



ANALYSIS

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1979, No. 44

An Act to amend the Dietitians Act 1950

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: [12 November 1979]

1. Short Title and commencement—(1) This Act may be cited as the Dietitians Amendment Act 1979, and shall be read together with and deemed part of the Dietitians Act 1950 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1980.

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “Minister”, the following definition:

“Penal Cases Committee” means the committee of that name appointed under section 8A of this Act:”

3. New sections substituted—The principal Act is hereby amended by repealing sections 4 to 6, and substituting the following sections:

“4. Dietitians Board constituted—(1) There is hereby established for the purposes of this Act a Board, to be known as the Dietitians Board.

“(2) The Board shall consist of—

“(a) An officer of the Department of Health designated from time to time by the Director-General of Health:

“(b) The person who, for the time being, holds office as the Dean of the Faculty of Home Science of the University of Otago:

“(c) A person who, for the time being, is responsible for the conduct of the prescribed course of training at an approved training school:

“(d) A registered medical practitioner:

“(e) Five dietitians to be nominated by the New Zealand Dietetic Association (Incorporated):

“(f) One other person to be nominated by the Board:

“(g) The Registrar.

“(3) The members of the Board referred to in paragraphs (c) to (f) of subsection (2) of this section shall be appointed by the Governor-General on the recommendation of the Minister, and shall be appointed for a period of 3 years, but any such member may from time to time be reappointed.

“(4) An appointed member may be at any time removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Registrar.

“(5) If any appointed member of the Board dies or resigns or is removed from office,—

“(a) The vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made; and

“(b) The person appointed to fill the vacancy shall be appointed for the residue of the term for which his predecessor was appointed.

“(6) Unless he sooner vacates his office in accordance with subsection (5) of this section, every appointed member of the Board shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

“(7) The powers of the Board shall not be affected by any vacancy in its membership.

“5. **Chairman and deputy chairman**—(1) At its first meeting in the year 1980, and at its first meeting in each subsequent year, the Board shall elect one of its members to be its Chairman and another of its members to be its Deputy Chairman.

“(2) Every person elected as Chairman or Deputy Chairman, unless he sooner resigns that office or vacates his office as a member of the Board, shall respectively hold office until his successor is elected under this section and shall be eligible for re-election.

“(3) If any person who is for the time being holding office as Chairman or Deputy Chairman of the Board vacates office as a member of the Board, an election to fill the vacancy in the office of Chairman or Deputy Chairman shall be held at the first meeting of the Board held after the vacancy on the Board has been filled. Where the office of Chairman or Deputy Chairman becomes vacant in any other case the Board shall elect one of its members to fill that vacancy as soon as practicable after its occurrence.

“(4) During every vacancy in the office of Chairman, or while the Chairman is for any reason unable to perform his functions, the Deputy Chairman shall exercise and perform the functions, powers, and duties of the Chairman.

“6. **Meetings of Board**—(1) The first meeting of the Board in the year 1980 shall be held at such time and place as the Minister shall appoint.

“(2) Subsequent meetings of the Board shall be held at such times and places as the Chairman or the Board from time to time appoints.

“(3) At any meeting of the Board 7 members shall form a quorum.

“(4) Every question before the Board shall be determined by a majority of the votes of the members present at the meeting of the Board.

“(5) The presiding member shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

“(6) The Chairman shall preside at all meetings of the Board at which he is present.

“(7) If at any meeting the Chairman is not present the Deputy Chairman shall preside at that meeting.

“(8) In the absence of both the Chairman and the Deputy Chairman from any meeting, the members present shall elect one of their number to preside at that meeting and the member presiding shall have all the powers of the Chairman for the purposes of that meeting.

“(9) In the absence from any meeting of the Board of the Dean of the Faculty of Home Science of the University of Otago, he may appoint any other member of the teaching staff of that Faculty to attend the meeting in his stead.

“(10) In the absence from any meeting of the Board of the person who is appointed under section 4 (2) (c) of this Act, that person may appoint any other member of the teaching staff employed for the purpose of the course referred to in that provision to attend the meeting in his stead.

“(11) Where any person appointed under subsection (9) or subsection (10) of this section attends a meeting of the Board in the absence of the person he represents, he shall be deemed for the purposes of this Act to be a member of the Board, except that he shall not be deemed to be the Chairman or Deputy Chairman by reason of the fact that he represents the Chairman or Deputy Chairman.

“(12) Subject to the provisions of this Act and of any regulations made under this Act, the Board may regulate its procedure in such manner as it thinks fit.”

4. Functions of Board—Section 8 of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraph:

“(ba) To advise the Council of any university in New Zealand on any matter relating to dietetic education.”.

5. Penal Cases Committee—The principal Act is hereby amended by inserting, after section 8, the following section:

“8A. (1) There shall be a committee of the Board to be known as the Penal Cases Committee, which shall have the functions and powers imposed or conferred on that Committee by this Act, and which shall consist of 3 members of the Board, of whom at least 2 shall be dietitians.

“(2) The members of the Penal Cases Committee shall be appointed by and hold office at the pleasure of the Board.

“(3) The Board shall nominate one of the members of the Penal Cases Committee to be the convener.

“(4) If, in relation to any particular complaint, the Chairman is satisfied that it would be impracticable, inappropriate, or unduly inconvenient for a member of the Penal Cases Committee to serve on the Committee for the purpose of investigating that complaint, he may, subject to subsection (1) of this section,—

“(a) Appoint some other person who is a member of the Board to serve on the Committee in the place of that member for that purpose; and

“(b) If the member replaced is the convener of the Committee, nominate any other member of the Committee (including a member appointed under paragraph (a) of this subsection) to be the convener in his place,—

and any person so appointed or nominated shall, while he is so acting, be deemed to be a member of the Committee or to be the convener of the Committee, as the case may require.

“(5) Subject to the provisions of this Act, the Board may from time to time make rules regulating the procedure of the Penal Cases Committee, and prescribing classes of cases that need not be referred to that Committee before they are considered by the Board.

“(6) Subject to the provisions of this Act, in the absence of any such rules, or so far as the rules do not extend, the Penal Cases Committee may regulate its procedure as it thinks fit.”

6. Register to contain addresses of dietitians—Section 9 (1) of the principal Act is hereby amended by inserting, after the word “name”, the words “and address”.

7. Qualification of applicants for registration—The principal Act is hereby amended by repealing section 10, and substituting the following section:

“10. (1) Except as provided in this Part of this Act, every person shall be entitled to be registered as a dietitian under this Act who satisfies the Board—

“(a) That he has undergone in New Zealand the prescribed course of training in dietetics at an approved training school for dietitians and that he has passed the examination prescribed for persons seeking to be registered under this Act; or

“(b) That he has a reasonable command of the English language and that he has undergone a course of training elsewhere than in New Zealand that is substantially equivalent to the training and examination required in the case of dietitians trained in New Zealand, and qualified by examination under this Act; or

“(c) That he has a reasonable command of the English language and that, having undergone a course of training in dietetics elsewhere than in New Zealand, he has thereafter undergone in New Zealand such further training at such hospital or other institution, and passed such examination (if any), as may be specified by the Board for the purposes of this paragraph in relation to the particular case.”

8. Temporary registration—The principal Act is hereby amended by repealing section 18B (as inserted by section 3 of the Dietitians Amendment Act 1973), and substituting the following section:

“18B. (1) Notwithstanding anything in this Act, if the Board is satisfied that any person is, or will be, visiting New Zealand for the purpose of giving instruction or carrying out research in dietetics or gaining experience as a dietitian—

“(a) In the Department of Health; or

“(b) In any hospital or other institution, or with any organisation, or in other circumstances, being in each case a hospital, or an institution, or an organisation, or circumstances approved by the Board for the purpose of this section,—

the Board may, in its discretion, on payment of the prescribed fee (if any), issue to that person a certificate of temporary registration if it is satisfied that that person has a reasonable command of the English language and that either,—

“(i) The person is qualified for registration under this Act; or

“(ii) The person is the holder of a qualification granted outside New Zealand and recognised by the Board as evidence that the holder has, for the purposes of this section, sufficient knowledge of dietetics and experience to practise properly and efficiently as a dietitian.

“(2) A temporary certificate issued under subsection (1) of this section shall entitle the person to whom it is issued to practise as a dietitian in the Department of Health, hospital, other institution, or organisation, or in the other circumstances specified in the certificate, for such period as may be determined by the Board and specified in the certificate.

“(3) The provisions of sections 11 and 12 of this Act shall apply to every application for temporary registration under this section.

“(4) Nothing in section 9 or section 13 (1) or section 22 of this Act shall apply to the holder of a certificate under this section.

“(5) The Board may from time to time, in its discretion, extend the period specified in any certificate under this section if it is satisfied that the requirements of this section are being and will continue to be met.

“(6) No such extension shall take effect until it has been endorsed on the certificate by the Registrar.

“(7) The Registrar shall cancel any certificate issued under this section at any time if the Board, in its discretion, so directs.”

9. Period of training—Section 20 of the principal Act is hereby amended by omitting the words “and not more than 2 years and 6 months”.

10. Annual practising certificates for registered dietitians—(1) Section 22 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) In this subsection the term ‘year’ means the period of 12 months beginning on the 1st day of April in any year and ending on the last day of March next following.”

(2) Every practising certificate issued in respect of the period of 12 months beginning on the 1st day of March

1979 shall, subject to the proviso to section 22 (4) of the principal Act, continue in force until the close of the 31st day of March 1980.

11. Registered medical practitioner to be member of suspension committee—Section 23 of the principal Act (as substituted by section 10 of the Dietitians Amendment Act 1964) is hereby amended by repealing subsection (9), and substituting the following subsection:

“(9) The Board may from time to time, for the purposes of this section, appoint a committee of Board members comprising the Chairman and at least 1 other member of the Board. At least 1 member of any such committee shall be a member of the Board who is a registered medical practitioner. The appointment of any such committee may be revoked by the Board at any time.”

12. New sections substituted—The principal Act is hereby amended by repealing sections 25 and 26, and substituting the following sections:

“**25. Complaints against dietitians**—(1) Except as otherwise provided by rules made under section 8A of this Act, every person who seeks to complain to the Board of the conduct of any dietitian shall make the complaint to the Registrar.

“(2) Every such complaint (other than a complaint made by a Court) shall be in writing.

“(3) When the Registrar has received any complaint under this section, he shall notify the convener of the Penal Cases Committee of the complaint; and the convener may require that the complaint be supported by such statutory declarations as he may require, or decide that the matter need not proceed further, or forthwith proceed in accordance with section 25A of this Act.

“(4) If the convener decides that the matter need not proceed further, he shall report the substance of the complaint and the reasons for his decision to the other members of the Penal Cases Committee.

“(5) Without limiting the provisions of subsection (1) of this section, a complaint may be made under this section by any person in the service of the Crown acting in his official capacity.

“25A. Penal Cases Committee to investigate complaints—

(1) Except where the convener of the Penal Cases Committee decides that the matter need not proceed further, the convener shall, upon being notified of the complaint in accordance with section 25 of this Act, and having received any statutory declarations that he may require, cause the Penal Cases Committee to investigate the complaint and determine whether or not any further action shall be taken in respect of it.

“(2) Before the Penal Cases Committee decides whether or not further action shall be taken in respect of the complaint,—

“(a) The convener shall post or deliver to the dietitian concerned a notice specifying the substance of the complaint with sufficient particularity to enable that dietitian to answer it and inviting him, within such period (being not less than 14 days) as may be specified in the notice, to give the convener any written explanation he may wish to offer and to advise the convener if he wishes to be heard by the Committee; and

“(b) The Penal Cases Committee shall allow the time specified in the notice to elapse, and shall give the dietitian concerned reasonable opportunity to be heard, either personally or by counsel or otherwise, and shall give due consideration to any explanation made.

“(3) Where at the conclusion of any such investigation the majority of the Penal Cases Committee considers that further inquiry should be made by the Board in relation to the subject-matter of the complaint, the Committee shall frame an appropriate charge and refer it to the Chairman of the Board who shall thereupon convene a meeting of the Board for the purpose of hearing the charge.

“(4) Every charge that is referred to the Chairman of the Board pursuant to subsection (3) of this section shall be prosecuted at the hearing by the Penal Cases Committee, and the Committee and the dietitian against whom the charge has been made may for that purpose be represented by counsel or otherwise.

“(5) No member of the Penal Cases Committee shall act as a member of the Board or of any other committee of the

Board at the hearing of, or deliberation and adjudication on, any charge arising out of a complaint that has been referred to the Penal Cases Committee under this section.

“(6) Notwithstanding anything in subsections (1) to (5) of this section, if any member of the Penal Cases Committee has reason to believe that a dietitian might have been guilty of professional misconduct, the Committee may investigate the matter of its own motion, without any complaint under section 25 of this Act having been made, and subsections (2) to (5) of this section shall apply in any such case with any modifications that may be necessary.

“25B. **Disciplinary powers of Board**—(1) Subject to subsection (4) of this section, if the Board is satisfied, in respect of any dietitian, that the dietitian,—

“(a) Has been convicted, whether before or after he became registered under this Act, by any Court in New Zealand of any offence punishable by imprisonment for a term of 6 months or more; or

“(b) Has been guilty of professional misconduct,—
the Board may, in its discretion, subject to subsections (2) and (3) of this section, by writing under the hand of the Chairman, and by way of penalty, do any one of the following things—

“(c) Order that the name of that dietitian be removed from the register:

“(d) Order that the registration of the dietitian be suspended for a period not exceeding 12 months:

“(e) Impose on the dietitian a fine not exceeding \$500:

“(f) Order that the dietitian be censured.

“(2) Where the Board makes an order under paragraph (d) or paragraph (f) of subsection (1) of this section, it may in addition impose a fine under paragraph (e) of that subsection.

“(3) The Board may, by writing under the hand of the Chairman, order any such dietitian to pay any costs and expenses of and incidental to the inquiry by the Board and any investigation made by the Penal Cases Committee.

“(4) Where the Board is inquiring into any act or omission that constitutes an offence for which the person has been convicted by a Court, the Board shall not impose a fine pursuant to subsection (1) (e) or subsection (2) of this section.

“(5) The Board shall not exercise any authority conferred by this section in respect of any offence committed by any person before the date of his registration, if at that date the Board was aware of his conviction in respect of the offence.

“(6) While any order of suspension from practice under this section remains in force, the person shall be deemed for the purposes of this Act not to be registered; but forthwith on the expiry of the order his rights and privileges as a registered dietitian shall be revived as from the date of the expiry.

“(7) In any order under this section directing the name of any person to be removed from the register, the Board may fix a time after which the person whose name is so removed may apply to have his name restored to the register.

“(8) Every fine imposed, and all costs and expenses payable, under this section shall be recoverable as a debt due to the Crown.

“25c. Procedure of Board in disciplinary matters—

(1) Before exercising its powers under section 25B of this Act or this section, the Board, or a committee of the Board, shall cause to be served on the person concerned a notice containing a copy of the charge framed by the Penal Cases Committee, or, if there is no such charge, a notice stating that it has reason to believe that a ground exists entitling the Board to exercise its powers under section 25B of this Act, specifying the ground with sufficient particularity to enable him to answer it, and requiring him to answer it, and requiring him to appear before the Board to show cause why the Board should not exercise its powers under that section.

“(2) The notice under subsection (1) of this section may require the person to whom the notice is addressed to notify the Board in writing, not later than a specified date before the date proposed for the hearing of the matter, whether or not he intends to appear before the Board at the hearing to show cause why the Board should not exercise its powers under section 25B of this Act. If he fails to notify his intention as required by the notice or notifies the Board that he does not intend to appear, he shall only be entitled to appear and be heard on such conditions as to the payment of expenses or otherwise as the Board thinks fit.

“(3) With the prior written consent of a person on whom a notice has been served under this section, and who has notified the Board that he intends to show cause why the

Board should not exercise its powers under section 25B of this Act, a committee of the Board may hear and determine the matter:

“Provided that the determination of the committee shall be of no effect until it has been confirmed by the Board, which shall have power—

“(a) To determine that no penalty be imposed; or

“(b) To reduce any penalty determined by the committee by suspending registration for a specified period or imposing a fine, or both, instead of removing the name of any person from the register; or

“(c) To reduce any period of suspension of registration or any fine; or

“(d) To substitute a fine for a period of suspension; or

“(e) To substitute a censure for any of the said penalties.

“(4) Subsections (7) to (11) of this section and sections 25D and 25E of this Act shall apply in respect of any proceedings before a committee under subsection (3) of this section as if they were proceedings before the Board, and for that purpose the committee shall have the powers conferred on the Board by sections 25D and 25E of this Act.

“(5) Any hearing of any matter under this section may be adjourned by the Board or the committee of the Board, as the case may be, from time to time and from place to place.

“(6) If any university or institution, having granted to any person a degree, certificate, diploma, licence, or other qualification that may be entered on the register under this Act, exercises any power conferred by law of removing the name of that person from the register in which the degree, certificate, diploma, licence, or other qualification is recorded, and notifies to the Board the fact of the removal,—

“(a) The Registrar shall make a note of the fact in the register; and

“(b) If the university or institution notifies to the Board the findings of fact on which the decision to remove the name was based, the findings may (if the Board thinks fit) be treated for the purposes of any inquiry or proceedings under this section as conclusive evidence of the facts found.

“(7) In all proceedings under this section the Board shall observe the rules of natural justice, and may receive evidence notwithstanding that it would not be admissible in a Court of law.

“(8) Board members, witnesses, and counsel shall have the same privileges and immunities in proceedings under this section as if they were proceedings in a Court of law.

“(9) The decision of a majority of the members present at any proceedings held under this section shall be the decision of the Board.

“(10) Unless the Board otherwise directs, proceedings held under this section shall not be open to the general public.

“(11) Every order, decision, or determination of the Board under this section shall—

“(a) Be reduced to writing; and

“(b) Contain a statement of the reasons on which it is based; and

“(c) Contain a clear statement of the person’s right to appeal against the order, decision, or determination and the time within which such appeal must be made; and

“(d) Be signed by the Chairman of the Board.

“(12) A copy of every order, decision, or determination of the Board under this section shall be served by the Registrar on the dietitian in respect of whom it was made, and shall take effect from the day on which such service was effected, or such later date as may be specified in the order, decision, or determination.

“**25D. Board and Committee to have certain powers of Commission of Inquiry**—The Board and Penal Cases Committee shall, for the purposes of any inquiry or investigation under section 25B or section 25c of this Act, have the same powers as are conferred on Commissions of Inquiry by section 4 of the Commissions of Inquiry Act 1908.

“**25E. Appointment of legal assessor**—With the consent of the Minister, the Board may, for the purposes of advising the Board or the Penal Cases Committee on questions of law or procedure arising in proceedings under sections 25 to 25c of this Act, appoint an assessor, who shall be a barrister or solicitor, to attend the proceedings.

“**26. Appeals from decisions of Board**—(1) Every person who is dissatisfied with the whole or any part of—

“(a) Any decision of the Board relating to an application by him for registration; or

“(b) Any order of the Board directing his name to be removed from the register; or

“(c) Any order of the Board, made pursuant to section 23 (6) or section 25c (3) (b) of this Act, suspending his registration; or

“(d) Any order of the Board imposing a fine on him; or

“(e) Any order of the Board censuring him,—

may, within 28 days after notice of the decision or order has been communicated to him by the Registrar (or within such further time as the Supreme Court may allow on application made before or after the expiration of those 28 days), appeal to the Supreme Court against the decision or order as the case may be.

“(2) For the purposes of this section, a decision by a committee of the Board set up under section 23 (9) of this Act shall be deemed to be a decision of the Board.

“(3) Every appeal under this section shall be heard and determined by the Administrative Division of the Supreme Court on the basis of the transcript of the evidence adduced and any exhibits produced before the Board, which shall transmit such evidence and exhibits to the Registrar of the Court for this purpose.

“(4) The Court shall as soon as practicable hear the appeal and may confirm, reverse, or modify the decision of the Board or may refer the matter back to the Board in accordance with the rules of the Court, and may give any decision that the Board could have given under section 25B or section 25c of this Act.

“(5) Nothing in this section shall be construed to give the Court power to review any part of the Board’s decision other than the part against which the appellant has appealed.

“(6) Subject to any order of the Court, every decision or order of the Board against which an appeal is lodged shall continue in force and have effect according to its tenor pending the determination of the appeal.

“(7) On any appeal under this section the Court may make an order for the payment by the Dietitians Board, or by the appellant, of the cost incurred in respect of the appeal by the other party to the appeal.”

13. Reference to universities altered—Section 28 of the principal Act is hereby amended by omitting the words “the University of New Zealand or any constituent college of that University”, and substituting the words “a university in New Zealand”.

14. Certain penalties increased—The principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby amended—

- (a) By omitting from section 13 (2) the expression “\$40”, and substituting the expression “\$200”:
- (b) By omitting from section 15 (2) the expression “\$2”, and substituting the expression “\$20”:
- (c) By omitting from section 17 the expression “\$100”, and substituting the expression “\$500”:
- (d) By omitting from section 22 (3) the expression “\$10”, and substituting the expression “\$200”:
- (e) By omitting from section 27 the expression “\$40”, and substituting the expression “\$500”:
- (f) By omitting from section 28 the expression “\$100”, and substituting the expression “\$500”:
- (g) By omitting from section 32 (2) (j) the expression “\$20”, and substituting the expression “\$200”.

15. Repeals and revocations—(1) The following enactments are hereby consequentially repealed:

- (a) Section 32 (2) (i) of the principal Act:
- (b) Sections 4 to 6 of the Dietitians Amendment Act 1964:
- (c) The Dietitians Amendment Act 1973.

(2) Regulation 17 of the Dietitians Regulations 1975 and the Third Schedule to those regulations are hereby consequentially revoked.

This Act is administered in the Department of Health.
