

# NORTHERN TERRITORY OF AUSTRALIA

## HEALTH PRACTITIONERS ACT 2004

As in force at 23 February 2005

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 23 February 2005

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## HEALTH PRACTITIONERS ACT 2004

**An Act to provide for the registration and enrolment of persons practising health care and the regulation of those persons, and for related purposes**

### **Part 1                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Health Practitioners Act 2004*.

#### **2                      Commencement**

This Act comes into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

#### **3                      Objectives**

The objectives of this Act are as follows:

- (a) to protect and promote the health and safety of the people of the Territory;
- (b) to promote the highest standard of professional health care practice in the Territory;
- (c) to determine the standards for registration and enrolment of health practitioners and for professional health care practice in the Territory;
- (d) to facilitate the continuing competence of health practitioners in the Territory.

#### **4                      Definitions**

In this Act, unless the contrary intention appears:

***accredited*** means accredited by a Board.

***applicant*** means a person who submits an application to a Board.

**application** means an application to be registered or enrolled.

**approved** means approved by a Board.

**assessment** means an assessment of a health practitioner's professional performance.

**assessor** means an assessor appointed under section 89.

**authorisation** means an authorisation to practise in a restricted practice area and includes an interim authorisation granted under section 36.

**Board** means a Board established by section 7.

**business address** means the address of the premises at or from which a person practises.

**category of enrolment** has the meaning in section 19.

**category of health care practice** has the meaning in section 6.

**category of registration** has the meaning in section 19.

**certificate of enrolment** means a certificate of enrolment issued under section 38(2)(a).

**certificate of registration** means a certificate of registration issued under section 38(1)(a).

**code** means the policy and guidelines adopted by a Board under section 12.

**committee** means a committee established under section 15.

**committee of evaluators** means a committee established for the purposes of section 25.

**complaint** means a complaint made under section 55.

**contravene** includes fail to comply.

**defendant** means a health practitioner who is the subject of an inquiry.

**due date** means 30 September.

**education** includes training.

**enrolled** means enrolled under this Act.



**enrolled nurse** means a health practitioner enrolled in the category of enrolment of enrolled nurse.

**evaluation** means an evaluation of an applicant's entitlement to be registered or enrolled.

**foreign health care practice law** means a law of a jurisdiction outside the Territory relating to the registration, authorisation, licensing or enrolment of persons practising health care.

**health practitioner registration authority** means a body established under the law of a State or another Territory of the Commonwealth having functions similar to those of a Board.

**health practitioner** means a person who is registered or enrolled.

**inquiry** means an inquiry conducted by the Tribunal under Part 4, Division 2.

**inspector** means a person appointed as an inspector under section 71.

**interim certificate of enrolment** means an interim certificate of enrolment issued under section 23.

**interim certificate of registration** means an interim certificate of registration issued under section 23.

**member** means a member of a Board and includes a Chairperson.

**notice** means notice in writing.

**Nursing and Midwifery Board** means the Nursing and Midwifery Board of the Northern Territory.

**practise** means to practise health care in a category of registration or enrolment.

**practising certificate** means a practising certificate issued under section 38.

**register** means a Register of Health Practitioners kept under section 43.

**registered** means registered under this Act.

**registered nurse** means a health practitioner registered in the category of registration of registered nurse.

**relevant Board** means:

- (a) in respect of a category of health care practice – the Board established in respect of the category; or
- (b) in respect of a health practitioner – the Board that registered or enrolled the health practitioner.

**report** includes publish.

**restricted practice area** means an area of health care practice referred to in section 31.

**roll** means the Roll of Nurses kept under section 44.

**specified** means specified by a Board in writing.

**supervision** includes oversight, direction, guidance and support.

**Tribunal** means the Professional Review Tribunal established by section 63.

## **5 Act binds Crown**

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

## **6 Meaning of *category of health care practice***

In this Act:

***category of health care practice*** means the practice of:

- (a) Aboriginal health work;
- (b) chiropractic;
- (c) dentistry;
- (d) medicine;
- (e) midwifery;
- (f) nursing;
- (g) occupational therapy;
- (h) optometry;

- (i) osteopathy;
- (j) pharmacy;
- (k) physiotherapy; or
- (l) psychology,

whether or not the practice is exclusively concerned with the health of a person.

## **Part 2                      Health Practitioners Registration Boards**

### **7                      Establishment of Boards**

- (1) Subject to subsections (2) and (3), a Board for each category of health care practice is established.
- (2) For the categories of health care practice of chiropractic and osteopathy, a single Board is established.
- (3) For the categories of health care practice of midwifery and nursing, a single Board is established.
- (4) The following are the names of the Boards:
  - (a) for the category of health care practice of Aboriginal health work – the Aboriginal Health Workers Board of the Northern Territory;
  - (b) for the categories of health care practice of chiropractic and osteopathy – the Chiropractors and Osteopaths Board of the Northern Territory;
  - (c) for the category of health care practice of dentistry – the Dental Board of the Northern Territory;
  - (d) for the category of health care practice of medicine – the Medical Board of the Northern Territory;
  - (e) for the categories of health care practice of midwifery and nursing – the Nursing and Midwifery Board of the Northern Territory;
  - (f) for the category of health care practice of occupational therapy – the Occupational Therapists Board of the Northern Territory;

- (g) for the category of health care practice of optometry – the Optometrists Board of the Northern Territory;
- (h) for the category of health care practice of pharmacy – the Pharmacy Board of the Northern Territory;
- (i) for the category of health care practice of physiotherapy – the Physiotherapists Board of the Northern Territory;
- (j) for the category of health care practice of psychology – the Psychologists Board of the Northern Territory.

## **8 Legal status of Boards**

- (1) A Board:
  - (a) is a body corporate with perpetual succession;
  - (b) has a common seal; and
  - (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.
- (2) All courts, judges and persons acting judicially must take judicial notice of the common seal of a Board affixed to a document and must assume that it was duly affixed.

## **9 Membership of Boards**

- (1) A Board consists of members appointed by the Minister.
- (2) Schedules 1 and 2 have effect with respect to the membership of a Board.
- (3) Schedule 3 has effect with respect to meetings of a Board.
- (4) A person may be appointed a member of more than one Board if he or she has the qualifications required for the appointment.

## **10 Functions of Boards**

- (1) A Board has the following functions:
  - (a) to administer the scheme of registration and enrolment under Part 3 in relation to the category of health care practice for which it is established;

- (b) to monitor the standard and provision of health care services in the category of health care practice for which it is established;
  - (c) to monitor the competence of health practitioners in the category of health care practice for which it is established;
  - (d) to provide guidance on clinical conduct and ethical matters to health practitioners in the category of health care practice for which it is established;
  - (e) to initiate investigations of complaints made against health practitioners in the category of health care practice for which it is established and to initiate investigations into other matters that are prescribed;
  - (f) to prosecute offences against this Act that relate to the category of health care practice for which it is established;
  - (g) to accredit courses for entry into the category of health care practice for which it is established;
  - (h) to accredit educational institutions to conduct courses referred to in paragraph (g);
  - (i) to advise the Minister on other matters relating to this Act.
- (2) In addition, a Board has those functions that are imposed on it by this or any other Act or that are prescribed.

## **11 Powers of Boards**

- (1) A Board has power to do all things necessary or convenient to be done in connection with the performance of its functions.
- (2) In particular, a Board has power:
- (a) to share information with other health practitioner registration authorities and with other persons and bodies (whether within Australia or elsewhere);
  - (b) to publish and distribute information concerning this Act to the public, health practitioners and other interested persons;
  - (c) to support education and research in health care practice;
  - (d) to conduct evaluations of persons applying to be registered or enrolled;

- (e) to co-operate with any university, hospital or other institution or body (whether in the Territory or elsewhere) to provide education and evaluation of health practitioners;
- (f) to participate in any programs (including Territory and national programs) relating to the education or practice of health practitioners; and
- (g) to participate in the formation of, and be a member of, any body or program concerned with health practitioners.

## **12 Codes**

- (1) A Board may adopt policies and guidelines for the purpose of providing practical guidance to health practitioners in the category of health care practice for which it is established.
- (2) A Board must:
  - (a) make a copy of a code adopted by it available at its office to be inspected by any person on request free of charge; and
  - (b) ensure that any person who wishes to do so may obtain a copy of the code from the Board.
- (3) A Board may charge a fee to recover the cost of providing a person with a copy of a code adopted by it.

## **13 Delegation**

- (1) A Board may delegate to a person, member, committee or the Registrar of the Board any of its powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, is taken to have been exercised or performed by the Board.
- (3) A delegation under this section:
  - (a) must be in writing; and
  - (b) does not prevent the exercise of a power or the performance of a function by the Board.

## **14 Registrars**

- (1) The Minister must appoint a person to be the Registrar of a Board.

- (2) A Registrar has the powers and functions conferred by or under this Act.
- (3) The Minister may appoint a person to act as the Registrar of a Board during any period, or during all periods, when the Registrar is absent from duty or from the Territory or during a vacancy in the office.

## **15 Committees**

- (1) A Board may establish committees to assist it in exercising any of its powers or performing any of its functions or advising it on any matter relating to this Act.
- (2) A committee consists of persons appointed by the Board.
- (3) A member of a Board may be a member of a committee established by it and may be appointed Chairperson of the committee.
- (4) A Board may give written directions to a committee established by it and the committee must comply with those directions.
- (5) A committee must keep accurate minutes of its proceedings.
- (6) Except as provided by this Act, a committee may regulate its own proceedings.

## **16 Protection from liability**

- (1) This section applies to a person who is or has been:
  - (a) a member of a Board;
  - (b) a member of a committee; or
  - (c) a delegate of a Board.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) In addition, the person is not civilly or criminally liable for an act done or omitted to be done by a Board or a committee in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (4) Subsections (2) and (3) do not affect any liability the Territory or a Board would, apart from those subsections, have for the act or omission.

**17                      Annual reports**

A Board must, not later than 31 December of each year, give to the Minister a report on its operations for the preceding financial year.

**18                      Fees**

- (1) The Minister may, by notice in the *Gazette*, determine the fees to be paid under this Act.
- (2) A Board may, in respect of the category of health care practice for which it is established, waive payment of the whole or a part of a fee determined under subsection (1).

**Part 3                      Registration and enrolment**

**Division 1                Categories of registration and enrolment**

**19                      Categories of registration and enrolment**

- (1) The following are the categories of registration:
  - (a) in the category of health care practice of Aboriginal health work – Aboriginal health worker;
  - (b) in the category of health care practice of chiropractic – chiropractor;
  - (c) in the category of health care practice of dentistry:
    - (i) dentist;
    - (ii) dental hygienist;
    - (iii) dental prosthetist;
    - (iv) dental specialist; and
    - (v) dental therapist;
  - (d) in the category of health care practice of medicine – medical practitioner;
  - (e) in the category of health care practice of midwifery:
    - (i) midwife; and
    - (ii) registered nurse authorised to practise midwifery;



- (f) in the category of health care practice of nursing – registered nurse;
  - (g) in the category of health care practice of occupational therapy – occupational therapist;
  - (h) in the category of health care practice of optometry – optometrist;
  - (i) in the category of health care practice of osteopathy – osteopath;
  - (j) in the category of health care practice of pharmacy – pharmacist;
  - (k) in the category of health care practice of physiotherapy – physiotherapist;
  - (l) in the category of health care practice of psychology – psychologist.
- (2) In the category of health care practice of nursing, enrolled nurse is a category of enrolment.

## **Division 2                      Application for registration or enrolment**

### **20                      Application for registration or enrolment**

- (1) A person may apply to be:
- (a) registered in a category of registration; or
  - (b) enrolled in a category of enrolment.
- (2) An application under subsection (1) must be made to the relevant Board.
- (3) A person may only apply to be registered or enrolled in a category of registration or enrolment if the person:
- (a) has successfully completed an accredited course in the category of registration or enrolment in the Territory;
  - (b) has successfully completed a course in the category of registration or enrolment outside the Territory that the Board considers is at least substantially equivalent to an accredited course in the category of registration or enrolment; or

- (c) has experience and training in the category of registration or enrolment that the Board considers is at least substantially equivalent to the successful completion of an accredited course in the category of registration or enrolment.
- (4) A person who is not otherwise eligible to apply for a category of registration or enrolment may do so if the relevant Board is satisfied that accepting the application and registering or enrolling the person is in the public interest or meets a community need.

## **21 Requirements of application for registration or enrolment**

- (1) An application must:
  - (a) be in the approved form;
  - (b) be lodged with the Registrar of the relevant Board;
  - (c) be accompanied by the application fee and practising certificate fee; and
  - (d) be accompanied by any other information or evidence that the Board may require.
- (2) A Board to whom an application is made may require an applicant to provide further information or evidence as it considers necessary in order to consider the application.

## **Division 3 Determination of entitlement**

### **22 Entitlement to registration or enrolment**

- (1) An applicant is entitled to be registered or enrolled in the category of registration or enrolment to which the application relates if the relevant Board is satisfied that the applicant:
  - (a) is eligible to apply for the category of registration or enrolment;
  - (b) is competent to practise in the category;
  - (c) has sufficient physical and mental capacity to practise in the category;
  - (d) has an adequate command of the English language;
  - (e) has adequate professional indemnity arrangements in place; and
  - (f) is of good character.

- (2) For the purposes of subsection (1)(b), the relevant Board may take into account evidence of an applicant's recent practice or continued competence in the category of health care practice in addition to anything else the Board thinks fit.

## **23 Interim registration or enrolment**

- (1) The Registrar of the relevant Board may grant the applicant interim registration or enrolment if the Registrar reasonably considers that the applicant is entitled to be registered or enrolled in the category of registration or enrolment but that it is not practicable to wait until the Board can consider the application.
- (2) The Registrar must issue an interim certificate of registration or enrolment to a person who is granted interim registration or enrolment.
- (3) An interim certificate of registration or enrolment must:
  - (a) be in the approved form; and
  - (b) contain the information that the Board determines.
- (4) A person to whom interim registration or enrolment is granted is registered or enrolled as a health practitioner for the period during which the interim registration or enrolment is in force.
- (5) A person's interim registration or enrolment is in force from the date on which it is granted until the date on which the person receives notice that the Board has:
  - (a) registered or enrolled the person;
  - (b) refused to register or enrol the person; or
  - (c) cancelled the interim registration or enrolment.

## **24 Cancellation of interim registration or enrolment**

- (1) The relevant Board may cancel a person's interim registration or enrolment for any reason it considers sufficient.
- (2) If the Board cancels a person's interim registration or enrolment, it must immediately:
  - (a) give the person notice of its decision and the reasons for its decision; and
  - (b) advise the person of his or her right of appeal.

- (3) Notice under subsection (2) must be served personally on, or sent by post to, the person.
- (4) On the notice being served or delivered:
  - (a) the person's interim registration or enrolment is cancelled; and
  - (b) the interim certificate of registration or enrolment issued to the person ceases to be valid.
- (5) A person who is given a notice under subsection (2) must surrender to the Board the person's interim certificate of registration or enrolment:
  - (a) within 7 days after receiving the notice; or
  - (b) within any longer period that the Board allows and specifies in the notice.

Penalty: 50 penalty units.

Default penalty: 1.5 penalty units.

- (6) An offence against subsection (5) is a regulatory offence.

## **25 Evaluation of entitlement**

- (1) A committee may be established to evaluate whether an applicant is entitled to be registered or enrolled in a category of health care practice.
- (2) A committee of evaluators consists of not less than 3 persons of whom at least 2 must be persons registered or enrolled in the category of health care practice in respect of which the application relates.
- (3) Schedule 4 has effect with respect to the powers and procedures of a committee of evaluators.
- (4) When a committee of evaluators is established, the relevant Board must give notice to the applicant of:
  - (a) the reasons for evaluating the applicant; and
  - (b) the date, time and place set for the evaluation.
- (5) Notice under subsection (4) must be given to the applicant at least 14 days before the date, or first date, set for the evaluation.

**26                      Recommendation of committee of evaluators**

- (1) After conducting an evaluation, a committee of evaluators must provide the relevant Board with a written report containing:
  - (a) a recommendation as to whether the applicant is entitled to be registered or enrolled and, if so, whether the registration or enrolment should be unconditional or subject to conditions; and
  - (b) if the committee recommends that the applicant is entitled to be registered or enrolled subject to conditions – a recommendation as to what those conditions should be.
- (2) A report under subsection (1) must:
  - (a) contain any findings on questions of fact and the evidence or other material on which those findings are based; and
  - (b) set out the reasons for any recommendation.

**Division 4                      Grant or refusal of registration or enrolment**

**27                      Determination of application**

- (1) If the relevant Board is satisfied that the applicant is entitled to be registered or enrolled, it must register or enrol the applicant and it may do so unconditionally or subject to conditions.
- (2) The Board must give notice to the applicant of:
  - (a) the applicant's registration or enrolment; and
  - (b) if the registration or enrolment is conditional – the conditions that the registration or enrolment is subject to and the applicant's rights of appeal and review in respect of those conditions.
- (3) If the Board is not satisfied that an applicant is entitled to be registered in the category of registration or enrolment, it must refuse to register or enrol the applicant.
- (4) If the Board does not register or enrol an applicant within 3 months after his or her application is lodged or within any other period agreed on by the Board and the applicant, the Board is taken to have refused to register or enrol the applicant.

(5) The Board must:

- (a) give notice to the applicant of the refusal to register or enrol the applicant under subsection (3) or (4), the reasons for the refusal and the applicant's right of appeal; and
- (b) refund the practising certificate fee that accompanied the application.

## **28                      Special grounds for refusing to register or enrol**

Without limiting section 22, the relevant Board may determine that the applicant is not entitled to be registered or enrolled if:

- (a) the applicant's right of practice under a foreign health care practice law has been cancelled or suspended for a reason relating to the person's professional conduct or competence or capacity to practise;
- (b) the applicant has been convicted in the Territory or elsewhere of a crime or an offence of a kind that, in the Board's opinion, makes it not in the public interest to allow the applicant to practise; or
- (c) the Board considers the applicant's use of alcohol or a drug may impact on his or her ability to practise.

## **29                      Nurse cannot be registered and enrolled at same time**

- (1) If an enrolled nurse is granted registration, the nurse's enrolment is cancelled.
- (2) If a registered nurse is granted enrolment, the nurse's registration is cancelled.
- (3) If an enrolled nurse is granted interim registration, the nurse's enrolment is suspended for the period of the interim registration.
- (4) If a registered nurse is granted interim enrolment, the nurse's registration is suspended for the period of the interim enrolment.

## **30                      Review of registration or enrolment conditions**

- (1) A health practitioner may, at intervals of not less than 12 months, apply to the relevant Board for a review of a condition to which the health practitioner's registration or enrolment is subject.
- (2) A health practitioner's right under subsection (1) is in addition to the health practitioner's right of appeal under section 99(1)(b).

- (3) The relevant Board, on its own motion, may at any time review the registration or enrolment of a health practitioner and may:
  - (a) vary the conditions to which the registration or enrolment is subject; or
  - (b) impose conditions to which the registration or enrolment is subject.
- (4) The Board must give notice to the health practitioner of any conditions varied or imposed under subsection (3) and of the health practitioner's right of appeal and review in respect of those conditions.

## **Division 5                      Restricted practice areas**

### **31                      Restricted practice areas**

- (1) A Board may, in respect of the category of health care practice for which it is established, declare an area of health care practice to be a restricted practice area.
- (2) A declaration under subsection (1) may be included in a code adopted by the Board under section 12.

### **32                      Authorisation to practise in restricted practice area**

- (1) A registered health practitioner may apply for an authorisation to practise in a restricted practice area if the health practitioner:
  - (a) has the qualifications, training and experience determined by the relevant Board in respect of the area of practice; or
  - (b) has qualifications, training and experience that the relevant Board considers to be at least substantially equivalent to those determined by it under paragraph (a).
- (2) A determination under subsection (1)(a) may be included in a code adopted by the relevant Board under section 12.

### **33                      Requirements of application for authorisation**

- (1) An application for an authorisation must be:
  - (a) in the approved form;
  - (b) lodged with the Registrar of the relevant Board;
  - (c) accompanied by the application fee; and

- (d) accompanied by any information or evidence that the Board requires.
- (2) The Board may require the applicant to provide further information or evidence as it considers necessary in order to consider the application.

#### **34            Entitlement to authorisation**

An applicant for an authorisation is entitled to be granted the authorisation if the relevant Board is satisfied that the applicant:

- (a) is eligible to apply for the authorisation; and
- (b) is competent and has the capacity to practise in the restricted practice area.

#### **35            Evaluation and determination of application**

Sections 25, 26, 27, 28 and 30 apply to an application for an authorisation and the determination of the application as if references in those sections:

- (a) to an applicant were references to an applicant for an authorisation;
- (b) to registration were references to an authorisation; and
- (c) to an entitlement to registration were references to an entitlement to an authorisation.

#### **36            Interim authorisation**

- (1) The Registrar of the relevant Board may grant the applicant an interim authorisation if the Registrar reasonably considers that the applicant is entitled to the authorisation but that it is not practicable to wait until the Board can consider the application.
- (2) A health practitioner to whom an interim authorisation is granted is authorised to practise in the restricted practice area specified in the authorisation.
- (3) A person's interim authorisation is in force from the date on which it is granted until the date on which the person receives notice that the Board has:
  - (a) approved the person's application;
  - (b) refused to approve the person's application; or



(c) cancelled the interim authorisation.

(4) A Registrar cannot impose conditions on the grant of an interim authorisation.

### **37                      Cancellation of authorisation**

(1) The relevant Board may, by notice to a health practitioner, cancel the authorisation granted to the health practitioner for any reason it considers sufficient.

(2) Without limiting subsection (1), the Board may cancel the authorisation if the health practitioner:

(a) was granted the authorisation by means of a false or misleading statement or declaration;

(b) no longer holds, or is no longer entitled to hold, a qualification by reason of which he or she was granted the authorisation;

(c) does not have the capacity to practise competently in the restricted practice area;

(d) contravenes a condition of the authorisation;

(e) contravenes a code that applies to the restricted practice area;

(f) is negligent or incompetent in practising in the restricted practice area; or

(g) has had his or her registration or interim registration cancelled.

(3) The relevant Board must not cancel an authorisation without first giving the health practitioner a reasonable opportunity to be heard.

(4) Notice under subsection (1) must:

(a) specify the reasons for cancelling the authorisation; and

(b) inform the health practitioner of his or her right of appeal.

(5) Notice under subsection (1) must be served personally on, or sent by post to, the health practitioner.

(6) On the notice being served or delivered, the health practitioner ceases to be authorised to practise in the restricted practice area.

(7) A health practitioner who is given a notice under subsection (1) must surrender to the relevant Board the person's authorisation:

- (a) within 7 days after receiving the notice; or
- (b) within any longer period that the Board allows and specifies in the notice.

Penalty: 50 penalty units.

Default penalty: 1.5 penalty units.

(8) An offence against subsection (7) is a regulatory offence.

## **Division 6            Certificates**

### **38            Registered and enrolled persons to be issued with certificates**

- (1) A Board must issue:
  - (a) a certificate of registration; and
  - (b) a practising certificate,to each person that it registers.
- (2) The Nursing and Midwifery Board must issue:
  - (a) a certificate of enrolment; and
  - (b) a practising certificate,to each person that it enrolls.

### **39            Certificates of registration or enrolment**

- (1) A certificate of registration or enrolment must:
  - (a) be in the approved form and contain information that the relevant Board determines; and
  - (b) specify the conditions, if any, to which the registration or enrolment is subject.
- (2) A certificate of registration or enrolment is evidence that the person named in the certificate is:
  - (a) registered or enrolled as a health practitioner in the category of registration or enrolment specified in the certificate; and

- 
- (b) subject to the conditions, if any, specified in the certificate.

#### **40 Practising certificates**

- (1) A practising certificate must:
- (a) be in the approved form and contain information that the relevant Board determines;
  - (b) if applicable – indicate whether the certificate holder's practice must be supervised and the degree of supervision required; and
  - (c) specify the conditions, if any, to which the certificate holder's registration or enrolment is subject.
- (2) A practising certificate issued to a registered health practitioner is evidence until the due date, or the date determined by the relevant Board, that:
- (a) the health practitioner is authorised to practise in the Territory in the category of registration specified in the certificate subject to the conditions, if any, specified in the certificate;
  - (b) the health practitioner is authorised to practise in the restricted practice areas, if any, subject to the conditions, if any, specified in the certificate; or
  - (c) if the person is registered in the category of registration of dental therapist or dental hygienist – the person is authorised to practise in the Territory:
    - (i) under the direct or indirect supervision of a person who is registered as a dentist or dental specialist; and
    - (ii) subject to the conditions, if any, specified in the certificate.
- (3) A practising certificate issued to an enrolled nurse is evidence until the due date, or the date determined by the Nursing and Midwifery Board, that the enrolled nurse is authorised to practise in the Territory:
- (a) under the direct or indirect supervision of a person who is a registered nurse; and
  - (b) subject to the conditions, if any, specified in the certificate.

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## **41 Replacement and amendment of certificates**

- (1) If the relevant Board is satisfied that a certificate issued by it has been lost or destroyed, it may issue a replacement certificate (that is marked accordingly) on the replacement certificate fee being paid.
- (2) The relevant Board, by notice, may require a health practitioner to surrender a certificate issued to the health practitioner to enable it to issue a new certificate with amended particulars.
- (3) The Registrar of a Board has the same powers in relation to an interim certificate of registration or enrolment as the Board has under this section in relation to certificates issued by it.
- (4) A health practitioner who is given a notice under subsection (2) must surrender the certificate to the relevant Board:
  - (a) within 7 days after receiving the notice; or
  - (b) within any longer period that the Board allows and specifies in the notice.

Penalty: 50 penalty units.

- (5) A person who is given a notice by a Registrar under subsection (3) must surrender his or her interim certificate to the Registrar:
  - (a) within 7 days after receiving the notice; or
  - (b) within any longer period that the Registrar allows and specifies in the notice.

Penalty: 50 penalty units.

- (6) An offence against this section is a regulatory offence.

## **42 Offences in relation to certificates**

A person who is issued with:

- (a) a certificate of registration or enrolment;
- (b) an interim certificate of registration or enrolment; or
- (c) a practising certificate,

must not:

- (d) lend or agree to lend that certificate to another person; or

- (e) allow that certificate to be used by another person.

Penalty:       500 penalty units.

## **Division 7            Registers and roll**

### **43            Registers**

- (1) A Board must keep a register.
- (2) A Board must record the following information in the register in relation to each person who is granted registration by it:
  - (a) the person's full name, personal address and business address, if any;
  - (b) the person's qualifications;
  - (c) the date of the person's registration;
  - (d) any conditions the person's registration is subject to under section 27;
  - (e) any authorisations that the person holds.
- (3) A Board must also record the following matters in the register:
  - (a) the renewal of a person's right of practice;
  - (b) the suspension of a person's right of practice;
  - (c) any conditions a person's registration is subject to under the Act;
  - (d) the removal from the register of a person's name;
  - (e) the restoration to the register of a person's name;
  - (f) any change in the name, personal address or business address of a registered person;
  - (g) any change in the authorisations held by a registered person.
- (4) The register may contain any other information that the Board considers necessary or appropriate.
- (5) The register may be kept in electronic form.

#### **44                      Roll of Nurses**

- (1) The Nursing and Midwifery Board must keep a roll called the Roll of Nurses.
- (2) The Board must record the following information in the roll in relation to each person who is granted enrolment:
  - (a) the person's full name, personal address and business address, if any;
  - (b) the person's qualifications;
  - (c) the date of the person's enrolment;
  - (d) any conditions the person's enrolment is subject to under section 27.
- (3) The Board must also record the following matters in the roll:
  - (a) the renewal of a person's right of practice;
  - (b) the suspension of a person's right of practice;
  - (c) any conditions the person's enrolment is subject to under the Act;
  - (d) the removal from the roll of a person's name;
  - (e) the restoration to the roll of a person's name;
  - (f) any change in the name, personal address or business address, if any, of an enrolled person.
- (4) The roll may contain any other information that the Board considers necessary or appropriate.
- (5) The roll may be kept in an electronic form.

#### **45                      Correction of registers and roll**

- (1) A person may apply to a Board to have an inaccurate or erroneous entry in the register or roll kept by it corrected and, if the Board is satisfied that the entry is inaccurate or erroneous, it must correct the register or roll accordingly.
- (2) No fee is payable for an application under subsection (1).

- (3) A Board may require an applicant under subsection (1) to provide information or evidence as it considers necessary in order to consider the application.

#### **46                      Notice of change of name or address**

- (1) A health practitioner must, within 30 days of changing his or her name, personal address or business address, give the relevant Board notice of the change and the new name or address, as the case may be.

Penalty:            20 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

- (3) In this section:

***health practitioner*** includes a health practitioner whose right of practice is suspended.

#### **47                      Inspection of registers and roll**

- (1) A person may inspect the register or roll kept by a Board at the office of the Board.
- (2) A person may obtain a copy of or extract from the register or roll kept by a Board.

#### **48                      Protection of private information**

Despite section 47, a health practitioner's private address and details of any health related condition must not appear in the register or roll that is made available for public inspection.

#### **49                      Annual practising certificate fees**

- (1) A health practitioner who wishes to practise must, on or before the due date in each year or the date determined by the relevant Board:
- (a) pay the practising certificate fee to the Board; and
  - (b) give to the Board any information it requires.
- (2) The Board may refuse to issue a practising certificate if:
- (a) the health practitioner fails to pay the practising certificate fee and, if applicable, the restoration fee;
  - (b) the health practitioner fails to provide information required by the Board by a date specified by the Board;

- (c) the Board is not satisfied that the health practitioner complies with the requirements of section 22; or
  - (d) the health practitioner has not practised for a period of time as specified by the Board unless the Board is satisfied that the health practitioner complies with the requirements of section 22.
- (3) If the Board refuses to issue a new practising certificate under subsection (2), the Board must refund the practising certificate fee and give the health practitioner notice of his or her right of appeal.
- (4) In this section:

***health practitioner*** includes a health practitioner whose right of practice is suspended.

## **50                      Removal from registers or roll**

- (1) A Board may remove from the register or roll kept by it the name of a person who:
- (a) contravenes a condition subject to which the person is registered or enrolled;
  - (b) fails to pay, within the time specified for payment, a fine imposed on the person under section 65(1)(d);
  - (c) fails to comply with a requirement made of the person under section 65(1)(f); or
  - (d) fails to honour an undertaking given to the Board or Tribunal.
- (2) A Board must remove from the register or roll kept by it the name of a person:
- (a) who dies;
  - (b) who requests the Board to remove his or her name from the register or roll;
  - (c) in respect of whom the Tribunal has made a decision under section 65(1)(a) that has taken effect;
  - (d) who is no longer entitled to be registered or enrolled;
  - (e) whose authority to practise under a foreign health care practice law has been cancelled for any reason relating to the person's competence to practise;



- (f) who has been registered or enrolled by reason of a false or misleading statement or declaration; or
  - (g) who fails to pay the practising certificate fee referred to in section 49 by the due date or the date specified by the Board.
- (3) A Board must not remove a person's name under subsection (1) or (2)(d), (e) or (f) without first giving the person a reasonable opportunity to be heard.
- (4) If a Board removes a person's name from a register or roll under this section (other than under subsection (2)(a), (c) or (g)), it must immediately give the person notice of the removal.
- (5) A notice under subsection (4) must:
  - (a) except if subsection (2)(b) applies – specify the reasons for the removal; and
  - (b) except if subsection (2)(b) or (c) applies – inform the person of his or her right of appeal.
- (6) A notice under subsection (4) must be served personally on, or sent by post to, the person whose name has been removed from the register or roll.
- (7) On the notice being served or delivered, the person ceases to be a health practitioner.
- (8) On the person ceasing to be a health practitioner, the Board may do either or both of the following:
  - (a) give notice of the fact to any health practitioner registration authority, body or person the Board considers appropriate to notify;
  - (b) publish notice of the fact in any professional publication related to health care practice that the Board considers appropriate.
- (9) If a Board removes a person's name from the register or roll kept by it, it may require that a specified period must elapse or that a specified condition must be fulfilled before the person may apply to be registered or enrolled.

**51                      Persons taken off register or roll must surrender certificate**

- (1) A person who is given notice that his or her name has been removed from a register or roll must surrender the certificate of registration or enrolment and any current practising certificate held by the person to the relevant Board:

- (a) within 14 days after receiving the notice; or
- (b) within any longer period that the Board allows and specifies in the notice.

Penalty:            50 penalty units.

Default penalty: 1.5 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

**52                      Restoring name to register or roll**

- (1) Subject to this section, if a person's name has been removed from a register or roll by a Board under section 50(2)(g), the Board must restore the person's name to the register or roll if the person:

- (a) requests that his or her name be restored to the register or roll;
- (b) pays the restoration fee; and
- (c) provides the Board with any information that it requires.

- (2) A request under subsection (1) must be in the approved form.

- (3) Subject to this section, if a person's name has been removed from the register or roll by a Board under section 50(2)(g), the Board must restore the person's name to the register or roll if the person pays the restoration fee within 30 days after the due date or the date specified by the Board.

- (4) A Board may refuse to restore a person's name to a register or roll if it is not satisfied that the person complies with the relevant requirements specified in section 22.

- (5) If a Board refuses to restore a person's name to a register or roll, it must, as soon as practicable, give the person notice of:

- (a) the refusal and the reasons for the refusal; and
- (b) the person's right of appeal.

- (6) A notice under subsection (5) must be served personally on, or sent by post to, the affected person.

### **53                      Endorsement of qualifications on register or roll**

- (1) A health practitioner may apply to have a degree or qualification that the health practitioner holds endorsed on the register or roll kept by the Board.
- (2) An application under subsection (1) must be:
- (a) in writing to the relevant Board;
  - (b) accompanied by the application fee; and
  - (c) accompanied by evidence of the successful completion of the degree or qualification.
- (3) The degree or qualification must be a degree or qualification recognised by the relevant Board for the purposes of this section.

### **54                      Evidentiary provisions**

- (1) A copy of an entry in the register or roll kept by a Board purporting to be signed by the Registrar of the Board is evidence that the entry was duly made.
- (2) A certificate purporting to be signed by the Registrar of a Board and stating one or more of the following matters is evidence of the matters stated:
- (a) a person specified in the certificate was or was not registered or enrolled on a date or during a period specified in the certificate;
  - (b) the registration or enrolment of a person specified in the certificate was subject to a condition specified in the certificate on a date or for a period specified in the certificate;
  - (c) the registration, enrolment, right of practice or authorisation of a person specified in the certificate was suspended on a date or for a period specified in the certificate;
  - (d) the name of a person specified in the certificate was removed from the register or roll kept by the Board on a date or for a period specified in the certificate;
  - (e) a person specified in the certificate was or was not the holder of a practising certificate or an authorisation on a date or during a period specified in the certificate;

- (f) the authorisation of a person specified in the certificate was subject to a condition specified in the certificate on a date or for a period specified in the certificate.

## **Part 4            Professional conduct**

### **Division 1        Complaints**

#### **55            Making complaints**

- (1) A person who is aggrieved by the conduct of a health practitioner may complain to the relevant Board.
- (2) The relevant Board may, on its own motion, make a complaint in respect of the conduct of a health practitioner.
- (3) A complaint may be made and dealt with under this Part even though the person who is the subject of the complaint:
  - (a) has ceased to be a health practitioner;
  - (b) is not a health practitioner – if there are reasonable grounds to suspect that the person is practising as a health practitioner but has no entitlement to do so; or
  - (c) is suspended at the time of the matter complained of.
- (4) For this Part:
  - (a) a reference to a health practitioner includes a person referred to in subsection (3)(a) or (b); and
  - (b) in respect of subsection (3)(b) – a complaint may be made and dealt with by the Board established in respect of the category of health care that the person is suspected of practising.

#### **56            Specific matters in respect of which complaints may be made**

- (1) Without limiting the matters in respect of which a complaint may be made, a complaint may be made that a health practitioner:
  - (a) has been registered or enrolled, or granted an authorisation, by reason of a false or misleading statement or declaration;
  - (b) no longer holds, or is no longer entitled to hold, a qualification by reason of which the health practitioner was registered or enrolled or granted an authorisation;

- (c) does not have capacity to practise competently;
  - (d) is not entitled on other grounds to be registered or enrolled or to hold an authorisation; or
  - (e) is guilty of professional misconduct.
- (2) Without limiting the matters that may constitute professional misconduct, a health practitioner is guilty of professional misconduct if the health practitioner:
- (a) contravenes this Act;
  - (b) contravenes a foreign health care practice law;
  - (c) contravenes a code that applies to the health care practice authorised by the health practitioner's category of registration or enrolment;
  - (d) contravenes a condition subject to which the health practitioner is registered or enrolled;
  - (e) when required to have a practising certificate – practises without a practising certificate;
  - (f) practises in a restricted practice area without an authorisation to practise in the area;
  - (g) contravenes a condition of an authorisation;
  - (h) fails to pay, within the time specified, a fine imposed on the health practitioner under section 65(1)(d);
  - (i) fails to comply with a requirement made of the health practitioner under section 65(1)(f);
  - (j) fails to honour an undertaking given to the Board or Tribunal;
  - (k) is negligent or incompetent in health care practice; or
  - (l) behaves in a fraudulent or dishonest manner in the health care practice authorised by the health practitioner's category of registration or enrolment.

## **57            Complaints procedure**

- (1) A complaint must:
- (a) be made in writing;

- (b) contain particulars of the matter complained of;
  - (c) identify the health practitioner against whom the complaint is being made;
  - (d) identify who is the complainant;
  - (e) contain a statement that the complainant consents to a copy of the complaint or particulars of the complaint being given to the health practitioner; and
  - (f) be lodged with the relevant Board.
- (2) The relevant Board must ensure that a person who wishes to make a complaint in respect of a health practitioner is given reasonable assistance to enable the person to make the complaint in accordance with this section.
- (3) On receiving a complaint, the Board must:
  - (a) record the date on which the complaint was received; and
  - (b) without undue delay – determine whether to accept or not to accept the complaint.
- (4) The Board must notify the Commissioner for Health and Community Services Complaints that the complaint has been received.
- (5) The Board may require the complainant to provide further particulars of the complaint.
- (6) The rules of procedural fairness must be observed in determining a complaint under this Part.

## **58        Certain complaints to be dismissed**

The relevant Board must dismiss the complaint if it considers that:

- (a) the complaint is without foundation or frivolous or vexatious; or
- (b) the matter complained of is insubstantial.

## **59        Mediation**

- (1) The relevant Board may refer the complaint to mediation if the health practitioner who is the subject of the complaint and the complainant agree.
- (2) If subsection (1) applies, the Board must appoint a person to be the mediator and refer the complaint to the mediator.

- (3) As soon as practicable after receiving the referral, the mediator must:
  - (a) attempt to resolve the complaint; and
  - (b) advise the Board of the outcome of the mediation.

## **60 Preliminary investigation of complaints**

- (1) The relevant Board may direct a committee, inspector or person to conduct a preliminary investigation of the complaint.
- (2) If subsection (1) applies, the Board must:
  - (a) give a copy of the complaint or the particulars of the complaint to the health practitioner who is the subject of the complaint; and
  - (b) allow the health practitioner to make submissions to the committee, inspector or person conducting the preliminary investigation.
- (3) The committee, inspector or person conducting the preliminary investigation of a complaint must provide the Board and the health practitioner who is the subject of the complaint with a written report of the findings of the preliminary investigation and any opinions based on those findings.

## **61 Complaints dealt with by Board**

- (1) If a Board to whom a complaint is made considers that a prescribed matter may not be sufficiently serious to warrant an inquiry, it may, by notice, require the health practitioner to do either or both of the following:
  - (a) give to it an explanation of the matter in writing;
  - (b) appear before it to give an explanation of the matter.
- (2) If the prescribed matter relates to the health practitioner's competence to practise, the Board may require the health practitioner to have a medical examination on the same terms as a medical examination required by the Tribunal.
- (3) A notice under subsection (1) must:
  - (a) be served personally or sent by post;
  - (b) set out particulars of the prescribed matter;

- (c) in respect of a notice under subsection (1)(a) – specify the date by which the explanation must be given;
  - (d) in respect of a notice under subsection (1)(b):
    - (i) state that the health practitioner is entitled to make submissions when appearing before the Board;
    - (ii) state that the health practitioner may be assisted by another person when appearing before the Board but is not entitled to be represented;
    - (iii) state that the appearance before the Board is not open to the public; and
    - (iv) specify the date, time and place at which the health practitioner is required to appear;
  - (e) inform the health practitioner that he or she may request that the prescribed matter be referred directly to the Tribunal; and
  - (f) inform the health practitioner of the other circumstances in which the prescribed matter may be referred to the Tribunal.
- (4) The notice may contain any other information that the Board considers necessary or expedient.
- (5) The date specified under subsection (3)(c) or (d)(iv) must be not less than 14 days after the date on which the notice is served or delivered.
- (6) The Board must not take any further action in respect of a prescribed matter unless, after considering the explanation of the health practitioner, it is satisfied that the health practitioner has a case to answer.
- (7) If the Board is satisfied, after considering the explanation, that the prescribed matter has been substantiated but that it is not sufficiently serious to warrant an inquiry, the Board may take one or more of the following actions:
- (a) caution or reprimand the health practitioner;
  - (b) accept an undertaking from the health practitioner to take or refrain from taking specified action;
  - (c) impose any condition that it thinks fit on the health practitioner's registration or enrolment or practising certificate;



- (d) impose on the health practitioner a fine not exceeding \$10 000;
  - (e) give notice of the decision and any action taken by the Board to any health practitioner registration authority, body or person that the Board considers appropriate to notify.
- (8) The Board may refer a prescribed matter to the Tribunal if the health practitioner fails to comply with the notice under subsection (1).
- (9) The Board must refer a prescribed matter to the Tribunal if:
- (a) in the course of giving an explanation of the prescribed matter, the health practitioner requests, orally or in writing, that the matter be referred;
  - (b) after or in the course of considering the explanation of the prescribed matter, the Board determines that the matter is sufficiently serious to warrant an inquiry; or
  - (c) if subsection (7) applies – the health practitioner disputes that the prescribed matter has been substantiated.
- (10) The Board must notify the complainant as it thinks fit of any action taken under this section.
- (11) At a meeting of the Board convened for the purposes of this section, the health practitioner:
- (a) is entitled to make submissions when appearing before the Board; and
  - (b) may be assisted by another person when appearing before the Board but is not entitled to be represented.
- (12) A meeting convened for the purposes of this section is not open to the public.
- (13) A fine imposed by a Board on a health practitioner under subsection (7) is a debt due and payable by the health practitioner to the Board.
- (14) In this section:

***prescribed matter*** means:

- (a) a matter giving rise to a complaint against a health practitioner; or

- (b) a matter that could be grounds for a complaint against a health practitioner.

## **62            Referral of complaints**

- (1) A Board to whom a complaint is made, after it has considered the complaint and, if applicable, the report on the preliminary investigation, must determine whether to refer the complaint to the Tribunal, the Commissioner for Health and Community Services Complaints or any other relevant body.
- (2) A complaint need not be referred to the Tribunal if the Board considers that:
  - (a) the complaint is without foundation;
  - (b) the complaint is frivolous or vexatious;
  - (c) the matter complained of is insubstantial; or
  - (d) the matter complained of may not be sufficiently serious to warrant an inquiry.
- (3) A Board, on its own motion, may refer to the Tribunal, the Commissioner for Health and Community Services Complaints or any other relevant body or person any matter that could be grounds for a complaint against a health practitioner.
- (4) Section 55(3) has effect in respect of an inquiry of the Tribunal conducted into a matter referred to it under subsection (3) as if the inquiry was an inquiry into a complaint made under this Part.
- (5) A meeting convened for the purposes of this section is not open to the public.

## **Division 2            Health Professional Review Tribunal**

### **63            Establishment and constitution of Tribunal**

- (1) The Health Professional Review Tribunal is established.
- (2) The Minister must appoint as permanent members of the Tribunal:
  - (a) a person who is a legal practitioner; and
  - (b) a person who is not a legal practitioner or health practitioner.
- (3) The permanent member appointed under subsection (2)(a) is the President of the Tribunal.

- (4) The Tribunal, in respect of each inquiry it conducts, consists of 5 members, being:
  - (a) the 2 permanent members; and
  - (b) 3 persons who are:
    - (i) registered or enrolled; or
    - (ii) registered or enrolled under a foreign health care practice law,  
  
in the same category of health care practice that the health practitioner against whom the complaint is made is registered or enrolled.
- (5) The members referred to in subsection (4)(b) must be appointed by the President.
- (6) A member appointed under subsection (5) is known as a special member.
- (7) A special member must be a health practitioner who is considered by the President to have skill, knowledge or experience that is relevant to the inquiry in respect of which he or she is appointed.
- (8) A person must not be appointed a special member if the person is a member of the Board that referred the complaint to the Tribunal or has been involved in any investigation or consideration of the complaint by the Board.
- (9) A person who is a member of the Tribunal is not personally liable for any act done or purported or omitted to be done by the person in good faith for the purposes of this Act.
- (10) Schedule 4 has effect with respect to the powers and procedures of the Tribunal.
- (11) Schedule 5 has effect with respect to the membership of the Tribunal.
- (12) Schedule 6 has effect with respect to the proceedings of the Tribunal.

## **64            Function of Tribunal**

The Tribunal must conduct an inquiry into each complaint that is referred to it by a Board.

## **Division 3 Actions following inquiry**

### **65 Actions by Tribunal**

- (1) On concluding an inquiry, the Tribunal may take one or more of the following actions as it considers appropriate having regard to the subject of the inquiry and its findings:
  - (a) have the defendant's name removed from a register or roll;
  - (b) have the defendant's authorisation cancelled;
  - (c) have the defendant's right of practice or authorisation suspended for the period determined by it;
  - (d) impose on the defendant a fine not exceeding \$10 000;
  - (e) impose on the defendant a condition subject to which the defendant may continue to practice in the category of registration or enrolment for which her or she is registered or enrolled or practise in a restricted practice area;
  - (f) require the defendant to take or refrain from taking specified action;
  - (g) caution or reprimand the defendant;
  - (h) dismiss the complaint and clear the defendant.
- (2) If the inquiry relates to a matter referred to in section 56(1)(b), the Tribunal must, unless it dismisses the complaint or clears the defendant:
  - (a) if the matter relates to registration or enrolment – take at least the action specified in subsection (1)(a); or
  - (b) if the matter relates to an authorisation – take at least the action specified in subsection (1)(b).
- (3) If the Tribunal imposes a fine under subsection (1)(d), it must specify a period within which the fine must be paid.
- (4) For the purposes of subsection (1)(f), but without limiting that provision, the Tribunal may require the defendant to do either or both of the following:
  - (a) be subject to periodic supervision or inspection by a specified person;
  - (b) undertake a rehabilitation program.

- (5) The Tribunal, as an alternative to taking action against a defendant under subsection (1), may accept an undertaking from the defendant to take or refrain from taking specified action, either generally or within a specified period of time.

## **66 Costs and expenses of inquiries**

- (1) The Tribunal may, in addition to exercising its powers under section 65, order the defendant to pay the costs and expenses of or arising from the inquiry as the Tribunal thinks fit.
- (2) Subsection (1) does not apply if the Tribunal decides to dismiss the complaint against the defendant or, if section 62(3) applies, clear the defendant.
- (3) If the Tribunal decides to dismiss the complaint or, if section 62(3) applies, clear the defendant, it may, if it considers it fair to do so, order the Board that referred the complaint to the Tribunal to pay the costs and expenses or any part of the costs and expenses incurred by the defendant in respect of the inquiry.
- (4) The Board must comply with the order of the Tribunal under subsection (3).
- (5) Any costs or expenses ordered to be paid under subsection (1) are recoverable as a debt due and payable to the Board that referred the complaint to the Tribunal.

## **67 Notice of decision**

- (1) When the Tribunal decides what action to take under section 65, it must give the Board and the defendant notice of the decision and the reasons for the decision.
- (2) The notice to the defendant must:
  - (a) inform the defendant of his or her right of appeal; and
  - (b) be served personally or by post.
- (3) A decision of the Tribunal takes effect on the day on which the decision is made or on any later day that is specified by the Tribunal.

- (4) On the Tribunal's decision taking effect, the Board may do one or both of the following:
  - (a) give notice of the decision to any health practitioner registration authority, body or person the Board considers appropriate to notify;
  - (b) publish a notice of the decision in any professional publication related to health care practice that the Board considers appropriate.

## **Division 4            Suspension**

### **68            Suspension of practising certificate or authorisation**

- (1) The relevant Board may suspend the right of practice or authorisation of a health practitioner for a period that the Board in the circumstances considers appropriate if:
  - (a) the health practitioner contravenes a condition subject to which the health practitioner is registered or enrolled or a condition of an authorisation;
  - (b) the health practitioner's right of practice under a foreign health care practice law is suspended for a reason relating to the health practitioner's competence to practise;
  - (c) the health practitioner fails to pay, within the time specified, a fine imposed under section 61(7)(d) or 65(1)(d);
  - (d) the health practitioner fails to comply with a requirement made of the health practitioner under section 65(1)(f);
  - (e) the health practitioner fails to honour an undertaking given to the Board or Tribunal;
  - (f) the health practitioner contravenes a code that applies to the health practitioner's health care practice;
  - (g) the Board reasonably considers the suspension necessary for the purposes of inquiring into a complaint made against the health practitioner or inquiring into a matter that could be the subject of a complaint against the health practitioner;
  - (h) the health practitioner fails to attend for a medical, psychological or psychiatric examination when required by the Board; or

- (i) the Board considers that it is in the public interest to suspend the health practitioner's registration or enrolment.
  - (2) The power of a Board under this section is in addition to the power of the Tribunal under section 65(1)(c).
  - (3) If a Board decides to suspend a health practitioner's right of practice or authorisation, it may give the health practitioner an opportunity to be heard.
  - (4) If a Board decides to suspend a health practitioner's right of practice or authorisation of a health practitioner, it must make an appropriate note of the suspension and the reasons for the suspension in the register or roll kept by it and give the health practitioner notice of:
    - (a) the suspension and the reasons for the suspension; and
    - (b) the health practitioner's right of appeal.
  - (5) A notice under subsection (4) must be served personally on, or sent by post to, the health practitioner.
  - (6) The person ceases to be entitled to practise or ceases to hold the authorisation, as the case may be, for the period specified by the Board or until the suspension is revoked under section 69 or Part 7.
  - (7) A health practitioner whose right of practice or authorisation is suspended under subsection (1) must, if directed in writing to do so by the Board, return the health practitioner's practising certificate to the Board:
    - (a) within 7 days after receiving the direction; or
    - (b) within any longer period that the Board allows and specifies in the direction.
- Penalty:        50 penalty units.
- Default penalty: 1.5 penalty units.
- (8) If subsection (7) applies, the Board:
    - (a) if the suspension is of a right of practice – may retain the practising certificate for the period of the suspension; or
    - (b) if the suspension is of an authorisation – must as soon as practicable issue the health practitioner with an amended practising certificate or a fresh practising certificate with amended particulars.

- (9) If the Board suspends the right of practice or authorisation of a health practitioner under this section, it may, if it considers that it is in the public interest to do so, give notice of the suspension to any health practitioner registration authority, body or person the Board considers appropriate to notify.
- (10) An offence against subsection (7) is a regulatory offence.

## **69 Revocation of suspension**

If the Board suspends a health practitioner's right of practice or authorisation under section 68, it may, at any time and for any reason it considers sufficient, revoke the suspension wholly or in part.

## **70 Effect of cancellation of right of practice in State or another Territory**

- (1) If the relevant Board ascertains that a health practitioner's registration or enrolment or entitlement to practise in a State or another Territory of the Commonwealth has been:
  - (a) cancelled or suspended; or
  - (b) made subject to a condition,on disciplinary grounds or as a result of or in anticipation of criminal or civil or disciplinary proceedings or as a result of a finding of impairment, the health practitioner's registration or enrolment in the Territory is affected in the same way and the Board must, as soon as practicable, notify the health practitioner in writing.
- (2) The Board may, in relation to a cancellation, suspension or imposition of a condition referred to in subsection (1), take any action that it thinks fit including revoking the cancellation, suspension or condition.

## **Division 5 Inspectors and investigations**

### **71 Appointment of inspectors**

- (1) A Board may appoint a person to be an inspector.
- (2) The functions of an inspector are:
  - (a) to investigate matters to ensure that this Act and the codes are being complied with; and



- (b) to investigate complaints or matters that could be the subject of complaints.
- (3) A Board that appoints an inspector must issue the inspector with an identity card, in the approved form, containing a recent photograph of the inspector, the inspector's name and signature and the common seal of the Board.
- (4) A person must, within 5 days of ceasing to be an inspector, return to the Board the identity card issued to the person under subsection (3).

Penalty: 5 penalty units.

## **72 Powers of inspectors**

- (1) An inspector may, on producing his or her identity card:
  - (a) enter any premises at any time with the consent of an occupier of those premises or enter any premises where a health care service is provided if that place is open for entry; and
  - (b) exercise all or any of the powers specified in section 73 with the consent of an occupier of those premises.
- (2) If an inspector considers on reasonable grounds that there is, or is likely to be, on premises a document or thing that is, or is likely to be, relevant to an investigation and that it is not possible or reasonable in the circumstances to rely on the power in subsection (1), the inspector may apply in writing to a Justice for a warrant.
- (3) The Justice may issue a warrant if satisfied that:
  - (a) the document or thing referred to in the application is, or is likely to be, relevant to the inspector's investigation;
  - (b) there are reasonable grounds for believing that the document or thing is, or is likely to be, on the premises referred to in the application; and
  - (c) it will not be possible or reasonable in the circumstances for the inspector to rely on the power in subsection (1).
- (4) A warrant may be made subject to any conditions the Justice considers appropriate.

- (5) A warrant issued under this section authorises the inspector named in the warrant, using any assistance that the inspector considers necessary and subject to the conditions to which it is subject, to enter and search the premises specified in the warrant and exercise any of the powers specified in section 73 that are not expressly excluded by the Justice who issued the warrant.
- (6) An inspector, when executing a warrant, must permit a person who is an occupier or person in charge of the premises to which the warrant relates to inspect the warrant.
- (7) A person must not give, agree to give or offer to an inspector a gift, reward or other inducement to do or abstain from doing anything in relation to an investigation.

Penalty: 400 penalty units or imprisonment for 2 years.

- (8) In this section:

**investigation** means an investigation carried out by an inspector under section 71(2).

**occupier**, in relation to premises, means a person in legal occupation of the premises.

**premises** includes a vehicle or vessel.

### **73 Specific investigative powers**

- (1) Subject to and for the purposes of section 72(1)(b) and (5), an inspector may exercise the following powers:
  - (a) inspect and search the premises generally;
  - (b) require the person apparently in charge of the premises to produce for inspection any document held at the premises;
  - (c) inspect and take notes of or extracts from a document referred to in paragraph (b);
  - (d) make a copy of a document referred to in paragraph (b);
  - (e) ask questions of and require answers from persons on the premises;
  - (f) take photographs;
  - (g) open and inspect containers or packages that the inspector reasonably suspects are used for the purpose of, or in connection with, the provision of health care practice services;

- (h) examine or test any equipment held on the premises;
  - (i) require a person registered or enrolled or claiming to be registered or enrolled to produce a certificate of registration or enrolment or a practising certificate;
  - (j) if the inspector reasonably suspects that this Act or a code has been contravened – seize and, on providing a receipt, remove anything that in the reasonable opinion of the inspector is evidence of the contravention;
  - (k) remove, on providing a receipt, any document found on the premises to the custody and control of a Board for as long as the Board considers necessary or expedient.
- (2) If a Board is satisfied that for legitimate reasons a person needs access to a document that has been removed from premises to the custody and control of the Board under subsection (1)(k), the Board may:
- (a) grant the person reasonable access to the document or to a copy of the document;
  - (b) provide the person with a copy or certified copy of the document; or
  - (c) retain a copy of the document and return the original to the premises.

## **Part 5                      Impaired health practitioners**

### **74                      Notifying Board of possible impairment**

- (1) A person may notify the relevant Board if he or she considers a health practitioner's ability to practise is or may be affected by the health practitioner's:
- (a) addiction to alcohol or another drug;
  - (b) lack of mental or physical competence; or
  - (c) state of health.
- (2) Notification under subsection (1) must:
- (a) be in writing;
  - (b) contain particulars of the alleged impairment;

- (c) identify:
    - (i) the person lodging the notice; and
    - (ii) the health practitioner to whom the notice relates;
  - (d) contain a statement that the person lodging the notice consents to a copy, or particulars, of the notice being given to the health practitioner to whom the notice relates; and
  - (e) be lodged with the Board.
- (3) On receiving the notice, the Board must:
- (a) record the date on which the notice was received; and
  - (b) without undue delay – determine to accept or not to accept the notice.
- (4) The Board may require the person who lodged the notice to provide further particulars of the alleged impairment.
- (5) The rules of procedural fairness must be observed in dealing with a notice under this Part.

## **75 Investigation of possible impairment without notice**

The relevant Board may, on its own motion, investigate a health practitioner if it considers the health practitioner's ability to practice is or may be affected by the health practitioner's:

- (a) addiction to alcohol or another drug;
- (b) lack of mental or physical competence; or
- (c) state of health.

## **76 Preliminary investigation of possible impairment**

- (1) The relevant Board may:
- (a) after accepting a notice under section 74; or
  - (b) after deciding to investigate a health practitioner under section 75,
- direct a committee, inspector or person to conduct a preliminary investigation of the health practitioner's fitness to practice.

- (2) If subsection (1) applies, the Board must:
- (a) give a copy of the notice, or particulars of the matter, to the health practitioner who is the subject of the notice; and
  - (b) allow the health practitioner to make submissions to the committee, inspector or person conducting the preliminary investigation.
- (3) The committee, inspector or person given a direction under subsection (1) must:
- (a) conduct a preliminary investigation under this section;
  - (b) provide the health practitioner with a written report of the findings of the investigation and any opinions based on those findings; and
  - (c) after complying with paragraph (b) – provide the report referred to in that paragraph to the relevant Board with recommendations that the committee, inspector or person thinks fit relating to the health practitioner.

## **77 Medical examination**

- (1) The relevant Board:
- (a) after accepting a notice under section 74; or
  - (b) after deciding to investigate a health practitioner under section 75,

may direct the health practitioner to have a medical examination on the same terms as a medical examination required by the Tribunal.

- (2) The Board may suspend a health practitioner's right of practice or authorisation if the health practitioner fails to comply with a direction given to him or her under subsection (1).
- (3) The suspension of a health practitioner's right of practice or authorisation remains in force until the health practitioner has the medical examination that he or she is directed to have under subsection (1).

## **78 Certain notices to be dismissed**

The relevant Board may decide to take no action in respect of a health practitioner under this Part if the Board considers that the matters alleged in a notice under section 74 are frivolous, vexatious or insubstantial.

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**79 Procedure for investigating possible impairment**

- (1) The relevant Board may, by notice, after considering the report relating to a health practitioner provided under section 76, require the health practitioner to do either or both of the following:
  - (a) give to it an explanation of the matter in writing;
  - (b) appear before it to give an explanation of the matter.
- (2) A notice under subsection (1) must:
  - (a) be served personally or sent by post;
  - (b) set out particulars of the matter;
  - (c) in respect of a notice under subsection (1)(a) – specify the date when the explanation must be given; and
  - (d) in respect of a notice under subsection (1)(b):
    - (i) state that the health practitioner is entitled to make submissions when appearing before the Board but is not entitled to be represented;
    - (ii) state that the appearance before the relevant Board is not open to the public; and
    - (iii) specify the date, time and place at which the health practitioner is required to appear.
- (3) The notice may contain any other information that the relevant Board considers necessary or expedient.
- (4) The date specified under subsection (2)(c) or (d)(iii) must be not less than 7 days after the date on which the notice is served or delivered.
- (5) At a meeting convened for the purposes of this section, the health practitioner:
  - (a) is entitled to make submissions when appearing before the relevant Board; and
  - (b) may be assisted by another person when appearing before the Board but is not entitled to be represented.
- (6) A meeting of the relevant Board convened for the purposes of this section is not open to the public.

**80 Actions of Board**

Following an investigation under this Part, the relevant Board:

- (a) may decide to take no action under this Part in respect of the health practitioner;
- (b) if it is satisfied that a health practitioner's ability to practise is or may be affected – may do either or both of the following:
  - (i) accept an undertaking from the health practitioner to take or refrain from taking specified action;
  - (ii) impose any condition that it thinks fit on the health practitioner's right of practice or authorisation; or
- (c) may decide to take no action under this Part but refer the matters relating to the health practitioner to be investigated under Part 4 or 6.

**81 Notice of decision of Board**

The relevant Board may give notice of any decision made by it under this Part to any health practitioner registration authority, body or person the Board considers appropriate to notify.

**82 Application of Part to students**

- (1) This Part, with the necessary changes, applies to a person who is undertaking an accredited course for entry into a category of health care practice.
- (2) In the application of this Part to a person referred to in subsection (1):
  - (a) a reference in this Part to a health practitioner includes a reference to that person; and
  - (b) a reference in this Part to the relevant Board is a reference to the Board that accredited the course that the person is undertaking.

## **Part 6                      Performance assessment**

### **Division 1                Preliminary**

#### **83                      Meaning of professional performance**

In this Part, a reference to a health practitioner's professional performance is a reference to the knowledge and skill possessed and applied by the health practitioner in the category of health care practice for which he or she is registered or enrolled.

#### **84                      Meaning of unsatisfactory in relation to professional performance**

In this Part, a health practitioner's professional performance is unsatisfactory if it is below the standard reasonably expected of a health practitioner of an equivalent level of training or experience.

### **Division 2                Board may obtain performance assessment**

#### **85                      Notifying Board of possible unsatisfactory professional performance**

- (1) A person may notify the relevant Board if he or she considers that a health practitioner's professional performance is unsatisfactory.
- (2) Notification under subsection (1) must:
  - (a) be in writing;
  - (b) contain particulars of the allegations on which the notice is founded;
  - (c) identify:
    - (i) the person lodging the notice; and
    - (ii) the health practitioner to whom the notice relates;
  - (d) contain a statement that the person consents to a copy, or particulars, of the notice being given to the health practitioner; and
  - (e) be lodged with the Board.
- (3) On receiving the notice, the Board must:
  - (a) record the date on which the notice was received; and



- (b) without undue delay – determine to accept or not to accept the notice.
- (4) The Board may require the person who lodged the notice to provide further particulars of the matter.
- (5) The rules of procedural fairness must be observed in dealing with a notice under this Part.

**86                      Investigation of possible unsatisfactory professional performance without notice**

- (1) The relevant Board may, on its own motion, have a health practitioner's professional performance assessed under this Part if any matter comes to its attention that indicates that his or her professional performance is unsatisfactory.
- (2) Subsection (1) is not limited to matters that are the subject of a complaint or notification to the relevant Board.

**87                      Serious matters not to be referred for assessment**

- (1) The relevant Board must not have a health practitioner's professional performance assessed under this Part if a matter giving rise to the proposed assessment raises a prima facie case of professional misconduct by the health practitioner or unsatisfactory professional conduct by the health practitioner of a significant nature.
- (2) A matter referred to in subsection (1) must be dealt with under Part 4.

**Division 3                      Assessment of professional performance by assessor**

**88                      Performance assessment**

The relevant Board may have:

- (a) a health practitioner's professional performance; or
- (b) any particular aspect of a health practitioner's professional performance,

assessed by one or more assessors.

**89                      Assessors**

- (1) The relevant Board may appoint a person to be an assessor to conduct an assessment.
- (2) An assessor must be a health practitioner who is considered by the Board to have skill, knowledge or experience that is relevant to the assessment in respect of which he or she is appointed.
- (3) A member of the Board may be appointed an assessor but not if the person has previously dealt with the particular matter before the Board in his or her capacity as a member of the Board.
- (4) An assessor is appointed on terms and conditions determined by the Board.
- (5) An assessor has the powers and functions that are conferred on an assessor by this Act and by the Board.
- (6) An assessor has the same powers as an inspector and sections 72 and 73, with the necessary changes, apply to an assessor.
- (7) The Board must provide an assessor with an identity card in a form approved by the Board.

**90                      Information to be given to health practitioner**

- (1) As soon as practicable after deciding to have the professional performance of a health practitioner assessed, the relevant Board must inform the health practitioner in writing of the decision.
- (2) The information given to the health practitioner must include:
  - (a) details of the matter or matters giving rise to the assessment; and
  - (b) information about how the performance assessment process under this Part works.

**91                      Assessors must refer certain matters to Board**

- (1) An assessor must terminate an assessment if the assessor forms an opinion that the assessment raises a prima facie case of professional misconduct or unsatisfactory professional conduct of a significant nature by the health practitioner.

- (2) An assessor must terminate an assessment if the assessor forms an opinion that the health practitioner's ability to practise is or may be affected by the health practitioner's:
  - (a) addiction to alcohol or another drug;
  - (b) lack of mental or physical competence; or
  - (c) state of health.
- (3) If an assessor terminates an assessment because of subsection (1) or (2), the assessor must refer the matter to the relevant Board.
- (4) The Board must deal with the matter accordingly.

## **92                      Report and recommendations by assessor**

- (1) An assessor must:
  - (a) conduct the assessment for which the assessor is appointed;
  - (b) report in writing on the assessment to the relevant Board; and
  - (c) provide a copy of the report to the health practitioner.
- (2) The report must include recommendations that the assessor considers appropriate.
- (3) If more than one assessor is appointed to conduct an assessment, the report must be made jointly and in the manner directed by the Board.

## **93                      Confidentiality of assessor's report**

- (1) A report by an assessor under this Part cannot be admitted or used in any civil proceedings before a court except with the consent of:
  - (a) the person giving the report; and
  - (b) the health practitioner.
- (2) A person can not be compelled to produce a report by an assessor under this Part or to give evidence in relation to the report or its contents in any civil proceedings before a court.

## **Division 4                      Performance assessment hearing by Board**

### **94                      Board may conduct performance assessment hearing**

- (1) The relevant Board, after considering the report provided under section 92, may:
  - (a) decide to take no further action in relation to the matter; or
  - (b) by notice to the health practitioner – require the health practitioner to do either or both of the following:
    - (i) give to it an explanation of the matter in writing;
    - (ii) appear before it to give an explanation of the matter.
- (2) A notice under subsection (1) must:
  - (a) be served personally or sent by post;
  - (b) set out particulars of the matter;
  - (c) in respect of a notice under subsection (1)(b)(i) – specify the date by which the explanation must be given; and
  - (d) in respect of a notice under subsection (1)(b)(ii):
    - (i) state that the health practitioner is entitled to make submissions when appearing before the relevant Board but is not entitled to be represented;
    - (ii) state that the appearance before the relevant Board is not open to the public; and
    - (iii) specify the date, time and place at which the health practitioner is required to appear.
- (3) The notice may contain any other information that the relevant Board considers necessary or expedient.
- (4) The date specified under subsection (2)(c) or (d)(iii) must be not less than 7 days after the date on which the notice is served or delivered.
- (5) At a meeting convened for the purposes of this section, the health practitioner:
  - (a) is entitled to make submissions when appearing before the relevant Board; and

- (b) may be assisted by another person when appearing before the Board but is not entitled to be represented.
- (6) A meeting of the relevant Board convened for the purposes of this section is not open to the public.

## **95                      Action that may be taken by Board**

- (1) If, after receiving the report of the assessor and the explanation of the health practitioner, the relevant Board is satisfied that the health practitioner's professional performance is unsatisfactory, it may do one or more of the following:
  - (a) accept an undertaking from the health practitioner to take or refrain from taking specified action;
  - (b) impose any condition that it thinks fit on the health practitioner's registration, enrolment, right of practice or authorisation;
  - (c) give notice of the decision and any action taken by the Board to any health practitioner registration authority, body or person the Board considers appropriate to notify.
- (2) If the Board finds that a matter raises a prima facie case of professional misconduct or unsatisfactory professional conduct of a significant nature by a health practitioner, it may direct that the matter be dealt with under Part 4.
- (3) In any other case, the Board may, if it thinks it appropriate to do so, direct that the matter be dealt with under Part 4 or 5.
- (4) This section does not limit the Board's powers under section 68.
- (5) The Board must refer the matter to the Tribunal if the health practitioner disputes the Board's findings that the health practitioner's professional performance is unsatisfactory.

## **96                      Re-assessment**

- (1) Without limiting section 95, the relevant Board may direct that a health practitioner's professional performance be re-assessed at a future date.
- (2) The Board must have one or more assessors conduct the assessment, when it is required, and report to the Board on the assessment.

- (3) The Board may take any action in respect of the assessment that is available to it under section 95 including requiring a further re-assessment to be conducted.

## **97                      Monitoring by Board**

- (1) The relevant Board must:
  - (a) monitor compliance with any orders made by it under this Part; and
  - (b) from time to time – evaluate the effectiveness of those orders in improving the professional performance of the health practitioner to a standard that is commensurate with other health practitioners of an equivalent level of training or experience.
- (2) The Board may take any action under this Act in respect of a health practitioner that it considers appropriate as a result of the exercise of its powers under subsection (1).

## **98                      Board to consider impact on third parties**

- (1) If, as a result of a performance assessment, the relevant Board proposes to impose a condition under section 95(1)(b) that in its opinion will impose an appreciable burden on an identifiable third party in connection with the health practitioner's practice, the Board must:
  - (a) give the third party an opportunity to make submissions to it with respect to the condition; and
  - (b) take those submissions, if any, into account before imposing the condition.
- (2) Without limiting subsection (1), a condition that has the effect of requiring the practice of a health practitioner to be supervised by an identified third party is a condition that may impose an appreciable burden on an identifiable third party in connection with a health practitioner's practice.
- (3) In this section:

***third party*** means a health practitioner, other than the health practitioner to whom a performance assessment relates, but does not include a person or body exercising powers under this Act.

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## **Part 7                      Appeals**

### **99                      Right of appeal**

- (1) A person may appeal, on a question of law, to the Supreme Court against any of the following:
  - (a) the refusal of a Board to register or enrol the person;
  - (b) a condition to which the person's registration or enrolment is made subject under section 27(2)(b) or 30(3);
  - (c) the removal of the person's name from a register or roll, other than removal under section 50(2)(b);
  - (d) the refusal of a Board to restore the person's name to a register or roll under section 52;
  - (e) the suspension of the person's right of practice or authorisation under section 68;
  - (f) the refusal of a Board to issue the person with a new practising certificate under section 49(2)(c) or (d);
  - (g) a decision of the Tribunal under section 65;
  - (h) the refusal of a Board to grant the person an authorisation to practise in a restricted practice area;
  - (i) the cancellation of an authorisation;
  - (j) the cancellation of the person's interim registration or enrolment.
- (2) A Board may appeal to the Supreme Court against:
  - (a) a decision of the Tribunal under section 65(1)(h); or
  - (b) any other decision of the Tribunal under section 65(1) if the Board considers that the action to be taken pursuant to the decision is inadequate in the circumstances.
- (3) An appeal must be made within 14 days after notice of the Board's or Tribunal's decision is given to the affected person.

### **100                      Hearing of appeals**

- (1) At the hearing of an appeal, the Supreme Court may:
  - (a) confirm the decision of the Board or Tribunal;

- (b) set aside the decision of the Board or Tribunal; or
  - (c) set aside the decision of the Board or Tribunal and substitute any other decision that the Board or Tribunal has jurisdiction to take as the Court specifies.
- (2) At the hearing of an appeal, the Supreme Court may make an order as to costs as it thinks fit.

## **Part 8            Offences**

### **Division 1        Protection of profession**

#### **101            Offence to practise health care if unregistered**

- (1) A person must not:
  - (a) carry out an act that by or under an Act is required to be carried out by a health practitioner; or
  - (b) carry out an act that by or under an Act is required to be carried out by a health practitioner holding a practising certificate,

unless he or she is registered or enrolled and holds a practising certificate.

Penalty:        500 penalty units.

- (2) A person to whom interim registration or enrolment is granted does not commit an offence against subsection (1) merely because he or she does not hold a practising certificate.
- (3) An offence against subsection (1) is a regulatory offence.

#### **102            Offence to practise in restricted practice area unless authorised**

- (1) A person must not practise in a restricted practice area unless the person has an authorisation to practise in the area.

Penalty:        500 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.



**103            False claims**

- (1) A person must not hold himself or herself out, or allow himself or herself to be held out, as being registered or enrolled in a category of registration or enrolment unless he or she is registered or enrolled in the category.
- (2) A person must not hold himself or herself out, or allow himself or herself to be held out, as being in any way entitled to practise in a category of health care practice unless he or she holds a practising certificate issued by the relevant Board.
- (3) A person must not hold himself or herself out, or allow himself or herself to be held out, as being in any way authorised to practise in a restricted practice area unless he or she has an authorisation to practise in the restricted practice area.

Penalty:            500 penalty units.

- (4) An offence against this section is a regulatory offence.

**104            Unauthorised use of certain titles**

- (1) A person must not practise a profession or trade under a title specified in Schedule 7, column 2 unless he or she is registered or enrolled in a category of registration or enrolment in the category of health care practice specified opposite the title in column 1.

Penalty:            500 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

**105            Notifying Board of civil claims**

- (1) A health practitioner must, within 14 days after proceedings claiming damages or other compensation for alleged negligence in health care practice are commenced against the health practitioner, give the relevant Board notice of the proceedings including particulars of the claim.
- (2) A health practitioner must, within 14 days after proceedings claiming damages or other compensation for alleged negligence by the health practitioner in health care practice are withdrawn or settled, or a court or other tribunal makes an order in respect of the proceedings, give the relevant Board notice of the withdrawal, settlement or order.

Penalty:            25 penalty units.

## **Division 2            General offences**

### **106            Offences of dishonesty**

- (1) A person must not make or produce a false or misleading statement, either orally or in writing, in connection with:
- (a) an application, assessment or inquiry;
  - (b) a preliminary investigation into a complaint; or
  - (c) an investigation carried out by an inspector.

- (2) A person must not forge or change:

- (a) a certificate of registration or enrolment;
- (b) an interim certificate of registration or enrolment; or
- (c) a practising certificate.

- (3) A person must not forge or change a degree, diploma or other evidence of qualifications for registration or enrolment under this Act.

Penalty:            If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

                         If the offender is a body corporate – 500 penalty units.

- (4) An offence against this section is a regulatory offence.

### **107            Obstruction**

A person must not obstruct, hinder, threaten or intimidate a person exercising a power or performing a function conferred on the person by this Act.

Penalty:            500 penalty units.

### **108            Offences relating to assessments, evaluations, inquiries etc.**

- (1) A person must not, without reasonable excuse:
- (a) fail to attend an assessment, evaluation or inquiry as required by a notice or summons;
  - (b) fail in an evaluation or inquiry to comply with the requirement to affirm or be sworn;

- 
- (c) fail to produce a document when required to do so by a committee, inspector, assessor or the Tribunal;
  - (d) fail to answer questions required to be answered by a committee, inspector, assessor or the Tribunal; or
  - (e) fail to assist a Board or an inspector or a committee appointed to conduct a preliminary investigation of a complaint.

Penalty: 50 penalty units.

- (2) A person may be directed by a committee, inspector, assessor or the Tribunal to answer a question despite that the answer to the question may tend to incriminate the person.
- (3) The answer to a question given by a person following a direction under subsection (2) is not admissible in evidence in any other proceedings against the person other than a prosecution for perjury.

#### **109 Intimidation**

A person must not threaten or intimidate a person who, in good faith:

- (a) makes a complaint against a health practitioner in accordance with this Act;
- (b) provides information about a health practitioner in accordance with this Act; or
- (c) provides information about a health practitioner in accordance with Part 5 or 6.

Penalty: 500 penalty units.

#### **110 Failure to comply with orders**

- (1) A person must not:
  - (a) fail to leave the hearing of an assessment or evaluation when ordered to do so by the committee or person conducting the assessment or evaluation;
  - (b) fail to leave the hearing of an inquiry when ordered to do so by the Tribunal; or

- (c) fail to leave a meeting of a Board when ordered to do so by the Board.

Penalty:        50 penalty units.

- (2) A person must not:

- (a) report or otherwise disclose any proceedings of a committee, a person conducting an assessment or evaluation or the Tribunal contrary to an order of the committee, person or Tribunal; or
- (b) report or otherwise disclose any information in respect of the proceedings of a committee, a person conducting an assessment or evaluation or the Tribunal contrary to an order of the committee, person or Tribunal.

Penalty:        If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

                    If the offender is a body corporate – 500 penalty units.

- (3) A person must not:

- (a) report or otherwise disclose any proceedings of a meeting of a Board contrary to an order of the Board; or
- (b) report or otherwise disclose any information in respect of a meeting of a Board contrary to an order of the Board.

Penalty:        If the offender is a natural person – 100 penalty units or imprisonment for 6 months.

                    If the offender is a body corporate – 500 penalty units.

## **111        Unconscionable conduct**

A person must not, either directly or indirectly, attempt to influence, coerce or otherwise cause a health practitioner to conduct or provide a health service that does not comply with the standards contained in the code applying to the category of registration or enrolment for which the health practitioner is registered or enrolled.

Penalty:        If the offender is a natural person – 400 penalty units.

                    If the offender is a body corporate – 2 000 penalty units.

## **Part 9                      Miscellaneous**

### **Division 1                Obligations to provide information**

#### **112                      Health practitioner notice relating to fitness to practise**

- (1) If, as a result of his or her treating another health practitioner in relation to an illness or condition, a health practitioner considers that the other health practitioner has a mental or physical incapacity that has resulted in or is likely to result in an incapacity that seriously impairs or may seriously impair his or her ability to practice in the category of health care for which the health practitioner is registered or enrolled, the first-mentioned health practitioner must give the Board that registered or enrolled the other health practitioner notice of that fact.

Penalty:            50 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

#### **113                      Educational institution notice relating to fitness to practise**

If:

- (a) the person in charge of an educational institution accredited to conduct courses under this Act; or
- (b) a person employed by an educational institution referred to in paragraph (a) to conduct courses accredited under this Act,

considers that a person undertaking an accredited course at the institution has a mental or physical incapacity that is likely to result in an incapacity that may seriously impair the person's ability to practice in the category of health care to which the course relates, he or she may notify the Board established in respect of the category of health care of that fact.

#### **114                      Employer notice relating to fitness to practise**

If a person who employs a health practitioner considers that the health practitioner has a mental or physical incapacity that has resulted in or is likely to result in an incapacity that seriously impairs or may seriously impair the health practitioner's ability to practice in the category of health care for which the health practitioner is registered or enrolled, he or she may notify the relevant Board of that fact.

**115                      Referral of matters by court**

- (1) If a court finds a person guilty of an offence, the court must cause a notice of the finding to be given to the relevant Board if:
  - (a) the person is, or was at the time of the offence, a health practitioner; and
  - (b) the conduct constituting the offence may indicate that a complaint could be made under this Act about the health practitioner.
- (2) If a coroner has reasonable grounds to believe that evidence given or to be given in any proceedings conducted or to be conducted before the coroner may indicate that a complaint could be made under this Act about a health practitioner, the coroner may cause a transcript of the evidence to be sent to the relevant Board.
- (3) If a notice or transcript of evidence is sent to a relevant Board under this section, a complaint is taken to have been made to the relevant Board about the health practitioner to whom the notice or transcript relates.

**116                      Provision of information**

- (1) A Board may, by notice in writing, require a body corporate that provides health care services or causes or allows health care services to be provided in its name or on its behalf, to give the Board, within the time specified in the notice, any or all of the following:
  - (a) any information required by the notice concerning its constitution, membership, shareholdings, officers or employees;
  - (b) any other information required by the notice concerning the body corporate's structure, management or operations.
- (2) A body corporate given a notice under subsection (1) must comply with the notice within the time specified in the notice.

Penalty:            100 penalty units.

Default penalty: 4 penalty units.

- (3) The relevant Board may, by notice in writing, require a health practitioner to give, within the time specified in the notice, any information required by the notice regarding any body corporate of which the health practitioner is a member.

- (4) A health practitioner given a notice under subsection (3) must comply with the notice within the time specified in the notice.

Penalty:            50 penalty units.

Default penalty: 4 penalty units.

**117            Employer notice of misconduct or incompetence**

If a person who employs a health practitioner terminates or suspends the health practitioner's employment because of alleged or actual misconduct or incompetence to practise, the person must provide a written report of the circumstances of the termination or suspension to the relevant Board and to the health practitioner.

Penalty:            If the offender is a natural person – 50 penalty units.

                          If the offender is a body corporate – 250 penalty units.

**118            Protection from liability**

- (1) This section applies to a person who:
- (a) makes a complaint;
  - (b) provides a Board with information;
  - (c) assists a Board with a preliminary investigation (including an assessment report or opinion);
  - (d) assists or provides information under Part 5 (including an assessment report or opinion);
  - (e) assists or provides information under Part 6; or
  - (f) assists or provides information to the Tribunal.
- (2) The person is not civilly or criminally liable for an act done by the person in good faith in taking an action referred to in subsection (1).

**Division 2            Administrative and legal matters**

**119            Convicted offenders may be prohibited from carrying on business**

- (1) The Secretary may, by notice in writing to a person convicted of an offence against this Act, prohibit the person from operating a business that provides health care services.

- (2) The prohibition may be expressed to be:
  - (a) for a fixed period (in which case the prohibition remains in force only for the fixed period); or
  - (b) for an unlimited period subject to an entitlement to apply after a specified time for the lifting of the prohibition (in which case the prohibition remains in force until it is lifted).
- (3) A prohibition may not be imposed under this section unless the Secretary is of the opinion that the person is not a fit and proper person to operate a business that provides health care services.
- (4) The Secretary is entitled to presume, in the absence of evidence to the contrary, that a person who has been convicted of an offence against this Act on 2 or more occasions in any period of 10 years is not a fit and proper person to operate a business that provides health care services.
- (5) A prohibition under this section may be limited in its operation in either or both of the following ways:
  - (a) it may be limited to specified premises, but only where the person operates a business that provides health care services at those premises and at other premises;
  - (b) it may be limited to premises within a specified area.
- (6) If a prohibition under this section is subject to an entitlement to apply after a specified time for the prohibition to be lifted, the application may be made to the Secretary after that time.
- (7) The Secretary may lift the prohibition or confirm the prohibition and set a further period after which an application for the prohibition to be lifted can be made under subsection (6).
- (8) A person must not operate a business that provides health care services in contravention of a prohibition under this section.

Penalty:        500 penalty units.

- (9) If health care services are provided on premises on which a business is carried on, it must be presumed for the purposes of subsection (8), unless the contrary is established, that the business provides those health care services.
- (10) A prohibition under this section has no effect while an appeal is pending against the conviction for the offence on which the prohibition is based.



(11) In this section:

**Secretary** means the Chief Executive Officer of the Agency responsible for the administration of this Act.

## **120       Service of documents**

(1) A document required to be delivered to or served on a Board may be delivered or served by:

- (a) leaving it at, or sending it by post to, the Board's address;
- (b) sending it by way of facsimile transmission to the Board's facsimile number; or
- (c) sending it by electronic mail to the Board's address.

(2) A document required to be delivered to or served on the Tribunal may be delivered or served by:

- (a) leaving it at, or sending it by post to, the relevant Board's address;
- (b) sending it by way of facsimile transmission to the relevant Board's facsimile number; or
- (c) sending it by electronic mail to the relevant Board's address.

(3) In subsection (2):

**relevant Board** means the Board that registered or enrolled the health practitioner the subject of the complaint to the Tribunal.

## **121       Presumptions**

In any proceedings, unless evidence is given to the contrary, proof is not required of:

- (a) the constitution of a Board or the Tribunal;
- (b) any resolution or decision of a Board or the Tribunal;
- (c) the appointment of any member of a Board or the Tribunal; or
- (d) the presence of a quorum at any meeting of a Board or the Tribunal.

**122                      Commencement of proceedings for offences**

A complaint for an offence against this Act may be commenced at any time within 3 years after the date the offence was committed or within 3 years after the date the actions constituting the offence were first discovered.

**123                      Meaning of *Default penalty***

If the expression ***Default penalty*** appears at the end of a section or subsection, a person who is found guilty of an offence against the section or subsection:

- (a) may be found guilty of a further offence at the time he or she is found guilty of the first offence if the offence continued after the date of the first offence; and
- (b) the person is punishable in respect of the further offence by a penalty not exceeding the amount of the default penalty specified after that expression for each day during which the offence continued.

**124                      Evidence of facts found in other proceedings**

A finding of fact relating to the conduct of a health practitioner made by a court or other tribunal in any proceedings to which the health practitioner is a party, whether in the Territory or elsewhere, is evidence of the fact in any proceedings under this Act.

**125                      Fees, penalties and fines to be paid to Board**

- (1) A fee payable under this Act must be paid to the Board that imposed the fee.
- (2) A fine imposed by a Board and recovered under this Act must be paid to the Board that imposed the fine.
- (3) A fee payable under this Act may be recovered as a debt due to the Board that imposed the fee.
- (4) A fine imposed by the Tribunal may be recovered as a debt due to the relevant Board.

**126                      Punishment of conduct constituting offence**

If conduct that constitutes an offence against this Act is also grounds for action under section 61, 65 or 68:

- (a) the taking of the action is not a bar to conviction and punishment for the offence; and

- (b) conviction and punishment for the offence is not a bar to the taking of the action under this Act.

#### **127            Offences by bodies corporate**

- (1) If a body corporate is found guilty of an offence against this Act, each person concerned in the management of the body corporate is taken also to have committed the offence and may be found guilty of the offence.
- (2) A person referred to in subsection (1) may be found guilty of an offence against this Act whether or not the body corporate is charged with or found guilty of the offence.

#### **128            Act does not prohibit certain practices**

This Act does not prohibit:

- (a) a person from rendering assistance in an emergency;
- (b) a person providing care to another person or using lawful traditional or cultural practices in caring for another person;
- (c) a person who is registered or enrolled under a foreign health practitioner law from assisting in the lawful retrieval of organs or tissue for transplanting to a person elsewhere, from retrieving or escorting a patient to or from the Territory or from assisting in similar emergencies or special circumstances;
- (d) a medical or midwifery student under the supervision of a health practitioner registered in the category of registration of medical practitioner or midwifery from providing care to a woman in childbirth; or
- (e) a student in a course accredited under this Act from engaging in health care practice under supervision in accordance with and for the purposes of the course or training.

#### **129            Determination of area of need**

- (1) The Minister may determine a locality in the Territory to be an area of need for the purposes of appointing health practitioners in a category of health care practice.
- (2) Before making the determination, the Minister must seek the advice of the relevant Board.

#### **130            Provisions relating to pharmacies**

Schedule 8 has effect.

**131            Regulations**

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Division 3            Repeal, savings and transitional provisions**

**132            Repeals**

The Acts specified in Schedule 9 are repealed.

**133            Savings and transitional provisions**

- (1) The savings and transitional provisions set out in Schedule 10 have effect.
- (2) In addition to subsection (1), the Regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (3) The Regulations may provide that a savings or transitional provision takes effect from a date that is earlier than the date of its publication or notification in the *Gazette* but, if they do so, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the Territory), the rights of that person existing before the date of its publication or notification; or
  - (b) to impose liabilities on a person (other than the Territory) in respect of anything done or omitted to be done before the date of its publication or notification.

## **Schedule 1      Membership of Boards**

section 9(2)

### **1.      Aboriginal Health Workers Board of the Northern Territory**

- (1) The Aboriginal Health Workers Board of the Northern Territory consists of 5 members.
- (2) Of the 5 members:
  - (a) 3 must be persons who are registered in the category of registration of Aboriginal health worker who hold current practising certificates and who demonstrate an ability to assist the Board in performing its functions; and
  - (b) 2 must be persons who are not registered in the category of registration of Aboriginal health worker and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered in that category.

### **2.      Chiropractors and Osteopaths Board of the Northern Territory**

- (1) The Chiropractors and Osteopaths Board of the Northern Territory consists of 6 members.
- (2) Of the 6 members:
  - (a) 2 must be persons who are registered in the category of registration of chiropractor who hold current practising certificate and who demonstrates an ability to assist the Board in performing its functions;
  - (b) 2 must be persons who are registered in the category of registration of osteopath who hold a current practising certificate and who demonstrates an ability to assist the Board in performing its functions; and
  - (c) 2 must be persons who are not registered in the categories of registration of chiropractor or osteopath and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered in those categories.

### **3.      Dental Board of the Northern Territory**

- (1) The Dental Board of the Northern Territory consists of 7 members.

(2) Of the 7 members:

- (a) 4 must be persons who are registered in the category of registration of dentist or dental specialist who hold current practising certificates and who demonstrate an ability to assist the Board in performing its functions;
- (b) one must be a person who is registered in the category of registration of dental hygienist, dental prosthetist or dental therapist who holds a current practising certificate and who demonstrates an ability to assist the Board in performing its functions; and
- (c) 2 must be persons who are not registered in the categories of registration of dentist, dental hygienist, dental prosthetist, dental specialist or dental therapist and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered in those categories.

**4. Medical Board of the Northern Territory**

(1) The Medical Board of the Northern Territory consists of 8 members.

(2) Of the 8 members:

- (a) 6 must be persons who are registered in the category of registration of medical practitioner who hold current practising certificates (of whom one must be employed in the public health system) and who demonstrate an ability to assist the Board in performing its functions; and
- (b) 2 must be persons who are not registered in the category of registration of medical practitioner and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered in that category.

**5. Nursing and Midwifery Board of the Northern Territory**

(1) The Nursing and Midwifery Board consists of 7 members.

(2) Of the 7 members:

- (a) 4 must be persons who are registered nurses or enrolled nurses who hold current practising certificates (of whom at least 2 must be registered nurses) and who demonstrate an ability to assist the Board in performing its functions;

- (b) one must be a person who is registered in the category of registration of midwifery who holds a current practising certificate and who demonstrates an ability to assist the Board in performing its functions; and
- (c) 2 must be persons who are not registered nurses, enrolled nurses or registered in the category of registration of midwifery and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered or enrolled in those categories.

**6. Occupational Therapists Board of the Northern Territory**

- (1) The Occupational Therapists Board of the Northern Territory consists of 5 members.
- (2) Of the 5 members:
  - (a) 3 must be persons who are registered in the category of registration of occupational therapist who hold current practising certificates and who demonstrate an ability to assist the Board in performing its functions; and
  - (b) 2 must be persons who are not registered in the category of registration of occupational therapist and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered in that category.

**7. Optometrists Board of the Northern Territory**

- (1) The Optometrists Board of the Northern Territory consists of 5 members.
- (2) Of the 5 members:
  - (a) 3 must be persons who are registered in the category of registration of optometrist who hold current practising certificates and who demonstrate an ability to assist the Board in performing its functions; and
  - (b) 2 must be persons who are not registered in the category of registration of optometrist and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered in that category.

**8. Pharmacy Board of the Northern Territory**

- (1) The Pharmacy Board of the Northern Territory consists of 7 members.

(2) Of the 7 members:

- (a) 5 must be persons who are registered in the category of registration of pharmacist who hold current practising certificates (of whom one must be employed in the public health system) and who demonstrate an ability to assist the Board in performing its functions; and
- (b) 2 must be persons who are not registered in the category of registration of pharmacist and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered in that category.

**9.      Physiotherapists Board of the Northern Territory**

(1) The Physiotherapists Board of the Northern Territory consists of 5 members.

(2) Of the 5 members:

- (a) 3 must be persons who are registered in the category of registration of physiotherapist who hold current practising certificates and who demonstrate an ability to assist the Board in performing its functions; and
- (b) 2 must be persons who are not registered in the category of registration of physiotherapist and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered in that category.

**10.     Psychologists Board of the Northern Territory**

(1) The Psychologists Board of the Northern Territory consists of 5 members.

(2) Of the 5 members:

- (a) 3 must be persons who are registered in the category of registration of psychologist who hold current practising certificates and who demonstrate an ability to assist the Board in performing its functions; and
- (b) 2 must be persons who are not registered in the category of registration of psychologist and who demonstrate that they are able to represent the interest of persons who use the services provided by persons registered in that category.



## **Schedule 2 Provisions with respect to membership of Board**

section 9(2)

### **1. Term of office**

- (1) A person appointed as a member of a Board holds office for the period, not exceeding 3 years, as is specified by the Minister.
- (2) A member may serve any number of terms but may not serve more than 2 terms in succession unless approved by the Minister.

### **2. Vacation of office**

- (1) A member vacates office if the member:
  - (a) resigns;
  - (b) is removed from office under subclause (2) or (3); or
  - (c) ceases to be qualified for office by virtue of subclause (4).
- (2) The Minister may remove a member from office if the member:
  - (a) is absent from 3 consecutive meetings of the Board without the permission of the Board;
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit;
  - (c) is found guilty in the Territory or elsewhere of a crime or an offence punishable by imprisonment;
  - (d) fails, without reasonable excuse, to comply with the member's obligation under Schedule 3, clause 5; or
  - (e) is found guilty of an offence against this Act.
- (3) The Minister may remove a member from office if satisfied that the member:
  - (a) has acted improperly in the performance of his or her duties as a member;
  - (b) has disclosed confidential information provided to the member in the course of his or her duties as a member; or

- (c) is unable to competently perform his or her duties as a member.
- (4) A member who is required to be a health practitioner vacates office if he or she ceases to be registered or enrolled.

### **3. Chairperson**

- (1) A Board must elect one of its members to be the Chairperson of the Board.
- (2) The member elected under subclause (1):
  - (a) for the Dental Board of the Northern Territory – must be a member who is registered in the category of registration of dentist or dental specialist;
  - (b) for the Nursing and Midwifery Board – must be a member who is a registered nurse; and
  - (c) for all other Boards – must be a member who is a health practitioner.
- (3) A Chairperson may in writing to the Board resign the office.
- (4) A Chairperson may resign the office but remain a member.

### **4. Validity of proceedings etc.**

- (1) An act or proceeding of a Board or of a person acting under the direction of a Board is not invalid by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the membership of the Board.
- (2) An act or proceeding of a Board or of a person acting under the direction of a Board is valid even if:
  - (a) the appointment of a member of the Board was defective; or
  - (b) a person appointed as a member of the Board was disqualified from acting as, or incapable of being, a member.

## **Schedule 3 Provisions with respect to meetings of Board**

section 9(3)

### **1. Convening of meetings**

A meeting of a Board may be convened by the Chairperson or by the number of members that constitute a quorum of the Board.

### **2. Procedure at meetings**

- (1) The quorum at a meeting of a Board is as follows:
  - (a) for the Dental Board of the Northern Territory – 4 members of whom 3 must be health practitioners;
  - (b) for the Medical Board of the Northern Territory – 5 members of whom 3 must be health practitioners;
  - (c) for the Nursing and Midwifery Board – 4 members of whom 3 must be registered nurses;
  - (d) for any other Board – 3 members of whom 2 must be health practitioners.
- (2) A duly convened meeting of a Board at which a quorum is present is competent to transact any business of the Board.
- (3) Questions arising at a meeting of a Board must be determined by a majority of votes of the members present and voting.
- (4) In the event of an equality of votes on a question arising at a meeting of a Board, the question stands adjourned until its next meeting.

### **3. Who presides at meetings**

- (1) The Chairperson must preside at all meetings of a Board at which the Chairperson is present.
- (2) If the Chairperson is not present at a meeting of a Board, a member elected by the members present must preside at the meeting.

### **4. Minutes**

A Board must keep accurate minutes of its meetings.

**5. Disclosure of interest**

- (1) If a member has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Board, the member must disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure under subclause (1) must be recorded in the minutes and, unless the Board (exclusive of the member) determines otherwise, the member must not:
  - (a) be present during any deliberations of the Board in relation to the matter; or
  - (b) take part in any decision of the Board in relation to the matter.

**6. Meetings to be open to public**

- (1) Except as provided in subclause (2), a meeting of a Board must be open to the public.
- (2) A Board may do either or both of the following at a meeting if it considers that there are compelling grounds to do so:
  - (a) make an order excluding any person from the meeting;
  - (b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings at the meeting or prohibiting the reporting or other disclosure of particular information in respect of the meeting.
- (3) Without limiting the range of grounds that may be relevant for the purposes of subclause (2), a Board may exercise its power under that subclause if:
  - (a) it is dealing with privileged information or information that has been communicated to the Board in confidence;
  - (b) it is dealing with information concerning the personal affairs, finances or business arrangements of an applicant or of a registered health practitioner; or
  - (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a registered health practitioner or any other person.
- (4) A person wishing to attend a meeting of a Board must notify the Board not later than 7 days before the date of the meeting.

(5) In this clause:

**meeting** does not include a meeting convened for the purposes of section 61, 62, 79, or 94.

## **7. General procedures**

- (1) Subject to this Schedule, the procedure for convening a Board and conducting its business is as determined by the Board.
- (2) A Board may permit members to participate in a particular meeting by telephone or by other means of communication.
- (3) A member who is permitted to participate in a meeting under subclause (2) is taken to be present at the meeting.
- (4) A Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

## **8. Confidentiality**

Subject to this Act, the Chairperson, a member or a delegate of a Board must not disclose information obtained in the course of his or her duties as Chairperson, member or delegate unless the disclosure is made in the course of those duties.

Penalty: 100 penalty units or imprisonment for 6 months.

## **Schedule 4 Powers and procedures of committee and Tribunal**

sections 25(3) and 63(10)

### **1. Definitions**

In this Schedule:

***committee*** means a committee of evaluators.

***proceedings*** includes evaluations and inquiries.

### **2. Powers**

- (1) A committee or the Tribunal may:
  - (a) summon any person to appear before it to give evidence and produce any document specified in the summons;
  - (b) require any person appearing before it to produce any document;
  - (c) require any person appearing before it to give evidence on oath or affirmation;
  - (d) require any person appearing before it to answer questions;
  - (e) proceed with and determine any proceedings despite the absence of a person who is summoned to appear;
  - (f) proceed with and determine any proceedings in the absence of a party to the proceedings if satisfied that the party was given reasonable opportunity to appear and failed to do so; and
  - (g) adjourn the hearing of any proceedings from time to time and from place to place.
- (2) A committee or the Tribunal may, at any time before or during any proceedings, give directions for the expeditious and efficient hearing of the proceedings.
- (3) The Chairperson of a committee or the President of the Tribunal may, at any time before or during any proceedings, give directions for the expeditious and efficient hearing of the proceedings.
- (4) A direction under subclause (3) must be consistent with any earlier direction given under subclause (2) in respect the proceedings.

**3. Requirements of summons for inquiry**

- (1) A summons to a health practitioner who is the subject of an inquiry must:
  - (a) set out particulars of the matter that the inquiry relates to;
  - (b) state that the health practitioner is entitled to be represented by a legal practitioner or other person in the inquiry;
  - (c) state that the proceedings will be open to the public unless the Tribunal orders otherwise; and
  - (d) specify the date, time and place at which the health practitioner is required to appear.
- (2) The summons may contain any other information that the Tribunal considers necessary or appropriate.
- (3) The date specified in subclause (1)(d) must be not less than 14 days after the date on which the summons is served.

**4. Procedures**

A committee or the Tribunal:

- (a) must conduct its proceedings with as little formality and with as much expedition as a proper consideration of the matter before it permits;
- (b) is not bound by the rules of evidence;
- (c) may inform itself on any matter in any way it considers appropriate; and
- (d) must observe the rules of procedural fairness.

**5. Additional complaints**

- (1) A committee or the Tribunal may in proceedings before it deal with one or more complaints about a health practitioner.
- (2) If during any proceedings it appears to a committee or the Tribunal that, having regard to any matters that have arisen, another complaint could have been made against the health practitioner:
  - (a) whether instead of or in addition to the complaint that was made; and
  - (b) whether or not by the same complainant,

the committee or the Tribunal may take that other complaint to have been referred to it and may deal with it in the same proceedings.

- (3) If another complaint is taken to have been referred to a committee or the Tribunal under subclause (2), the complaint may be dealt with after an adjournment, if any, that is, in the opinion of the committee or the Tribunal, just and equitable in the circumstances.

## **6. Medical examinations**

- (1) A committee or the Tribunal, by notice, may require an applicant or defendant to have one or more medical examinations at the expense of the relevant Board.
- (2) The Tribunal must not require a defendant to have a medical examination under subclause (1) unless, having regard to the relevant inquiry, it is reasonable to require the examination.
- (3) A notice under subclause (1) must specify:
  - (a) the name of the health practitioner who is to carry out the medical examination; and
  - (b) the date, time and place of the medical examination.
- (4) The time and place specified for a medical examination must be reasonable.
- (5) The health practitioner who carries out the medical examination must provide the committee or the Tribunal, and the person examined, with a written report of the results of the examination.
- (6) In this clause:

**medical examination** includes an examination of the physical, psychological and mental capacities of a person.

**relevant Board** includes, in the case of a committee, the Board that established the committee.

## **7. Proceedings to be open to public**

- (1) Except as provided in subclause (2), the proceedings of a committee or the Tribunal must be open to the public.



- (2) If a committee or the Tribunal is hearing any proceedings, the committee or Tribunal may, on the application of a party to the proceedings or on its own motion, do either or both of the following if it considers that there are compelling grounds to do so:
  - (a) make an order excluding any person from the hearing;
  - (b) make an order prohibiting the reporting or other disclosure of all or any of the proceedings or prohibiting the reporting or other disclosure of particular information in respect of the proceedings.
- (3) Without limiting the range of grounds that may be relevant for the purposes of subclause (2), a committee or the Tribunal may exercise its power under that subclause if:
  - (a) it is dealing with privileged information or information that has been communicated to it in confidence;
  - (b) it is dealing with information concerning the personal affairs, finances or business arrangements of an applicant or of a health practitioner; or
  - (c) the disclosure of the proceedings or the information may be unfairly prejudicial to the reputation of a health practitioner or any other person.

**8. Representation etc.**

- (1) An applicant is entitled to attend an evaluation and to be represented by a legal practitioner or any other person.
- (2) The costs of representation must be met by the applicant.
- (3) A defendant is entitled to attend an inquiry and to be represented by a legal practitioner or any other person.
- (4) The Board, at its own expense, may appoint a legal practitioner to assist a committee or the Tribunal in conducting any proceedings.

## **Schedule 5 Provisions with respect to membership of Tribunal**

section 63(11)

### **1. Definitions**

In this Schedule:

**meeting** includes proceedings being conducted by the Tribunal.

**member** means a member of the Tribunal and includes the President of the Tribunal.

### **2. Term of office etc.**

- (1) A permanent member holds office for the period, not exceeding 3 years, as is specified by the Minister.
- (2) A permanent member may serve any number of terms but may not serve more than 3 terms in succession unless approved by the Minister.
- (3) A special member is appointed for the duration of the inquiry to which the member's appointment relates.
- (4) There is no limit to the number of times a person may be appointed as a special member.

### **3. Vacation of office**

- (1) A member vacates office if he or she:
  - (a) resigns;
  - (b) is removed from office under subclause (2) or (3); or
  - (c) ceases to be qualified for office by virtue of subclause (4), (5) or (6).
- (2) The Minister may remove a member from office if the member:
  - (a) being a permanent member – is absent from a meeting of the Tribunal convened to deal with a particular inquiry without the permission of the other members of the Tribunal as it is constituted for the purposes of that inquiry;
  - (b) being a special member – is absent from a meeting of the Tribunal convened to deal with the inquiry to which the special member's appointment relates without the permission of the

other members of the Tribunal as it is constituted for the purposes of the inquiry;

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit;
  - (d) is found guilty, in the Territory or elsewhere, of a crime or an offence punishable by imprisonment for longer than 12 months;
  - (e) fails, without reasonable excuse, to comply with the member's obligations under Schedule 6, clause 7; or
  - (f) is found guilty of an offence against this Act.
- (3) The Minister may remove a member from office if satisfied that the member is unable to perform the duties of the office competently.
  - (4) The permanent member appointed under section 63(2)(a) vacates office if he or she ceases to be a legal practitioner.
  - (5) The permanent member appointed under section 63(2)(b) vacates office if he or she becomes a health practitioner or legal practitioner.
  - (6) A special member vacates office if he or she ceases to be a health practitioner.

#### **4. Filling of vacancies**

- (1) If the office of a permanent member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of the former member's term of office.
- (2) The person appointed to a vacant office under subclause (1) must:
  - (a) if the office is referred to in section 63(2)(a) – be a legal practitioner; and
  - (b) if the office is referred to in section 63(2)(b) – not be a health practitioner or legal practitioner.

#### **5. Validity of proceedings etc.**

An act or proceeding of the Tribunal or of a person acting under the direction of the Tribunal is valid even if:

- (a) the appointment of a member of the Tribunal was defective; or

- (b) a person appointed as a member of the Tribunal was disqualified from acting as, or incapable of being, a member.

## **Schedule 6 Provisions with respect to proceedings of Tribunal**

section 63(12)

### **1. Convening Tribunal**

The Tribunal, as constituted for the purposes of an inquiry, may be convened by:

- (a) the President; or
- (b) any 2 members.

### **2. Effect of vacancies**

- (1) If one of the members, other than the President, constituting the Tribunal for the purposes of an inquiry vacates office for any reason before the inquiry is completed, the inquiry may be continued and completed by the remaining 4 members regardless of whether, in the case of a vacancy in the office referred to in section 63(2)(b), any other person is appointed to the vacant office.
- (2) If more than one of the members constituting the Tribunal for the purposes of an inquiry vacates office for any reason before the inquiry is completed, the inquiry is terminated.
- (3) If an inquiry is terminated by virtue of subclause (2), the Tribunal may be reconstituted for the purposes of conducting a new inquiry on the same matter.
- (4) For this clause, an inquiry is taken to have been completed once the Tribunal has made a decision under section 65.
- (5) For this clause, a member vacates office if he or she has disclosed an interest under clause 7(1) and a determination under clause 7(2) has not been made in respect of the member.

### **3. Voting**

- (1) Questions arising for determination by the Tribunal must be determined by a majority of votes of the members present and voting.
- (2) In the event of an equality of votes on a question arising for determination by the Tribunal, the question stands adjourned until it is next convened.

- (3) The vote of a special member is equal to the vote of a permanent member.

**4. President**

The President must preside over all proceedings of the Tribunal.

**5. Decisions of Tribunal**

- (1) Unless there are circumstances beyond the control of the Tribunal, a decision of the Tribunal must be made within 3 months after the inquiry into the matter is completed.
- (2) The decision of the Tribunal following an inquiry and the reasons for the decision must be in writing.

**6. Minutes**

The Tribunal must keep:

- (a) accurate minutes of its meetings; and
- (b) a verbatim record of each hearing it conducts in the course of an inquiry.

**7. Disclosure of interest**

- (1) If a member has or acquires an interest (whether pecuniary or otherwise) that would conflict with the proper performance of the member's functions in relation to a matter being considered or about to be considered by the Tribunal, the member must disclose the nature of the interest at a meeting of the Tribunal.
- (2) A disclosure under subclause (1) must be recorded in the minutes and the member must not, unless the Tribunal (exclusive of the member) determines otherwise:
  - (a) be present during any deliberations of the Tribunal in relation to the matter; or
  - (b) take part in any decision of the Tribunal in relation to the matter.

**8. General procedures**

Subject to this Schedule and Schedule 4, the procedure for convening the Tribunal and conducting its business is as determined by the Tribunal.

## Schedule 7 Protected titles

section 104

Column 1	Column 2
Aboriginal health work	Aboriginal health worker
chiropractic	Chiropractor
dentistry	Dentist
	Dental Specialist
	Dental Hygienist
	Dental Therapist
	Dental Prosthetist
	Dental Mechanic
	Dental Technician
medicine	Doctor
	Medical Practitioner
	Surgeon
	Physician
	Medical Specialist
midwifery	Midwife
	Certified Midwife
	Authorised Midwife
	Registered Midwife
	Direct Entry Midwife
nursing	Nurse
	Registered Nurse
	Enrolled Nurse
	Licensed Nurse
	Qualified Nurse
	Nurse Practitioner
	Direct Entry Psychiatric Nurse
occupational therapy	Occupational Therapist
optometry	Optometrist
	Optician

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osteopathy	Osteopath
pharmacy	Pharmacist
	Pharmaceutical Chemist
physiotherapy	Physiotherapist
	Physical Therapist
psychology	Psychologist



## Schedule 8 Provisions relating pharmacies

section 130

### 1. Definitions

In this Schedule:

**Aboriginal health service** means a service that provides health care primarily to Aboriginals.

**authorised pharmacy business owner** means:

- (a) a pharmacist;
- (b) a partnership of which all the partners are pharmacists; or
- (c) a corporation of which all shareholders and directors are pharmacists.

**authorised pharmacy service provider** means an organisation that operates:

- (a) an Aboriginal health service;
- (b) a pharmacy service that is part of a public hospital; or
- (c) a pharmacy service that is part of a defence force facility.

**Board** means the Pharmacy Board of the Northern Territory.

**pharmacist** means a person who is registered in the category of registration of pharmacist and holds a current practising certificate.

**pharmacy** means premises or the part of premises in which a pharmacy business is carried on.

**pharmacy business** means a business that includes the custody of drugs and medicines, the dispensing of medicines on prescription and the supply of scheduled drugs and poisons to consumers by retail.

**pharmacy department** means premises or the part of premises in which a pharmacy service is provided.

**pharmacy service** means a service that includes the custody of drugs and medicines, the dispensing of medicines on prescription and the supply of scheduled drugs and poisons to patients and consumers.

## **2. Ownership of pharmacy**

(1) A person must not:

- (a) own; or
- (b) exercise any control over the conduct of,  
a pharmacy business unless the person:
- (c) is an authorised pharmacy business owner; or
- (d) has been granted an exemption under subclause (2).

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

(2) The Minister may grant an Aboriginal health service or friendly society an exemption from the application of subclause (1).

(3) The Minister must not grant an exemption under subclause (2) unless he or she is satisfied that:

- (a) health services or access to health services will be improved by granting the exemption; and
- (b) granting the exemption will meet the needs of the community where the pharmacy business is situated.

(4) Subclause (1) does not apply to a person who immediately before the commencement of section 130 was the owner of a pharmacy business.

(5) Subclause (1) does not apply to a person who is:

- (a) the administrator of the estate of a deceased person to whom that subclause applied;
- (b) the administrator of a person to whom that subclause applies who is declared bankrupt; or
- (c) the administrator of a corporation to which that subclause applies that is in administration.

**3. Ownership of pharmacy service**

A person must not own a pharmacy service unless the person is an authorised pharmacy service provider.

Penalty: If the offender is a natural person – 500 penalty units.  
If the offender is a body corporate – 2 500 penalty units.

**4. Conduct of pharmacy business and pharmacy service**

- (1) A person must not conduct a pharmacy business from premises unless the premises comply with the standards prescribed by the Board.

Penalty: If the offender is a natural person – 500 penalty units.  
If the offender is a body corporate – 2 500 penalty units.

- (2) A person must not conduct a pharmacy service from premises unless the premises comply with the standards prescribed by the Board.

Penalty: If the offender is a natural person – 500 penalty units.  
If the offender is a body corporate – 2 500 penalty units.

- (3) For the purposes of this clause, the Board may prescribe standards that apply to premises from which a pharmacy business or pharmacy service must be conducted.

- (4) The standards prescribed under this clause may be included in a code adopted by the Board under section 12.

**5. Pharmacy and pharmacy department to be under direct supervision of pharmacist**

- (1) The owner of a pharmacy must ensure that the pharmacy is under the direct supervision of a pharmacist at all times while it is open to the public.

Penalty: If the offender is a natural person – 500 penalty units.  
If the offender is a body corporate – 2 500 penalty units.

- (2) The owner of pharmacy department must ensure that the pharmacy department is under the direct supervision of a pharmacist at all times while it is open to dispense drugs or medicine.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

## **6. Restriction on entry to pharmacy or pharmacy department**

- (1) A person must not enter or remain in a pharmacy unless he or she is a pharmacist or under the direct supervision of a pharmacist.

Penalty: 500 penalty units.

- (2) A person must not enter or remain in a pharmacy department unless he or she is a pharmacist or under the direct supervision of a pharmacist.

Penalty: 500 penalty units.

## **7. Pharmacist-in-charge**

- (1) An authorised pharmacy business owner must not open the pharmacy business to the public unless the owner has appointed a pharmacist to be the pharmacist-in-charge of the business.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

- (2) An authorised pharmacy business owner must notify the Board of an appointment being made under subclause (1) as soon as practicable after it is made.

Penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

- (3) An authorised pharmacy service provider must not open the pharmacy department from which the service is provided unless the owner has appointed a pharmacist to be the pharmacist-in-charge of the department.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

- (4) An authorised pharmacy service provider must notify the Board of an appointment being made under subclause (3) as soon as practicable after it is made.

Penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

- (5) A pharmacist-in-charge appointed under this clause is responsible to the Board for the conduct of the pharmacy business or pharmacy service undertaken at the pharmacy or pharmacy department for which he or she is appointed.
- (6) An appointment cannot be made under this clause if the effect is that a pharmacist would be appointed pharmacist-in-charge of more than one pharmacy or pharmacy department.

## **8. Pharmacy superintendent**

- (1) A person who owns more than one pharmacy or pharmacy department must appoint a pharmacist to be the pharmacy superintendent for those pharmacies or pharmacy departments.

Penalty: If the offender is a natural person – 500 penalty units.

If the offender is a body corporate – 2 500 penalty units.

- (2) A person who makes an appointment under subclause (1) must notify the Board of the appointment being made as soon as practicable after it is made.

Penalty: If the offender is a natural person – 20 penalty units.

If the offender is a body corporate – 100 penalty units.

- (3) A pharmacy superintendent appointed under this clause is responsible to the Board for the conduct of the pharmacy businesses or pharmacy services undertaken at the pharmacies or pharmacy departments for which he or she is appointed.

## **9. Pharmacy key holder**

- (1) A person must not have in his or her possession the keys to a pharmacy or pharmacy department unless he or she is a pharmacy key holder for the pharmacy or pharmacy department or authorised by the pharmacy key holder.

Penalty: 50 penalty units.

- (2) A pharmacy key holder for a pharmacy or pharmacy department is:
  - (a) the pharmacist-in-charge of the pharmacy or pharmacy department; or
  - (b) a pharmacist nominated by the pharmacist-in-charge of the pharmacy or pharmacy department as a pharmacy key holder.
- (3) In this clause:  
**keys** includes a device, code and any other mechanism to gain access to a locked pharmacy or pharmacy department.

#### **10. Unauthorised use of certain titles**

- (1) A person must not use the title "pharmacy", "chemist" or "pharmaceutical chemist", or a similar title, either alone or with other words, to describe premises unless those premises are used as a pharmacy.  
  
Penalty: 25 penalty units.
- (2) Subclause (1) does not apply to an authorised pharmacy business owner who conducts a remote agency or depot and who advertises the agency or depot at the premises from which the agency or depot operates.
- (3) An advertisement referred to in subclause (2) must clearly indicate:
  - (a) that the premises are only an agency or depot; and
  - (b) that a full service is not available at the premises or that a pharmacist is not on duty at the premises.
- (4) A person must not use the title "pharmacy department" or "pharmacy service", or a similar title, either alone or with other words, to describe premises unless the premises are a pharmacy department.  
  
Penalty: 25 penalty units.
- (5) An offence against this clause is a regulatory offence.

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**Schedule 9 Repealed Acts**

section 132

<i>Dental Act 1986</i>	No. 8, 1986
<i>Dental Amendment Act 1991</i>	No. 74, 1991
<i>Health Practitioners and Allied Professionals Registration Act 1985</i>	No. 48, 1985
<i>Health Practitioners and Allied Professionals Registration Amendment Act 1989</i>	No. 3, 1989
<i>Health Practitioners and Allied Professionals Registration Amendment Act 1993</i>	No. 5, 1993
<i>Health Practitioners and Allied Professionals Registration Amendment Act 2000</i>	No. 25, 2000
<i>Medical Act 1995</i>	No. 7, 1995
<i>Nursing Act 1999</i>	No. 10, 1999
<i>Optometrists Ordinance 1958</i>	No. 14, 1958
<i>Optometrists Amendment Act 1983</i>	No. 20, 1983
<i>Pharmacy Ordinance 1936</i>	No. 10, 1936
<i>Pharmacy Ordinance 1952</i>	No. 8, 1952
<i>Pharmacy Ordinance 1957</i>	No. 7, 1957
<i>Pharmacy Ordinance 1964</i>	No. 56, 1964
<i>Pharmacy Ordinance 1968</i>	No. 3, 1969
<i>Pharmacy Ordinance 1973</i>	No. 8, 1973
<i>Pharmacy Ordinance (No. 2) 1973</i>	No. 22, 1973
<i>Pharmacy Ordinance 1975</i>	No. 2, 1976
<i>Pharmacy Ordinance 1977</i>	No. 41, 1977
<i>Pharmacy Act 1979</i>	No. 154, 1979
<i>Pharmacy Amendment Act 1982</i>	No. 92, 1982
<i>Pharmacy Amendment Act 1983</i>	No. 27, 1983

## Schedule 10 Savings and transitional provisions

section 133

### 1. Definitions

In this Schedule:

**former Board** means a Board as constituted under a repealed Act.

**new Board**, in relation to a former Board, means the Board established under this Act of the same or an equivalent name as the former Board.

**repealed Act** means an Act repealed by section 132.

### 2. Proceedings

Any proceedings that, immediately before the commencement of section 133, might have been brought or continued by or against a former Board may be brought or continued by or against the new Board.

### 3. Continuation of registers and rolls

- (1) A register kept under a repealed Act by a former Board is taken to be part of the register kept by the new Board for the purposes of this Act.
- (2) A roll kept under a repealed Act by a former Board is taken to be part of the roll kept by the new Board for the purposes of this Act.

### 4. Accredited courses

A course of study prescribed or accredited under a repealed Act is taken to be an accredited course for entry into the category of health care practice for the purposes of this Act.

### 5. Application for registration or enrolment

An application made under a repealed Act to be registered or enrolled and not determined by a former Board before the commencement of section 133 must be determined by the new Board as if it were an application for registration or enrolment under this Act.

### 6. Continuation of registration and enrolment

- (1) A person who, immediately before the commencement of section 133, was registered under a repealed Act is taken to be



registered under and subject to this Act on the same conditions and with the same limitations, if any, as applied to the person's registration under the repealed Act.

- (2) A person who, immediately before the commencement of section 133, was enrolled under a repealed Act is taken to be enrolled under and subject to this Act on the same conditions and with the same limitations, if any, as applied to the person's enrolment under the repealed Act.
- (3) Subclauses (1) and (2) apply to a registration or enrolment even if, immediately before the commencement of section 133, the registration or enrolment was suspended under a repealed Act but those subclauses are not to be taken as revoking or reducing any period of suspension to which the former registration or enrolment was subject immediately before that day.

## **7. Interim registration or enrolment**

- (1) A provisional registration or enrolment (however described) that was in force under a repealed Act immediately before the commencement of section 133 remains in force as an interim registration or enrolment under this Act until the first of the following events occurs:
  - (a) the person holding the interim registration or enrolment applies for and is granted registration or enrolment under this Act;
  - (b) the interim registration or enrolment is cancelled under this Act;
  - (c) the expiration of 3 months from the day on which the interim registration or enrolment was granted, as provisional registration or enrolment, under the repealed Act.
- (2) For the purposes of subclause (1), a certificate issued under a repealed Act in respect of the provisional registration or enrolment, despite anything in this Schedule, continues in force until the first of the events referred to in subclause (1) occurs.

## **8. Practising certificate**

- (1) A certificate issued under a repealed Act authorising a person to practise under the repealed Act that was in force immediately before the commencement of section 133 is taken to be a practising certificate issued to the person under this Act for the unexpired period of the certificate.

- (2) Subclause (1) applies to a certificate even if, immediately before the commencement of section 133, the certificate was suspended under a repealed Act but that subclause is not to be taken as revoking or reducing any period of suspension to which the former certificate was subject immediately before that commencement.
- (3) If a certificate referred to in subclause (1) expires before the due date, the new Board may issue a new certificate for the period that commences immediately after the expiry and ends on the due date.
- (4) If a certificate referred to in subclause (1) is endorsed with the category of midwifery, the holder of the certificate is, on the commencement of section 133:
  - (a) entitled to practise generally in the category of health care practice of nursing under and subject to this Act; and
  - (b) taken to hold an authorisation to practise in the restricted practice area of midwifery under and subject to this Act.
- (5) If a certificate referred to in subclause (1) is endorsed with categories of nursing other than midwifery, the holder of the certificate is, on the commencement of section 133, entitled to practise generally in the category of health care practice of nursing under and subject to this Act on the same conditions and with the same limitations as applied to the person's entitlement to practise under the repealed Act.
- (6) Subclauses (4) and (5) have effect subject to subclause (2).

**9. Registered or enrolled person without practising certificate may apply for that certificate under this Act**

- (1) A person:
  - (a) who is taken to be registered or enrolled by virtue of this Schedule; and
  - (b) who was not issued with a certificate authorising the person to practise under a repealed Act by a former Board,may apply in writing to the new Board for a practising certificate under this Act.
- (2) The new Board must, within 14 days after receiving an application under subclause (1), having regard to the matters that the Board considers necessary or appropriate, issue or refuse to issue the person with a practising certificate.

- (3) The new Board must, as soon as practicable, give notice of its decision to the applicant.
- (4) A person whose application under subclause (1) is refused may, within 14 days of receiving the notice, appeal, on a question of law, to the Supreme Court against the new Board's decision.
- (5) At the hearing of an appeal, the Supreme Court may confirm the decision of the Board or order the Board to issue the applicant with a practising certificate.

## **10. Complaints**

- (1) If, immediately before the commencement of section 133, an investigation (however described) had begun under a repealed Act by a former Board but had not been concluded, the new Board may:
  - (a) terminate the investigation and regard the investigation as a complaint to the new Board made under this Act; or
  - (b) continue and conclude the investigation as if this Act had not commenced.
- (2) In making a determination under subclause (1), the new Board may have regard to any matter that it considers appropriate but must have particular regard to:
  - (a) how far the investigation had progressed;
  - (b) fairness to the person who is the subject of the investigation;
  - (c) cost and inconvenience to the Board, the person who is the subject of the investigation or other persons; and
  - (d) any submissions made to the Board by or on behalf of the person who is the subject of the investigation.
- (3) If subclause (1)(b) applies, the new Board, on concluding the investigation, may take any action under this Act that it considers appropriate having regard to the findings of the investigation.
- (4) A complaint may be made or dealt with under this Act in respect of an act or omission of a health practitioner despite that the act or omission actually or allegedly occurred before the commencement of section 133.

## **11. Appeals**

- (1) An appeal instituted under a repealed Act and not determined by the commencement of section 133 may be continued and determined as if this Act had not commenced.
- (2) If under subclause (1) a court orders in respect of an appeal that an application for registration or enrolment under a repealed Act be granted, the registration or enrolment is, for the purposes of this Schedule, taken to have been in force immediately before the commencement of section 133.
- (3) If under subclause (1) a court orders that an application for the renewal of a certificate under a repealed Act be granted, the certificate is, for the purposes of this Schedule, taken to have been a certificate issued under the repealed Act in force immediately before the commencement of section 133.
- (4) If under subclause (1) a court orders in respect of an appeal that some action or determination be substituted for an action or determination of a former Board, the court may, if it considers it fair and appropriate to do so having regard to the repeal of the repealed Act and the enactment of this Act, order that the substituted action or determination be one that the new Board or Tribunal could take or make under this Act had the appeal been instituted under this Act.

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

### 2 LIST OF LEGISLATION

***Health Practitioners Act 2004 (Act No. 21, 2004)***

Assent date	16 April 2004
Commenced	s 130 and sch 8: 23 February 2005 ( <i>Gaz</i> G8, 23 February 2005, p 2); rem: 14 May 2004 ( <i>Gaz</i> G19, 12 May 2004, p 4)