notifies an authority of an investigation, the authority may not take any action under this Part concerning the complaint or the subject matter of the investigation until—
- (a) the Health and Disability Commissioner notifies the authority—
 - (i) that the matter is not to be investigated, or investigated further, under the Health and Disability Commissioner Act 1994; or

- (ii) that the complaint or matter has been resolved; or
 - (iii) that the matter is not to be referred to the Director of Proceedings under section 45(2)(f) of that Act; or
- (b) the Director of Proceedings notifies the authority of his or her decision under section 49 of that Act not to institute disciplinary proceedings in relation to the matter.

- (2) This section is subject to section 69.

Professional conduct committees

71. Professional conduct committees—

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

72. Committees may regulate own procedure—

- (1) A professional conduct committee may regulate its procedure as it thinks fit.

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

73. Committees may appoint legal advisers and investigators—

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

74. Information to be given to practitioner and complainant—

- (1) Within 14 working days after a matter concerning a health practitioner is referred to a professional conduct committee, the authority must ensure—
 - (a) that the health practitioner is given written notice of—

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

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

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

76. Professional conduct committees may receive evidence—

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

- (5) A professional conduct committee may require that any evidence it receives be supported by a statutory declaration in the manner provided for by section 9 of the Oaths and Declarations Act 1957.
- (6) Subsection (5) does not apply to a submission made by the health practitioner or a complainant under section 80(4).
- (7) No civil or disciplinary proceedings lie against any person in respect of any evidence given, or statements or submissions made, under this section by that person, unless the person has acted in bad faith.

77. Powers to call for information or documents—

- (1) If the conditions stated in subsection (2) are satisfied, a professional conduct committee may, by notice in writing, require any person to produce to the committee any papers, documents, records, or things.
- (2) The conditions referred to in subsection (1) are that—
 - (a) the members of the committee believe, on reasonable grounds, that the exercise of the powers conferred by that subsection is necessary to enable the committee to carry out its investigation; and
 - (b) the person to whom a notice under that subsection is to be given has failed to comply with a previous request to produce to the committee, within a reasonable time, the papers, documents, records, or things required by the notice; and
 - (c) the members of the committee believe, on reasonable grounds, that—

- (i) it is not reasonably practicable to obtain the information required by the committee from another source; or
- (ii) for the purposes of the investigation, it is necessary to obtain the papers, documents, records, or things to verify or refute information obtained from another source.

78. Compliance with requirement to provide information or document—

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

- (b) knowingly or recklessly provides information that is false or misleading in any material particular.

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

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

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

80. Recommendations and determinations of professional conduct committee—

- (1) Within 14 working days after completing its investigation into a matter concerning a health practitioner, the committee must make—
 - (a) 1 or more of the recommendations specified in subsection (2); or
 - (b) 1 of the determinations specified in subsection (3); or
 - (c) both.
- (2) The recommendations referred to in subsection (1)(a) are—
 - (a) that the authority review the competence of the health practitioner to practise his or her profession:

- (b) that the authority review the fitness of the health practitioner to practise his or her profession:
 - (c) that the authority review the practitioner's scope of practice:
 - (d) that the authority refer the subject matter of the investigation to the police:
 - (e) that the authority counsel the practitioner.
- (3) The determinations referred to in subsection (1)(b) are—
- (a) that no further steps be taken under this Act in relation to the subject matter of the investigation:
 - (b) that a charge be brought against the health practitioner before the Tribunal:
 - (c) in the case of a complaint, that the complaint be submitted to conciliation.
- (4) The committee may not make a recommendation or determination unless the health practitioner concerned and any complainant has each been given a reasonable opportunity to make written submissions and be heard on the matter under investigation, either personally or by a representative; and for that purpose the committee must give the health practitioner and the complainant written notice of—
- (a) the latest date by which the committee will receive written submissions from the health practitioner and the complainant; and
 - (b) the date on which the committee will hear persons who are entitled to be heard and wish to be heard.

81. Procedure after committee makes recommendation or determination—

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

82. Settlement of complaint by conciliation—

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

- (b) the committee should make 1 or more of the recommendations specified in section 80(2) about the practitioner; or
 - (c) no further steps be taken under this Act in relation to the complaint.
- (4) If the professional conduct committee decides to lay a charge before the Tribunal, it must—
 - (a) formulate an appropriate charge; and
 - (b) lay it before the Tribunal, together with a copy of the conciliator's report; and
 - (c) give a copy of the charge and the report to the practitioner, the responsible authority, and the complainant.
- (5) The costs of conciliation must be paid by the responsible authority.
- (6) If the committee makes a determination that no further steps be taken under this Act in relation to the complaint,—
 - (a) no further steps may be taken under this Act in relation to the complaint; and
 - (b) the committee must give the practitioner, the responsible authority, and complainant written notice of—
 - (i) the determination; and
 - (ii) the committee's reasons.

83. Restriction on information obtained by professional conduct committees—

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

Health Practitioners Disciplinary Tribunal

84. Establishment of Tribunal—

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

85. Functions of Tribunal—

The functions of the Tribunal are—

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

86. Membership of Tribunal—

- (1) The members of the Tribunal are—
 - (a) a chairperson and 1 or more deputy chairpersons, each of whom must be a barrister or solicitor of the High Court of not less than 7 years' practice, whether or not he or she holds or has held judicial office; and
 - (b) the members of the panel maintained by the Minister under section 87.
- (2) The chairperson and each deputy chairperson are appointed by the Minister by notice in the Gazette, after consultation by the Minister with any persons that the Minister thinks fit.

- (3) No person who is a member of an authority is eligible for appointment as chairperson or as a deputy chairperson or as a member of the panel.

87. Panel—

- (1) The Minister must maintain a panel of—
 - (a) practitioners of each profession, each of whom must hold a current practising certificate; and
 - (b) laypersons.
- (2) The numbers of persons appointed under subsection (1)(a) and (b) must be sufficient to enable the Tribunal to be constituted in accordance with section 88.
- (3) In considering the suitability of any person for inclusion on the panel, the Minister must have regard not only to the person's personal attributes but also to the person's knowledge and experience of matters likely to come before the Tribunal.
- (4) The name of a person must be removed from the panel if—
 - (a) the person is convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer; or
 - (b) the person dies or is, under the Insolvency Act 1967, adjudged bankrupt; or
 - (c) the Minister directs that the name of the person be removed from the panel on the grounds of inability to perform the functions of the office, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister; or
 - (d) the person becomes a member of an authority; or

- (e) a period of 5 years has elapsed since the date on which the Minister last approved the entry of the person's name; or
- (f) the person requests by writing addressed to the Minister that his or her name be removed.

(5) If subsection (4)(d) or (e) applies, the name of the person must not be removed from the panel until any hearings in respect of which that person was appointed to the Tribunal have concluded.

88. Constitution of Tribunal for hearings—

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

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

89. Hearings of Tribunal—

- (1) The Tribunal may from time to time, as the chairperson directs, sit in 2 or more divisions, each of which—
- (a) has and may exercise or perform all the powers and functions of the Tribunal; and
 - (b) may exercise or perform any power or function of the Tribunal, even though another division of the Tribunal is exercising or performing a power or function of the same kind at the same time.

- (2) Hearings of the Tribunal must be held at the times and places appointed by the Tribunal or the presiding officer for the purpose.
- (3) Any hearing of the Tribunal may be adjourned by the Tribunal or the presiding officer.
- (4) No hearing may take place unless all members of the Tribunal for that hearing are present, but a decision of a majority of those members is, for the purposes of the hearing, the decision of the Tribunal.

90. Further provisions relating to Tribunal in Schedule 1—

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

Procedure and decisions of Tribunal

91. Laying of charge before Tribunal—

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

committee, as the case may be, has reason to believe that a ground exists entitling the Tribunal to exercise its powers under section 100.

- (3) If the charge was laid by the Director of Proceedings, it must be prosecuted at the hearing by the Director of Proceedings.
- (4) If the charge was laid by a professional conduct committee, it must be prosecuted at the hearing by that committee.
- (5) The Director of Proceedings or the professional conduct committee may be represented by counsel or otherwise.
- (6) The chairperson of the Tribunal must, as soon as reasonably practicable after the laying of the charge, convene a hearing of the Tribunal to consider the charge.

92. Notice of disciplinary proceedings to be given to practitioner—

- (1) Before convening a hearing of the Tribunal to consider a charge against a health practitioner, the chairperson of the Tribunal must ensure that the practitioner is given a written notice that—
 - (a) states that the Director of Proceedings, or a professional conduct committee, as the case may be, has reason to believe that a ground exists entitling the Tribunal to exercise its powers under section 100; and
 - (b) contains sufficient particulars to inform the practitioner clearly of the substance of the ground believed to exist; and
 - (c) specifies the particulars of the charge; and
 - (d) specifies a date (being not less than 20 working days, and not more than 60 working days, after the date on which the notice is

received by the practitioner) on which the Tribunal intends to hear the matter.

- (2) The appropriate executive officer of the Tribunal must also ensure that the responsible authority and any complainant are promptly given a copy of the notice.
- (3) Every notice given to a health practitioner must require the practitioner to notify the Tribunal in writing, not later than on a specified date (being not less than 10 working days after the date on which the notice is received by the practitioner), whether or not he or she wishes to be heard by the Tribunal, either personally or by his or her representative.
- (4) If a practitioner fails to notify the Tribunal as required by the notice, the practitioner is entitled to appear and be heard at the hearing only on any conditions as to payment of costs and expenses or otherwise that the Tribunal thinks fit to order.

93. Interim suspension of registration or imposition of restrictions on practice—

- (1) At any time after a notice has been given to a health practitioner under section 92(1), the Tribunal may, if it is satisfied that it is necessary or desirable to do so, having regard to the need to protect the health or safety of members of the public, order that, until the charge to which that notice related has been disposed of,—
 - (a) the registration of that health practitioner be suspended; or
 - (b) the health practitioner may practise as a health practitioner only in accordance with conditions stated in the order.

- (2) The Tribunal may make an order under this section on the recommendation of the Director of Proceedings or a professional conduct committee, or on its own initiative.
- (3) The Tribunal does not have to give the health practitioner notice that it intends to make the order.
- (4) The order must—
 - (a) be in writing; and
 - (b) state the reasons for it; and
 - (c) state clearly the health practitioner's right to apply to the Tribunal to have it revoked; and
 - (d) be signed by the chairperson or a deputy chairperson of the Tribunal.
- (5) The appropriate executive officer of the Tribunal must also ensure that the health practitioner, any employer of the health practitioner, and the responsible authority are promptly given a copy of the order.
- (6) The order takes effect from the day on which the copy is given to the health practitioner.

94. Health practitioner may apply for revocation of order—

- (1) A health practitioner may at any time apply to the Tribunal for the variation or revocation of an order under section 93(1).
- (2) The application must be in writing and delivered to the appropriate executive officer of the Tribunal.
- (3) The Tribunal—

- (a) must hear the application within 10 working days after it is received by the appropriate executive officer of the Tribunal; and
 - (b) may, as it thinks fit,—
 - (i) grant or refuse the application; or
 - (ii) in the case of conditions imposed under section 93(1)(b), amend or replace the conditions.
- (4) The Tribunal may also revoke or vary an order under section 93(1) on its own initiative.
- (5) The appropriate executive officer of the Tribunal must ensure that the health practitioner, any employer of the health practitioner, and the responsible authority are promptly given notice of the Tribunal's decision.
- (6) The Tribunal's decision takes effect immediately.

95. Hearings to be public unless Tribunal orders otherwise—

- (1) Every hearing of the Tribunal must be held in public unless the Tribunal orders otherwise under this section or unless section 97 applies.
- (2) If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the Tribunal is satisfied that it is desirable to do so, it may (on application by any of the parties or on its own initiative) make any 1 or more of the following orders:
- (a) an order that the whole or any part of a hearing must be held in private:

- (b) an order prohibiting the publication of any report or account of any part of a hearing, whether held in public or in private:
 - (c) an order prohibiting the publication of the whole or any part of any books, papers, or documents produced at a hearing:
 - (d) an order prohibiting the publication of the name, or any particulars of the affairs, of any person.
- (3) An application to the Tribunal for an order under subsection (2) must be heard in private, but the other parties to the proceedings and any complainant are entitled to be present and to make written or oral submissions on the application.
- (4) If the Tribunal proposes on its own initiative to make an order under subsection (2), it must give the parties to the proceedings and any complainant an opportunity to make written or oral submissions on the proposal; all parties and complainants (if any) are entitled to be present when any oral submissions are heard.
- (5) Even if a hearing of the Tribunal is otherwise held in private, the Tribunal may allow any particular person to attend it if satisfied that he or she has a particular interest in the matter to be heard.
- (6) An order made under this section continues in force—
 - (a) until a time specified in it; or
 - (b) if no time is specified, until it is revoked under section 99.
- (7) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who contravenes an order made under subsection (2).

96. Clarifications concerning section 95—

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

97. Special protection for certain witnesses—

- (1) This section applies to evidence to be given by a witness at a hearing by the Tribunal that—
 - (a) relates to or involves a sexual matter; or
 - (b) in the Tribunal's opinion, relates to or involves some other matter that may require the witness to give intimate or distressing evidence.
- (2) Before a witness at a hearing by the Tribunal begins to give oral evidence to which this section applies, the presiding officer must—
 - (a) tell the witness that he or she has a right to give the evidence in private; and
 - (b) ask if the witness wishes to give the evidence in private.

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

- (5) The witness may object to the presence of a person of the health practitioner's choice; and, if the Tribunal upholds the objection, that person may not be present in the room while the witness is giving the evidence.

98. Prohibition of publication of names of complainants in sexual cases—

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

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

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

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

100. Grounds on which health practitioner may be disciplined—

- (1) The Tribunal may make any 1 or more of the orders authorised by section 101 if, after conducting a hearing on a charge laid under section 91 against a health practitioner, it makes 1 or more findings that—
 - (a) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, amounts to malpractice or negligence in relation to the

scope of practice in respect of which the practitioner was registered at the time that the conduct occurred; or

- (b) the practitioner has been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, has brought or was likely to bring discredit to the profession that the health practitioner practised at the time that the conduct occurred; or
- (c) the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise; or
- (d) the practitioner has practised his or her profession while not holding a current practising certificate; or
- (e) the practitioner has performed a health service that forms part of a scope of practice of the profession in respect of which he or she is or was registered without being permitted to perform that service by his or her scope of practice; or
- (f) the practitioner has failed to observe any conditions included in the practitioner's scope of practice; or
- (g) the practitioner has breached an order of the Tribunal under section 101.

(2) The Tribunal may make a finding under subsection (1)(c) only if the conviction concerned—

- (a) is for an offence against—
 - (i) the Births, Deaths, and Marriages Registration Act 1995; or
 - (ii) the Burial and Cremation Act 1964; or
 - (iii) the Contraception, Sterilisation, and Abortion Act 1977; or

- (iv) the Coroners Act 1988; or
 - (v) the Health Act 1956; or
 - (vi) the Health and Disability Services (Safety) Act 2001; or
 - (vii) the Human Tissue Act 1964; or
 - (viii) the Injury Prevention, Rehabilitation, and Compensation Act 2001; or
 - (ix) the Medicines Act 1981; or
 - (x) the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (xi) the Misuse of Drugs Act 1975; or
 - (xii) the Radiation Protection Act 1965; or
 - (xiii) this Act; or
- (b) has been entered by any court in New Zealand or elsewhere for an offence punishable by imprisonment for a term of 3 months or longer.
- (3) The Tribunal may not make an order under section 101 on the basis of a finding under subsection (1)(c) if the responsible authority was aware of the conviction concerned at the date of the practitioner's registration.
- (4) No person may be found guilty of a disciplinary offence under this Part merely because that person has adopted and practised any theory of medicine or healing if, in doing so, the person has acted honestly and in good faith.

101. Penalties—

- (1) In any case to which section 100 applies, the Tribunal may—
- (a) order that the registration of the health practitioner be cancelled:
 - (b) order that the registration of the health practitioner be suspended for a period not exceeding 3 years:

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

- (a) whether to make an order that he or she pay a fine; or
- (b) the amount of any fine.

102. Orders limiting restoration of registration—

- (1) When making an order that the registration of a health practitioner be cancelled, the Tribunal may impose 1 or more conditions that he or she must satisfy before he or she may apply for registration again.
- (2) The conditions may include any or all of the following:
 - (a) a condition that the person undertake a specified course of education or training:
 - (b) a condition that the person undergo—
 - (i) any specified medical examination and treatment; or
 - (ii) any specified psychological or psychiatric examination, counselling, or therapy:
 - (c) a condition that the person attend any specified course of treatment or therapy for alcohol or drug abuse:
 - (d) any other condition designed to address the matter that gave rise to the cancellation of the person's registration.
- (3) The Tribunal must not impose a condition under subsection (2)(b) or (c) unless the person consents to the examination, treatment, counselling, or therapy concerned.
- (4) Subsection (2) does not limit subsection (1).

103. Orders of Tribunal—

- (1) An order of the Tribunal must—
 - (a) be in writing; and

- (b) contain a statement of the reasons for the order; and
 - (c) be signed by the chairperson or a deputy chairperson of the Tribunal.
- (2) The appropriate executive officer of the Tribunal must ensure that a copy of an order under section 95 or section 98 or section 101 is given to—
 - (a) the Director of Proceedings or the professional conduct committee that laid the charge; and
 - (b) the health practitioner concerned; and
 - (c) any complainant; and
 - (d) the responsible authority.
- (3) An order made by the Tribunal takes effect on a date stated in the order, which, if the order is sent to the health practitioner by post, may not be earlier than 4 days after it is posted.
- (4) The appropriate executive officer of the Tribunal must ensure that a copy of an order made under section 92(4) is given to the health practitioner concerned.