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1994, No. 90

An Act to amend the Occupational Therapy Act 1949

[*20 October 1994*

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

1. Short Title and commencement—(1) This Act may be cited as the Occupational Therapy Amendment Act 1994, and shall be read together with and deemed part of the Occupational Therapy Act 1949 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the day after the date on which it receives the Royal assent.

(3) Sections 2 and 4 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

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

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

" 'Commissioner' means the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994:

" 'Director of Proceedings' means the person for the time being designated under section 15 of the Health and Disability Commissioner Act 1994 as the Director of Proceedings:".

3. Disciplinary powers of Board—(1) Section 25 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

"(1A) In any case to which subsection (1) of this section applies, the Board may order the person in respect of whom the powers conferred by that subsection have been exercised to pay such sum as the Board thinks fit in respect of either or both of the following matters:

"(a) The costs and expenses of and incidental to the inquiry by the Board:

"(b) The costs and expenses of and incidental to any investigation conducted in relation to the matter to which the inquiry relates."

(2) Section 25 (2) of the principal Act is hereby amended by omitting the words "the next succeeding section", and substituting the words "section 26 of this Act".

(3) Section 25 (5) of the principal Act is hereby amended by adding, to the proviso, the sentence "The Board may also reduce the amount of any sum ordered to be paid under subsection (1A) of this section or determine that no sum shall be payable under that subsection."

(4) Section 25 (7) of the principal Act is hereby amended—

(a) By inserting, after the word "section", the words ", and any sum ordered to be paid under subsection (1A) of this section,":

(b) By inserting, after the words "such penalty", the words "or sum":

(c) By inserting, after the words "the penalty" in each place where they appear, the words "or sum".

4. New sections inserted—The principal Act is hereby amended by inserting, after section 25, the following sections:

"25A. **Complaints to be notified to Commissioner**—Where—

"(a) A complaint is made to the Board against any person who is registered under this Act, being a complaint alleging any matter that might be grounds entitling

the Board to exercise its powers under section 25 of this Act; or

"(b) The Board becomes aware, in respect of any person who is registered under this Act, of any matter that might be grounds entitling the Board to exercise any such powers,—

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

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

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

"(a) The Commissioner notifies the Board—

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

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

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

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

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

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

"(a) After conducting an investigation under Part IV of the Health and Disability Commissioner Act 1994, the Commissioner is of the opinion that any action (within the meaning of that Act) that was the

subject-matter of the investigation, being the action of a person who is registered under this Act, was in breach of the Code; and

"(b) The Director of Proceedings decides, pursuant to section 49 of that Act, that proceedings should be taken under section 25 of this Act against that person.

"(2) Where this section applies, the Director of Proceedings shall frame an appropriate charge and refer it to the Board.

"(3) Where the Director of Proceedings refers a charge to the Board under subsection (2) of this section, the Board shall, subject to section 25E of this Act, deal with the charge under section 25 of this Act, and the provisions of this Part of this Act shall apply accordingly with all necessary modifications.

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

"25F. **Costs may be awarded to Commissioner**—(1) Where,—

"(a) In any proceedings under section 25 of this Act, the Board is empowered to make an order under subsection (1A) of that section; and

"(b) The proceedings relate to a charge laid by the Director of Proceedings under section 25D of this Act,—

the person concerned may be ordered under section 25 (1A) of this Act to pay—

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

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

"(2) Notwithstanding anything in section 25 (7) of this Act, any costs and expenses payable pursuant to subsection (1) of this section shall be paid to the Commissioner.

"(3) Nothing in this section limits section 25 (1A) of this Act."

5. Appeals from decisions of Board—(1) Section 26 (1) of the principal Act is hereby amended by inserting, after the word "penalty,", the words "or the payment by him of any sum under section 25 (1A) of this Act,".

(2) Section 26 (3) of the principal Act is hereby amended by omitting the words "of the last preceding section", and substituting the words "or, as the case requires, subsection (1A) of section 25 of this Act".

This Act is administered in the Ministry of Health.