

## HEALTH COMMISSIONER BILL

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### EXPLANATORY NOTE

THIS Bill provides for the appointment of a Health Commissioner who will investigate complaints against persons or bodies that provide health care, and who will have general functions in relation to the protection of the rights of health consumers. The Bill also provides for the establishment of a Health Consumer Advocacy Service, and for the promulgation of a Code of Health Consumers' Rights.

This Bill implements, in part, the recommendations contained in the "Report of the Committee of Inquiry into Allegations Concerning the Treatment of Cervical Cancer at National Women's Hospital and into Other Related Matters (1988)", otherwise known as the "Cartwright Report".

#### *Clause by Clause Analysis*

*Clause 1* relates to the Short Title and commencement of the Bill.

*Part IV* of the Bill, which provides for the investigation of complaints involving a breach of the Code of Health Consumers' Rights, will be brought into force by Order in Council. That is necessary to enable the Health Commissioner to first develop the Code of Health Consumers' Rights.

The rest of the Bill is to come into force on 1 May 1991.

*Clauses 2 to 4* define certain terms used in the Bill.

*Clause 5* provides that the Bill binds the Crown.

*Clause 6* requires persons who exercise or perform any power or function under the Bill to take into account the principles of the Treaty of Waitangi.

### PART I

#### HEALTH COMMISSIONER

*Clause 7* provides for the appointment of a Health Commissioner. The Commissioner is to be appointed by the Governor-General on the recommendation of the Minister of Health. For administrative and financial reasons, the Commissioner is to be a corporation sole, and is also to be a Crown agency for the purposes of the Public Finance Act 1989.

*Clause 8* provides for the appointment of a Deputy Health Commissioner. The Deputy Commissioner is given all the powers, duties, and functions of the Commissioner whenever there is a vacancy in the office of Commissioner or

whenever the Commissioner is absent from duty, and the Deputy Commissioner is entitled to remuneration only when acting as the Commissioner.

*Clauses 9 to 12* relate to the qualifications for appointment, the term of office, and the vacation from office, of the Commissioner, and for certain restrictions on holding other offices. These provisions also apply in respect of the Deputy Commissioner.

*Clause 13* sets out the functions of the Commissioner. These are as follows:

- (a) As a first priority, to prepare a Code of Health Consumers' Rights:
- (b) To keep the Code of Health Consumers' Rights under review, and make recommendations to the Minister on any changes needed to the Code:
- (c) To promote, by education and publicity, respect for and observance of health consumers' rights, and, in particular, to promote awareness, among health consumers and health care providers, of health consumers' rights and of the means by which those rights may be enforced:
- (d) To make public statements and publish reports in relation to any matter affecting health consumers' rights, including statements and reports that promote an understanding of, and compliance with, the Code of Health Consumers' Rights or the provisions of the Bill:
- (e) To investigate, on complaint or on the Commissioner's own initiative, any action that is or appears to be in breach of the Code of Health Consumers' Rights, and to take such further action in respect of any such breach or alleged breach as is contemplated by the Bill:
- (f) To make recommendations to any appropriate person or authority in relation to the means by which complaints involving alleged breaches of the Code of Health Consumers' Rights might be resolved and further breaches avoided:
- (g) To appoint health consumer advocates, and administer the Health Consumer Advocacy Service in accordance with *Part III* of the Bill:
- (h) To make suggestions to any person in relation to any matter that concerns the need for, or the desirability of, action by that person in the interests of health consumers' rights:
- (i) On the Commissioner's own initiative or at the request of the Minister, to advise the Minister on any matter relating to health consumers' rights or the administration of the Bill:
- (j) To report to the Minister from time to time on the need for, or desirability of, taking legislative, administrative, or other action to give protection or better protection to health consumers' rights:
- (k) To receive and invite representations on matters relating to health consumers' rights from members of the public and from any other body, organisation, or agency:
- (l) To exercise and perform such other functions, powers, and duties as are conferred or imposed on the Commissioner by or under the Bill or any other enactment.

In performing his or her functions, the Commissioner is required—

- (a) To establish and maintain effective links with health care providers and other bodies and organisations (including community groups) concerned with health matters:
- (b) To consult and co-operate with other agencies concerned with personal rights, including the Ombudsmen, the Human Rights Commission, the Race Relations Conciliator, and the Commissioner for Children.

*Clause 14* requires the Commissioner to furnish to the Minister an annual report on the operation of the Bill.

*Clause 15* provides that the provisions set out in the Schedule to the Bill are to have effect in relation to the Commissioner and the Commissioner's affairs. Those provisions are of a general, machinery nature, and relate to such matters as the appointment of the staff of the Commissioner, the remuneration of the Commissioner and the Deputy Commissioner, superannuation and retiring allowances, and financial matters.

*Clause 16* requires the Commissioner to review the operation of the Bill after it has been in force for 3 years, and from then on at least every 5 years.

## PART II

### CODE OF HEALTH CONSUMERS' RIGHTS

*Clause 17* requires the Commissioner, as a first priority, to prepare a Code of Health Consumers' Rights and forward it to the Minister. The Code will then be incorporated into regulations and will form the basis on which the complaint procedures established by *Part IV* of the Bill will operate.

The Code of Health Consumers' Rights is to contain provisions relating to the following matters:

- (a) The principle that health care procedures should not be carried out without the informed consent of the health consumer or some person entitled to consent on the health consumer's behalf:
- (b) The duties and obligations of health care providers as they relate to the principle of informed consent:
- (c) The rights of health consumers, and the duties and obligations of health care providers, as they relate to—
  - (i) Matters of privacy and the confidentiality of health consumer information:
  - (ii) Health teaching and health research that involve the participation of health consumers:
  - (iii) The collection and use of information from health consumers for administrative or epidemiological purposes:
- (d) The provision of interpreters to ensure that health consumers are able to communicate with health care providers in the health consumer's first or preferred language:
- (e) The establishment and maintenance, by health care providers, of procedures for dealing with complaints against them by health consumers, and access by health consumers to such procedures:
- (f) The appropriate standard of care to be provided to health consumers by health care providers:
- (g) Any other matter relating to health consumers' rights that the Commissioner considers should be dealt with by the Code.

*Clause 18* requires the Commissioner to review the Code from time to time, either on the Commissioner's own initiative or at the request of the Minister, and make recommendations to the Minister on any changes that should be made to the Code.

*Clause 19* provides that in preparing and reviewing the Code of Health Consumers' Rights, the Commissioner is to consult with appropriate persons, bodies, organisations, and agencies to ensure that a wide range of views is available to the Commissioner.

## PART III

## HEALTH CONSUMER ADVOCACY SERVICE

*Clause 20* provides for the establishment of a Health Consumer Advocacy Service, which is to consist of health consumer advocates appointed under the Bill. The Service is to operate independently of any Government department, Government agency, or area health board.

*Clause 21* provides for the appointment of health consumer advocates by the Commissioner. The Minister is to determine the minimum number of health consumer advocates to be appointed in respect of each area health district, after consultation with the Commissioner and the area health board concerned.

*Clause 22* sets out the functions of a health consumer advocate. These are as follows:

- (a) To act as an advocate for health consumers:
- (b) To use his or her best endeavours to ensure that health consumers on or in respect of whom any health care procedure is carried out, or is proposed to be carried out, by a health care provider are made aware of the provisions of the Code of Health Consumers' Rights:
- (c) Having regard to the needs, values, and beliefs of different religious, social, cultural, and ethnic groups, to provide information and assistance to health consumers and members of the public for the purposes of—
  - (i) Promoting awareness of health consumers' rights:
  - (ii) Promoting awareness of the procedures available for the resolution of complaints involving a possible breach of the Code of Health Consumers' Rights:
- (d) To provide to health consumers or, where applicable, persons entitled to consent on a health consumer's behalf, such assistance as may be necessary to ensure—
  - (i) That the health consumer's or, as the case may be, that person's consent to the carrying out of health care procedures is obtained; and
  - (ii) That that consent is informed consent:
- (e) To promote, by education and publicity, an understanding of, and compliance with, the principle that health care procedures should not be carried out without informed consent (as that principle is developed in the Code of Health Consumers' Rights):
- (f) In respect of health care providers in the area health district that the health consumer advocate serves,—
  - (i) To provide information on health consumers' rights:
  - (ii) To promote awareness of the Health Consumer Advocacy Service:
  - (iii) To provide advice on the establishment and maintenance of procedures for providing proper information to health consumers in relation to health care procedures and for the obtaining of consent to such health care procedures:
  - (iv) To provide advice on the establishment and maintenance of procedures to ensure the protection of health consumers' rights, including monitoring procedures and complaints procedures:
- (g) To receive complaints alleging that any action of any health care provider is or appears to be in breach of the Code of Health Consumers' Rights:
- (h) In respect of a complaint alleging a breach of the Code, to represent or assist the person alleged to be aggrieved for the purposes of endeavouring to facilitate a resolution of the complaint by agreement between the parties concerned:
- (i) To provide assistance to persons who wish—

- (i) To pursue a complaint of the kind referred to in paragraph (g) above through any formal or informal procedures (including proceedings before a health professional authority) that exist for resolving that complaint:
- (ii) To make a representation to the Commissioner or any other body or person in respect of any matter that is or appears to be in breach of the Code of Health Consumers' Rights:
- (j) To report regularly to the Commissioner on the operation of the Health Consumer Advocacy Service in the area health district served by the health consumer advocate:
- (k) To report to the Commissioner from time to time on any matter relating to health consumers' rights that, in the health consumer advocate's opinion, should be drawn to the attention of the Commissioner:
- (l) To exercise and perform such other functions, powers, and duties as are conferred or imposed on health consumer advocates by or under the Bill or any other enactment.

*Clause 23* provides for the provision of services to health consumer advocates. Every area health board is required, in consultation with the Commissioner, to provide office accommodation, and secretarial and other services to the health consumer advocates that serve its area health district, to assist health consumer advocates to familiarise themselves with the health care system within its district, and to publicise the Health Consumer Advocacy System within its district.

*Clause 24* provides that health consumer advocates are to be under the general control of the Commissioner, who may issue instructions to them concerning the general administration of the Health Consumer Advocacy Service and the policies and procedures to be followed by them in carrying out their functions. However, in relation to individual complaints, health consumer advocates are to act independently.

## PART IV

### INVESTIGATION OF COMPLAINTS

#### *Complaints*

*Clause 25* provides that any person may make a complaint to a health consumer advocate or the Health Commissioner alleging a breach of the Code of Health Consumers' Rights.

*Clause 26* provides that complaints may be made orally or in writing.

#### *Investigations by Commissioner*

*Clauses 27 to 29* relate to the investigation by the Commissioner of breaches of the Code of Health Consumers' Rights. The Commissioner is empowered to undertake such investigations either on complaint or on his or her own initiative.

The Commissioner may investigate a complaint himself or herself or refer it to a health consumer advocate, and in certain circumstances the Commissioner may decide to take no action on a complaint (see *clauses 28 and 29*).

#### *Proceedings of Commissioner*

*Clauses 30 to 36* relate to the proceedings of the Commissioner in respect of any investigation conducted by him or her.

*Clause 30* requires the Commissioner to inform all interested parties of his or her intention to undertake an investigation.

*Clause 31* empowers the Commissioner to refer any matter under investigation to a health consumer advocate for the purpose of resolving the matter by agreement between the parties concerned.

*Clause 32* requires the Commissioner to inform the parties concerned, as soon as practicable after the conclusion of an investigation into a complaint, of the result of the investigation and of what further action (if any) the Commissioner proposes to take in relation to the complaint.

*Clause 33* sets out the powers of the Commissioner where he or she finds, on investigation, that any action was in breach of the Code of Health Consumers' Rights. In such circumstances the Commissioner may do all or any of the following:

- (a) Report the Commissioner's opinion, with reasons, to the health care provider whose action was the subject-matter of the investigation, and may make such recommendations as the Commissioner thinks fit, including a recommendation that disciplinary proceedings be taken against any officer or employee or member of the health care provider:
- (b) Report the Commissioner's opinion, with reasons, together with such recommendations (if any) as the Commissioner thinks fit, to all or any of the following:
  - (i) Any area health board:
  - (ii) Any health professional authority:
  - (iii) Any other person that the Commissioner considers appropriate:
- (c) Make such report to the Minister as the Commissioner thinks fit:
- (d) Take such action as is contemplated by *clause 35* or *clause 37* of the Bill.

*Clause 34* provides that where the Commissioner makes any recommendation to any person pursuant to *clause 33*, the Commissioner may request that person to notify the Commissioner, within a specified time, of the steps (if any) that the person proposes to take to give effect to the recommendation. If no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner shall inform the complainant (if any) of the recommendation, and may make a report to the Minister.

*Clause 35* empowers the Commissioner to participate in disciplinary and certain other proceedings. Pursuant to this provision, the Commissioner may—

- (a) Make a complaint to any health professional authority in respect of any registered health professional:
- (b) Where any person wishes to make such a complaint, assist that person to do so:
- (c) Provide assistance (whether financial or otherwise) to any complainant in any proceedings before any health professional authority:
- (d) Provide representation (either in person or by counsel)—
  - (i) For any complainant in any proceedings before a health professional authority, in any case where the complainant, or any person acting on the complainant's behalf, is permitted, by or under the rules of procedure governing those proceedings, to appear and be heard in those proceedings:
  - (ii) For any party in any proceedings in any Court in relation to any proceedings that are or have been before a health professional authority:
  - (iii) For any party in any proceedings before any Court, tribunal, authority, Royal Commission, commission of inquiry, board of inquiry, Court of Inquiry, or committee of inquiry, in any case where those proceedings in any way relate to or arise from any matter that was or

is the subject-matter of any investigation by the Commissioner under *Part IV* of the Bill:

- (e) Appear and be heard, either in person or by counsel, in any proceedings of a kind described in subparagraph (ii) or subparagraph (iii) of paragraph (d) above, whether or not the Commissioner is a party to those proceedings;
- (f) In the Commissioner's own right, take such proceedings as the Commissioner thinks fit before any Court or other tribunal in respect of any matter that in any way relates to or arises from any matter that was or is the subject-matter of any investigation by the Commissioner under *Part IV* of the Bill.

*Clause 36* requires the Commissioner to refer to the appropriate authority any evidence of any significant breach of duty or misconduct on the part of any health care provider or any officer or employee or member of a health care provider, where that evidence comes to light during an investigation by the Commissioner.

#### *Proceedings Before Equal Opportunities Tribunal*

*Clauses 37 to 45* provide for the taking of proceedings before the Equal Opportunities Tribunal (which is established under the Human Rights Commission Act 1977) in relation to breaches of the Code of Health Consumers' Rights where an investigation into that breach has been carried out under the Bill. The provisions are based on the procedures available under the Human Rights Commission Act 1977 in relation to unlawful discrimination under that Act.

*Clause 37* provides that the Commissioner may take civil proceedings before the Equal Opportunities Tribunal against any health care provider for the breach, by that person, of the Code of Health Consumers' Rights. The Commissioner may also bring proceedings on behalf of a class of persons where a practice that is in breach of the Code affects that class.

*Clause 38* provides that a person aggrieved by a breach of the Code of Health Consumers' Rights may take proceedings before the Equal Opportunities Tribunal if—

- (a) The Commissioner is of the opinion that the complaint has no substance or ought not to be proceeded with; or
- (b) In a case where the Commissioner would be entitled to bring proceedings, the Commissioner agrees to that person bringing the proceedings or declines to take proceedings himself or herself.

*Clause 40* provides that proceedings may not be brought before the Equal Opportunities Tribunal in respect of a breach of the Code if the matter has previously been resolved by agreement between the parties concerned, unless a term of that agreement has not been complied with.

*Clause 41* sets out the remedies that the Equal Opportunities Tribunal may grant if it finds that any action is in breach of the Code. These are as follows:

- (a) A declaration that the action of the defendant is in breach of the Code of Health Consumers' Rights;
- (b) An order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order;
- (c) Damages in accordance with *clause 44*:

(d) An order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the aggrieved person as a result of the breach:

(e) Such other relief as the Tribunal thinks fit.

The Tribunal may also award costs against the defendant or the plaintiff, or decline to award costs.

*Subclause (4)* provides that it is no defence to proceedings under *clause 37* or *clause 38* that the breach of the Code was unintentional or without negligence, but the Tribunal may take that matter into account in deciding what remedy it will grant.

*Clause 42* provides for the appearance of the Commissioner in proceedings before the Equal Opportunities Tribunal and in any judicial proceedings that relate to proceedings before the Tribunal, whether or not the Commissioner is or was a party to the proceedings.

*Clause 43* provides that the onus of proving any exception to a breach of the Code lies upon the defendant.

*Clause 44* empowers the Equal Opportunities Tribunal to award damages against any defendant for a breach of the Code of Health Consumers' Rights. Such damages may be awarded in respect of any of the following:

- (a) Pecuniary loss suffered as a result of, and expenses reasonably incurred by the aggrieved person for the purpose of, the transaction or activity out of which the breach arose;
- (b) Loss of any benefit, whether or not of a monetary kind, which the aggrieved person might reasonably have been expected to obtain but for the breach;
- (c) Humiliation, loss of dignity, and injury to the feelings of the aggrieved person.

Damages awarded to any person for humiliation, loss of dignity, and injury to feelings may not exceed \$2,000.

*Clause 45* applies the relevant provisions of the Human Rights Commission Act 1977 to proceedings of the Equal Opportunities Tribunal taken under the Bill.

## PART V

### MISCELLANEOUS PROVISIONS

#### *Miscellaneous Provisions*

*Clauses 46 to 64* contain miscellaneous provisions. Of particular significance are the following:

- (a) *Clause 47*, which requires persons in charge of health care institutions to forward letters written by health consumers and addressed to the Commissioner or a health consumer advocate;
- (b) *Clause 48*, which provides for the calling of a mediation conference in respect of any matter under investigation by the Commissioner;
- (c) *Clauses 49 and 50*, which confer rights of entry for the purposes of obtaining information relevant to an investigation being conducted by the Commissioner;
- (d) *Clauses 51 to 54*, which relate to the obtaining of information by the Commissioner and the protection and privileges of witnesses in proceedings before the Commissioner.

#### *Amendments to Other Enactments*

*Clauses 65 to 67* amend the Higher Salaries Commission Act 1977, the Official Information Act 1982, and the Films Act 1983.

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## HEALTH COMMISSIONER

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### ANALYSIS

Title	
1. Short Title and commencement	
2. Interpretation	
3. Definition of health care provider	
4. Definition of registered health professional	
5. Act to bind the Crown	
6. Treaty of Waitangi	
PART I	
HEALTH COMMISSIONER	
7. Health Commissioner	
8. Deputy Commissioner	
9. Qualifications for appointment	
10. Commissioner to hold no other office	
11. Term of office	
12. Vacation of office	
13. Functions of Health Commissioner	
14. Annual report	
15. Further provisions relating to Commissioner	
16. Review of operation of Act	
PART II	
CODE OF HEALTH CONSUMERS' RIGHTS	
17. Code of Health Consumers' Rights	
18. Review of Code of Health Consumers' Rights	
19. Consultation on preparation and review of Code	
PART III	
HEALTH CONSUMER ADVOCACY SERVICE	
20. Health Consumer Advocacy Service	
21. Appointment of health consumer advocates	
22. Functions of health consumer advocates	
23. Provision of services to health consumer advocates	
24. Health consumer advocates subject to control of Commissioner	
PART IV	
INVESTIGATION OF COMPLAINTS	
<i>Complaints</i>	
25. Complaints	
26. Mode of complaint	
<i>Investigations by Commissioner</i>	
27. Investigation of breaches of Code	
28. Action on receipt of complaint	
29. Commissioner may decide to take no action on complaint	
<i>Proceedings of Commissioner</i>	
30. Proceedings of Commissioner	
31. Commissioner may refer matter to health consumer advocate	
32. Parties to be informed of result of investigation	
33. Procedure after investigation	
34. Implementation of recommendations of Commissioner	
35. Commissioner's right to participate in disciplinary and other proceedings	
36. Commissioner to report breach of duty or misconduct	
<i>Proceedings Before Equal Opportunities Tribunal</i>	
37. Proceedings before Equal Opportunities Tribunal	
38. Aggrieved person may bring proceedings before Equal Opportunities Tribunal	
39. Remedies that may be sought	
40. Limitation on right to bring proceedings	
41. Powers of Equal Opportunities Tribunal	
42. Right of Commissioner to appear in proceedings	
43. Proof of exceptions	
44. Damages	
45. Certain provisions of Human Rights Commission Act 1977 to apply	

<p>PART V</p> <p>MISCELLANEOUS PROVISIONS</p> <p><i>Miscellaneous Provisions</i></p> <p>46. Procedure</p> <p>47. Duty to forward complaints</p> <p>48. Mediation conference</p> <p>49. Right of entry</p> <p>50. Restriction on right of entry</p> <p>51. Evidence</p> <p>52. Protection and privileges of witnesses, etc.</p> <p>53. Disclosure of certain matters not to be required</p> <p>54. Medical records not to be made available without health consumer's consent</p> <p>55. Proceedings not to be questioned or subject to review</p>	<p>56. Proceedings privileged</p> <p>57. Corrupt use of official information</p> <p>58. Adverse comment</p> <p>59. Money to be appropriated by Parliament for purposes of this Act</p> <p>60. Delegation of functions or powers of Commissioner</p> <p>61. Revocation of delegations</p> <p>62. Liability of employer and principals</p> <p>63. Offences</p> <p>64. Regulations</p> <p style="text-align: center;"><i>Amendments to Other Enactments</i></p> <p>65. Amendment to Higher Salaries Commission Act 1977</p> <p>66. Amendment to Official Information Act 1982</p> <p>67. Amendment to Films Act 1983 Schedule</p>
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A BILL INTITULED

- An Act to promote and protect the rights of health consumers in relation to the carrying out of health treatment, health examinations, health teaching, and health research, and, in particular,—** 5
- (a) To provide for the appointment of a Health Commissioner to investigate complaints against persons or bodies who provide health care; and to define the Commissioner's functions and powers; and** 10
- (b) To provide for the establishment of a Health Consumer Advocacy Service; and**
- (c) To provide for the promulgation of a Code of Health Consumers' Rights; and**
- (d) To provide for matters incidental thereto** 15

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

- 1. Short Title and commencement—**(1) This Act may be cited as the Health Commissioner Act 1990.
- (2) Except as provided in subsection (3) of this section, this Act shall come into force on the 1st day of May 1991. 20
- (3) Part IV of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.
- 2. Interpretation—**In this Act, unless the context otherwise requires,—
- “Action”, in relation to a health care provider, includes failure to act; and also includes any policy or practice: 25

“Code of Health Consumers’ Rights” or “Code” means the Code of Health Consumers’ Rights for the time being prescribed by regulations made under **section 64 (1)** of this Act:

5 “Commissioner” means the Health Commissioner appointed under **section 7** of this Act:

“Deputy Commissioner” means the Deputy Health Commissioner appointed under **section 8** of this Act:

10 “Document” has the meaning given to it by section 2 (1) of the Official Information Act 1982:

“Equal Opportunities Tribunal” or “Tribunal” means the Equal Opportunities Tribunal established under section 45 of the Human Rights Commission Act 1977:

15 “Health” means human health:

“Health care institution” means—

(a) A licensed private hospital:

(b) An institution under the control of the Department of Health or an area health board:

20 (c) An institution within the meaning of the Area Health Boards Act 1983 or the Hospitals Act 1957:

(d) A hospital within the meaning of the Mental Health Act 1969:

25 (e) A children’s health camp within the meaning of the Children’s Health Camps Act 1972:

(f) An aged persons’ home licensed under regulations for the time being in force pursuant to section 120A of the Health Act 1956:

30 (g) A home registered under the Disabled Persons Community Welfare Act 1975:

(h) Any house or place to which an authority under section 110 of the Mental Health Act 1969, and for the time being in force, relates:

35 (i) A certified institution within the meaning of the Alcoholism and Drug Addiction Act 1966:

“Health care procedure” means any health treatment, health examination, health teaching, or health research administered to or carried out on or in respect of any health consumer by any health care provider; and includes any provision of health services to any health consumer by any health care provider:

40 “Health care provider” has the meaning given to it by **section 3** of this Act:

- “Health consumer” includes any person on or in respect of whom any health care procedure is carried out:
- “Health consumer advocate” means a health consumer advocate appointed under **clause 2** of the Schedule to this Act: 5
- “Health professional authority” means any authority or body that is empowered, under or by virtue of any enactment or law, or the rules of any body or association, to exercise disciplinary powers in respect of any registered health professional: 10
- “Health services”—
- (a) Means—
- (i) Services to promote health:
- (ii) Services to protect health:
- (iii) Services to prevent disease or ill-health: 15
- (iv) Treatment services:
- (v) Nursing services:
- (vi) Rehabilitative services:
- (vii) Diagnostic services; and
- (b) Includes— 20
- (i) Psychotherapy and counselling services:
- (ii) Contraception services and advice:
- (iii) Sterilisation services:
- “Human Rights Commission” means the Human Rights Commission established under section 4 of the Human Rights Commission Act 1977: 25
- “Informed consent”, in relation to a health consumer on or in respect of whom there is carried out any health care procedure, means consent to that procedure where that consent— 30
- (a) Is freely given, by the health consumer or, where applicable, by any person who is entitled to consent on that health consumer’s behalf; and
- (b) Is obtained in accordance with such requirements as are prescribed by the Code of Health Consumers’ Rights: 35
- “Minister” means the Minister of Health:
- “Registered health professional” has the meaning given to it by **section 4** of this Act.

**3. Definition of health care provider**—In this Act, unless the context otherwise requires, the term “health care provider” means—

- (a) Any of the following bodies:
- (i) Area health boards:

- (ii) The Department of Health:
- (iii) The Children’s Health Camps Board:
- (iv) Camp Committees under the Children’s Health Camps Act 1972:
- 5 (b) A licensee of a private hospital licensed under Part V of the Hospitals Act 1957:
- (c) A licensee of an aged persons’ home licensed under regulations for the time being in force pursuant to section 120A of the Health Act 1956:
- 10 (d) A controlling authority of a home registered under the Disabled Persons Community Welfare Act 1975:
- (e) A householder, occupier, or other person in charge of any house or place to which an authority under section 110 of the Mental Health Act 1969, and for the time being in force, relates:
- 15 (f) A manager of a certified institution within the meaning of the Alcoholism and Drug Addiction Act 1966:
- (g) Any registered health professional:
- 20 (h) Any person who provides ambulance services to the public:
- (i) Any person employed by the School Dental Service to carry on the practice of dentistry:
- (j) Any other person who provides, or holds himself or herself or itself out as providing, health services to the public or to any section of the public.
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**4. Definition of registered health professional—**(1) In this Act, unless the context otherwise requires, the term “registered health professional” means—

- 30 (a) Any person for the time being registered as a medical practitioner under the Medical Practitioners Act 1968, including a person conditionally registered, and a holder of a certificate of probationary registration, and a holder of a certificate of temporary registration, and a holder of a provisional certificate of registration, under that Act:
- 35 (b) Any person for the time being registered as a dentist under the Dental Act 1988, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:
- 40 (c) Any person for the time being registered as a clinical dental technician under the Dental Act 1988, including a holder of a provisional certificate of

- registration, and a holder of a certificate of temporary registration, under that Act:
- (d) Any person for the time being registered as a pharmacist under the Pharmacy Act 1970, including a person conditionally registered under that Act: 5
  - (e) Any person for the time being registered or enrolled as a nurse (whether as a comprehensive nurse, or a general nurse, or otherwise), or as a midwife, under the Nurses Act 1977, including a holder of a provisional certificate of enrolment, and a holder of a certificate of temporary registration or a certificate of temporary enrolment, under that Act: 10
  - (f) Any person for the time being registered as a psychologist under the Psychologists Act 1981, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act: 15
  - (g) Any person for the time being registered as a chiropractor under the Chiropractors Act 1982, including a holder of a certificate of temporary registration under that Act: 20
  - (h) Any person for the time being registered as a dispensing optician or an optometrist under the Optometrists and Dispensing Opticians Act 1976, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act: 25
  - (i) Any person for the time being registered as a dietitian under the Dietitians Act 1950, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act: 30
  - (j) Any person for the time being registered as an occupational therapist under the Occupational Therapy Act 1949, including a holder of a provisional certificate of registration under that Act: 35
  - (k) Any person for the time being registered as a physiotherapist under the Physiotherapy Act 1949, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act: 40
  - (l) Any person for the time being registered as a medical laboratory technologist or a medical radiation technologist or a podiatrist under the Medical Auxiliaries Act 1966, including a holder of a 45

provisional certificate of registration, and a holder of temporary registration, under that Act:

(m) Any member of the New Zealand Register of Osteopaths Incorporated.

5 (2) For the purposes of this Act, any person who is receiving training or gaining experience under the supervision of a registered health professional shall be deemed to be a registered health professional.

**5. Act to bind the Crown**—This Act binds the Crown.

10 **6. Treaty of Waitangi**—In exercising or performing any power or function under this Act, every person shall take into account the principles of the Treaty of Waitangi.

## PART I

### HEALTH COMMISSIONER

15 **7. Health Commissioner**—(1) There shall be a Commissioner to be called the Health Commissioner.

(2) The Commissioner shall be appointed by the Governor-General on the recommendation of the Minister.

20 (3) The Commissioner shall be a corporation sole with perpetual succession and a seal of office, and shall have and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

25 (4) The Commissioner shall be a Crown agency for the purposes of the Public Finance Act 1989, and, notwithstanding anything in section 1 (3) of that Act, Part V of that Act shall apply to the Commissioner as if that Part of that Act were in force on the commencement of this section.

30 **8. Deputy Commissioner**—(1) There may from time to time be appointed a deputy to the person appointed as the Commissioner.

35 (2) The Deputy Commissioner shall be appointed in the same manner as the Commissioner, and **sections 9 to 12** of this Act shall apply to the Deputy Commissioner in the same manner as they apply to the Commissioner.

40 (3) On the occurrence from any cause of a vacancy in the office of the Commissioner (whether by reason of death, resignation, or otherwise), and in the case of the absence from duty of the Commissioner (from whatever cause arising), and so long as any such vacancy or absence continues, the Deputy Commissioner shall have and may exercise all the powers,

duties, and functions of the Commissioner under this Act or any other enactment, and shall be entitled to all the protections, privileges, and immunities of the Commissioner.

(4) The fact that the Deputy Commissioner exercises any power, duty, or function of the Commissioner shall be conclusive evidence of the Deputy Commissioner's authority to do so. 5

**9. Qualifications for appointment**—No person shall be recommended for appointment as the Commissioner unless, in the opinion of the Minister, the person is qualified for appointment, having regard to the following matters: 10

- (a) The functions and powers of the Commissioner:
- (b) The person's personal attributes:
- (c) The person's knowledge of, or experience in,—
  - (i) The New Zealand health care system: 15
  - (ii) The resolution of disputes, including mediation and arbitration:
- (d) The person's understanding of the various needs of health consumers:
- (e) The person's knowledge and recognition of the aims and aspirations of Maori: 20
- (f) The person's recognition of the social, cultural, and religious values of different cultural and ethnic groups in New Zealand.

**10. Commissioner to hold no other office**—The Commissioner shall not be capable of being a member of Parliament or of a local authority, and shall not, without the approval of the Minister in each particular case, hold any office of trust or profit or engage in any occupation for reward outside the duties of the Commissioner's office. 25 30

Cf. 1975, No. 9, s. 4

**11. Term of office**—(1) Except as otherwise provided in section 12 of this Act, the Commissioner shall hold office for such term not exceeding 5 years as the Governor-General on the recommendation of the Minister shall specify in the instrument appointing the Commissioner. 35

(2) The Commissioner shall be eligible for reappointment from time to time.

(3) Where the term for which a person who has been appointed as Commissioner expires, that person, unless sooner vacating or removed from office under section 12 of this Act, 40

shall continue to hold office, by virtue of the appointment for the term that has expired, until—

- (a) That person is reappointed; or
- (b) A successor to the person is appointed.

5       **12. Vacation of office**—(1) The Commissioner may at any time be removed from office by the Governor-General for inability to perform the duties of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

10       (2) The Commissioner may at any time resign his or her office by notice in writing addressed to the Minister.

**13. Functions of Health Commissioner**—(1) The functions of the Commissioner shall be—

- 15       (a) As a first priority, to prepare a Code of Health Consumers' Rights in accordance with **section 17** of this Act:
- 20       (b) To keep under review the Code of Health Consumers' Rights in accordance with **section 18** of this Act, and to make recommendations to the Minister in accordance with that section:
- 25       (c) To promote, by education and publicity, respect for and observance of health consumers' rights, and, in particular, to promote awareness, among health consumers and health care providers, of health consumers' rights and of the means by which those rights may be enforced:
- 30       (d) To make public statements and publish reports in relation to any matter affecting health consumers' rights, including statements and reports that promote an understanding of, and compliance with, the Code of Health Consumers' Rights or the provisions of this Act:
- 35       (e) To investigate, on complaint or on the Commissioner's own initiative, any action that is or appears to the Commissioner to be in breach of the Code of Health Consumers' Rights, and to take such further action in respect of any such breach or alleged breach as is contemplated by this Act:
- 40       (f) To make recommendations to any appropriate person or authority in relation to the means by which complaints involving alleged breaches of the Code of Health Consumers' Rights might be resolved and further breaches avoided:

- (g) To appoint health consumer advocates, and to administer the Health Consumer Advocacy Service in accordance with **Part III** of this Act:
- (h) To make suggestions to any person in relation to any matter that concerns the need for or the desirability of action by that person in the interests of health consumers' rights: 5
- (i) On the Commissioner's own initiative or at the request of the Minister, to advise the Minister on any matter relating to health consumers' rights or the administration of this Act: 10
- (j) To report to the Minister from time to time on the need for or desirability of taking legislative, administrative, or other action to give protection or better protection to health consumers' rights: 15
- (k) To receive and invite representations on matters relating to health consumers' rights from members of the public and from any other body, organisation, or agency:
- (l) To exercise and perform such other functions, powers, and duties as are conferred or imposed on the Commissioner by or under this Act or any other enactment. 20
- (2) The Commissioner shall, in performing his or her functions,— 25
  - (a) Establish and maintain effective links with health care providers and other bodies and organisations (including community groups) concerned with health matters:
  - (b) Consult and co-operate with other agencies concerned with personal rights, including the Ombudsmen, the Human Rights Commission, the Race Relations Conciliator, and the Commissioner for Children. 30

**14. Annual report**—(1) Without limiting the right of the Commissioner to report at any other time, but subject to **section 58** of this Act, the Commissioner shall in each year furnish to the Minister a report with respect to the operation of this Act during the year to which the report relates. 35

(2) The Commissioner shall include in every annual report of the Commissioner the financial statements prepared by the Commissioner, in accordance with Part V of the Public Finance Act 1989, in respect of the financial year to which the report relates, together with the audit report and the management statement relating to those financial statements. 40

(3) A copy of every annual report of the Commissioner shall be tabled in the House of Representatives in accordance with section 44 of the Public Finance Act 1989.

5       **15. Further provisions relating to Commissioner**—The provisions of the Schedule to this Act shall have effect in relation to the Commissioner and the Commissioner's affairs.

10       **16. Review of operation of Act**—(1) As soon as practicable after the expiry of the period of 3 years beginning on the commencement of this Part of this Act, and then at intervals of not more than 5 years, the Commissioner shall—

(a) Review the operation of this Act since—

15               (i) The date of the commencement of this Part of this Act (in the case of the first review carried out under this paragraph); or

              (ii) The date of the last review carried out under this paragraph (in the case of every subsequent review); and

20       (b) Consider whether any amendments to this Act are necessary or desirable; and

              (c) Report the Commissioner's findings to the Minister.

(2) As soon as practicable after receiving a report from the Commissioner under **subsection (1)(c)** of this section, the Minister shall lay a copy of that report before the House of Representatives.

25

## PART II

### CODE OF HEALTH CONSUMERS' RIGHTS

30       **17. Code of Health Consumers' Rights**—(1) As soon as practicable after the commencement of this Part of this Act, the Commissioner shall prepare a Code of Health Consumers' Rights and forward it to the Minister.

35       (2) Where, at the expiry of the period of 6 months beginning on the commencement of this Part of this Act, the Commissioner has not forwarded a Code to the Minister in accordance with **subsection (1)** of this section, the Commissioner shall, as soon as practicable after the expiry of that period, and then at intervals of not more than 6 months until a Code has been so forwarded, report to the Minister on the progress made in the preparation of a Code.

40       (3) In preparing a Code of Health Consumers' Rights, the Commissioner shall ensure that the Code contains provisions relating to the following matters:

- (a) The principle that health care procedures should not be carried out without the informed consent of the health consumer or of some person entitled to consent on the health consumer's behalf:
- (b) The duties and obligations of health care providers as they relate to the rights of health consumers not to be subject to health care procedures without the informed consent of the health consumer or of some person entitled to consent on the health consumer's behalf:
- (c) The rights of health consumers, and the duties and obligations of health care providers, as they relate to—
  - (i) Matters of privacy and the confidentiality of health consumer information:
  - (ii) Health teaching and health research that involve the participation of health consumers:
  - (iii) The collection and use of information from health consumers for administrative or epidemiological purposes:
- (d) The provision of interpreters to ensure that health consumers are able to communicate with health care providers in the health consumer's first or preferred language:
- (e) The establishment and maintenance, by health care providers, of procedures for dealing with complaints against them by health consumers, and access by health consumers to such procedures:
- (f) The appropriate standard of care to be provided to health consumers by health care providers:
- (g) Any other matter relating to health consumers' rights that the Commissioner considers should be dealt with by the Code.

**18. Review of Code of Health Consumers' Rights**—The Commissioner shall from time to time, either at the request of the Minister or on the Commissioner's own initiative, review the Code of Health Consumers' Rights and make recommendations to the Minister on what changes (if any) the Commissioner considers should be made to the Code.

**19. Consultation on preparation and review of Code**— Without limiting section 13(2) of this Act, the Commissioner shall, in carrying out the requirements of sections 17 and 18 of this Act, consult with, and invite representations from, such

5 persons, bodies, organisations, and agencies as the Commissioner considers necessary to ensure that a wide range of views is available to the Commissioner to assist in the preparation and review of the Code of Health Consumers' Rights.

PART III

HEALTH CONSUMER ADVOCACY SERVICE

10 **20. Health Consumer Advocacy Service**—(1) There shall be a service to be known as the Health Consumer Advocacy Service.

(2) The service shall consist of health consumer advocates appointed under this Act.

15 (3) Subject to this Act, the service shall operate independently of any Government department, Government agency, or area health board.

Cf. 1987, No. 77, s. 251

**21. Appointment of health consumer advocates**—

20 (1) Subject to subsection (3) of this section, the Commissioner shall, from time to time, appoint in respect of each area health district a sufficient number of health consumer advocates.

(2) Every health consumer advocate shall be appointed under clause 2 of the Schedule to this Act, and shall be an employee of the Commissioner.

25 (3) The minimum number of health consumer advocates to be appointed in respect of each area health district shall be determined from time to time by the Minister, after consultation by the Minister with the Commissioner and the area health board concerned.

30 (4) In determining the minimum number of health consumer advocates to be appointed in respect of an area health district, the Minister shall take into account—

(a) The size and composition of the population of the area health district:

(b) The needs of the various groups within that population.

35 **22. Functions of health consumer advocates**—A health consumer advocate shall have the following functions:

(a) To act as an advocate for health consumers:

40 (b) To use his or her best endeavours to ensure that health consumers on or in respect of whom any health care procedure is carried out, or is proposed to be carried out, by a health care provider are made aware of the provisions of the Code of Health Consumers' Rights:

- (c) Having regard to the needs, values, and beliefs of different cultural, religious, social, and ethnic groups, to provide information and assistance to health consumers and members of the public for the purposes of— 5
- (i) Promoting awareness of health consumers' rights:
  - (ii) Promoting awareness of the procedures available for the resolution of complaints involving a possible breach of the Code of Health Consumers' Rights: 10
- (d) To provide to health consumers or, where applicable, persons entitled to consent on a health consumer's behalf such assistance as may be necessary to ensure— 15
- (i) That the health consumer's or, as the case may be, that person's consent to the carrying out of health care procedures is obtained; and
  - (ii) That that consent is informed consent:
- (e) To promote, by education and publicity, an understanding of, and compliance with, the principle that health care procedures should not be carried out without informed consent (as that principle is developed in the Code of Health Consumers' Rights): 20
- (f) In respect of health care providers in the area health district that the health consumer advocate serves,— 25
- (i) To provide information on health consumers' rights:
  - (ii) To promote awareness of the Health Consumer Advocacy Service: 30
  - (iii) To provide advice on the establishment and maintenance of procedures for providing proper information to health consumers in relation to health care procedures and for the obtaining of consent to such health care procedures: 35
  - (iv) To provide advice on the establishment and maintenance of procedures to ensure the protection of health consumers' rights, including monitoring procedures and complaints procedures:
- (g) To receive complaints alleging that any action of any health care provider is or appears to be in breach of the Code of Health Consumers' Rights: 40
- (h) In respect of a complaint of the kind referred to in **paragraph (g)** of this section, to represent or assist the person alleged to be aggrieved for the purposes of 45

endeavouring to facilitate a resolution of the complaint by agreement between the parties concerned:

- 5 (i) To provide assistance to persons who wish—  
 (i) To pursue a complaint of the kind referred to in paragraph (g) of this section through any formal or informal procedures (including proceedings before a health professional authority) that exist for resolving that complaint:  
 10 (ii) To make a representation to the Commissioner or any other body or person in respect of any matter that is or appears to be in breach of the Code of Health Consumers' Rights:
- 15 (j) To report regularly to the Commissioner on the operation of the Health Consumer Advocacy Service in the area health district served by the health consumer advocate:
- 20 (k) To report to the Commissioner from time to time on any matter relating to health consumers' rights (whether in relation to a particular health consumer or group of health consumers or in relation to health consumers generally) that, in the health consumer advocate's opinion, should be drawn to the attention of the Commissioner:
- 25 (l) To exercise and perform such other functions, powers, and duties as are conferred or imposed on health consumer advocates by or under this Act or any other enactment.

30 **23. Provision of services to health consumer advocates**—Every area health board shall, in consultation with the Commissioner,—

- (a) In respect of the health consumer advocates that serve its area health district, provide—  
 35 (i) Such office accommodation, and such secretarial and other services, as may be necessary to enable those health consumer advocates to exercise their functions and powers:  
 (ii) Such assistance as will enable those health consumer advocates to familiarise themselves with the relevant aspects of the health care system within that area health district:  
 40 (b) Publicise the Health Consumer Advocacy Service within its area health district.

- 24. Health consumer advocates subject to control of Commissioner**—(1) Subject to **subsection (2)** of this section, health consumer advocates shall be subject to the general control of the Commissioner, and for that purpose the Commissioner may from time to time issue instructions to health consumer advocates concerning— 5
- (a) The general administration of the Health Consumer Advocacy Service:
  - (b) The policies and procedures to be followed by health consumer advocates in carrying out their functions: 10
  - (c) Such other matters as the Commissioner thinks fit.
- (2) Notwithstanding anything in **subsection (1)** of this section, health consumer advocates, in relation to individual complaints, shall act independently, and the Commissioner shall not issue instructions in respect of an individual complaint. 15

## PART IV

## INVESTIGATION OF COMPLAINTS

*Complaints*

**25. Complaints**—Any person may make a complaint to a health consumer advocate or to the Commissioner alleging that any action of any health care provider is or appears to be in breach of the Code of Health Consumers' Rights. 20

**26. Mode of complaint**—A complaint to a health consumer advocate or to the Commissioner may be made either orally or in writing. 25

*Investigations by Commissioner*

**27. Investigation of breaches of Code**—(1) It shall be a function of the Commissioner to investigate any action of any health care provider where that action is or appears to the Commissioner to be in breach of the Code of Health Consumers' Rights. 30

(2) The Commissioner may commence an investigation under **subsection (1)** of this section either on complaint made to the Commissioner or on the Commissioner's own initiative.

**28. Action on receipt of complaint**—(1) On receiving a complaint under this Part of this Act, the Commissioner may do all or any of the following: 35

- (a) Investigate the complaint himself or herself:
- (b) Refer the complaint to a health consumer advocate in accordance with **section 31** of this Act for the purpose 40

of resolving the complaint by agreement between the parties concerned:

(c) Decide, in accordance with **section 29** of this Act, to take no action on the complaint.

5 (2) The Commissioner shall, as soon as practicable, advise the complainant and the health care provider to whom or to which the complaint relates of the procedure that the Commissioner proposes to adopt under **subsection (1)** of this section.

10 **29. Commissioner may decide to take no action on complaint**—(1) The Commissioner may in his or her discretion decide to take no action or, as the case may require, no further action, on any complaint, if, in the Commissioner's opinion,—

15 (a) The length of time that has elapsed between the date when the subject-matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or

(b) The subject-matter of the complaint is trivial; or

20 (c) The complaint is frivolous or vexatious or is not made in good faith; or

(d) The person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or

25 (e) There is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, which it would be reasonable for the person alleged to be aggrieved to exercise.

30 (2) Notwithstanding anything in **subsection (1)** of this section, the Commissioner may in his or her discretion decide not to take any further action on a complaint if, in the course of the investigation of the complaint, it appears to the Commissioner that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

35 (3) In any case where the Commissioner decides to take no action, or no further action, on a complaint, the Commissioner shall inform the complainant of that decision and the reasons for it.

Cf. 1988, No. 2, s. 18

40 *Proceedings of Commissioner*

**30. Proceedings of Commissioner**—Before proceeding to investigate any matter under this Part of this Act, the Commissioner—

- (a) Shall inform the complainant (if any), the health care provider to whom or to which the investigation relates, and any person alleged to be aggrieved (if not the complainant), of the Commissioner's intention to make the investigation; and 5
- (b) Shall inform the health care provider to whom or to which the investigation relates of the nature of the complaint (if any).

**31. Commissioner may refer matter to health consumer advocate—**(1) The Commissioner may, at any stage of the investigation of any matter under this Part of this Act, refer the matter to a health consumer advocate for the purpose of resolving the matter by agreement between the parties concerned. 10

(2) Where any matter is referred to a health consumer advocate pursuant to **subsection (1)** of this section, the health consumer advocate shall— 15

- (a) Use his or her best endeavours to resolve the complaint by agreement between the parties concerned; and
- (b) Report the results of those endeavours to the Commissioner. 20

(3) Every report made under **subsection (2) (b)** of this section shall record—

- (a) The terms of any agreement reached between the parties concerned; and 25
- (b) Where agreement is not reached on all matters, those matters on which agreement is reached and those matters on which no agreement is reached; and
- (c) Such other matters as the health consumer advocate thinks fit. 30

(4) A copy of every report made under **subsection (2) (b)** of this section shall, on request, be made available by the Commissioner to each of the parties concerned.

**32. Parties to be informed of result of investigation—** 35  
Where any investigation is made following a complaint, the Commissioner shall conduct the investigation with due expedition and shall inform the parties concerned, as soon as reasonably practicable after the conclusion of the investigation and in such manner as the Commissioner thinks proper, of the result of the investigation and of what further action (if any) the Commissioner proposes to take in respect of that complaint. 40

**33. Procedure after investigation**—Where, after making any investigation under this Part of this Act, the Commissioner is of the opinion that any action that was the subject-matter of the investigation was in breach of the Code of Health Consumers' Rights, the Commissioner may do all or any of the following:

- (a) Report the Commissioner's opinion, with reasons, to the health care provider whose action was the subject-matter of the investigation, and may make such recommendations as the Commissioner thinks fit, including a recommendation that disciplinary proceedings be taken against any officer or employee or member of the health care provider:
- (b) Report the Commissioner's opinion, with reasons, together with such recommendations (if any) as the Commissioner thinks fit, to all or any of the following:
  - (i) Any area health board:
  - (ii) Any health professional authority:
  - (iii) Any other person that the Commissioner considers appropriate:
- (c) Make such report to the Minister as the Commissioner thinks fit:
- (d) Take such action as is contemplated by **section 35** or **section 37** of this Act.

**34. Implementation of recommendations of Commissioner**—(1) Where, in accordance with **section 33 (a)** or **(b)** of this Act, the Commissioner makes any recommendation to any person, the Commissioner may request that person to notify the Commissioner, within a specified time, of the steps (if any) that the person proposes to take to give effect to that recommendation.

(2) If, within a reasonable time after a recommendation is made, no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner—

- (a) Shall, after considering the comments (if any) of the person concerned, inform the complainant (if any) of the Commissioner's recommendations and may make such comments on the matter as the Commissioner thinks fit; and
- (b) May, where the Commissioner considers it appropriate, transmit to the Minister such report on the matter as the Commissioner thinks fit.

Cf. 1975, No. 9, ss. 22 (3), 24

- 35. Commissioner's right to participate in disciplinary and other proceedings**—(1) The Commissioner may—
- (a) Make a complaint to any health professional authority in respect of any registered health professional: 5
  - (b) Where any person wishes to make such a complaint, assist that person to do so: 5
  - (c) Provide assistance (whether financial or otherwise) to any complainant in any proceedings before any health professional authority:
  - (d) Provide representation (either in person or by counsel)— 10
    - (i) For any complainant in any proceedings before a health professional authority, in any case where the complainant, or any person acting on the complainant's behalf, is permitted, by or under the rules of procedure governing those proceedings, to appear and be heard in those proceedings: 15
    - (ii) For any party in any proceedings in any Court in relation to any proceedings that are or have been before a health professional authority:
    - (iii) For any party in any proceedings before any Court, tribunal, authority, Royal Commission, commission of inquiry, board of inquiry, Court of Inquiry, or committee of inquiry, in any case where those proceedings in any way relate to or arise from any matter that was or is the subject-matter of any investigation by the Commissioner under this Part of this Act: 20
  - (e) Appear and be heard, either in person or by counsel, in any proceedings of a kind described in **subparagraph (ii) or subparagraph (iii) of paragraph (d)** of this subsection, whether or not the Commissioner is a party to those proceedings: 30
  - (f) In the Commissioner's own right, take such proceedings as the Commissioner thinks fit before any Court or other tribunal in respect of any matter that in any way relates to or arises from any matter that was or is the subject-matter of any investigation by the Commissioner under this Part of this Act. 35
- (2) Where, pursuant to **subsection (1)(e)** of this section, the Commissioner appears in any proceedings, the Commissioner shall, unless those proceedings are by way of appeal, have the right— 40
- (a) To call evidence on any matter (including evidence in rebuttal) that should be taken into account in the proceedings: 45

(b) To examine, cross-examine, and re-examine witnesses,—  
but shall have no greater rights than parties to the proceedings  
in respect of the calling of evidence or evidence in rebuttal, or  
in respect of the examination, cross-examination, and re-  
5 examination of witnesses.

(3) Where, pursuant to **subsection (1) (e)** of this section, the  
Commissioner appears in any proceedings to which the  
Commissioner is not a party, the Court, tribunal, or other body  
before which those proceedings are conducted, where it has  
10 power to award costs to or against parties to the proceedings,  
may make such order as it thinks just—

(a) As to the payment by any party to the proceedings of the  
costs incurred by the Commissioner in so doing; or  
(b) As to the payment by the Commissioner of any costs  
15 incurred by any party to the proceedings by reason of  
the Commissioner's so doing.

(4) Where any costs are so awarded to the Commissioner, the  
Commissioner may recover them in the same manner as  
parties to the proceedings may recover costs awarded to them.

20 (5) Nothing in **subsection (3)** of this section limits or affects any  
power of a Court, tribunal, or other body to award costs in any  
proceedings to which the Commissioner is a party.

**36. Commissioner to report breach of duty or  
misconduct**—If, during or after any investigation, the  
25 Commissioner is of the opinion that there is evidence of any  
significant breach of duty or misconduct on the part of any  
health care provider or any officer or employee or member of a  
health care provider, the Commissioner shall refer the matter  
to the appropriate authority.

30 Cf. 1975, No. 9, s. 18 (6); 1982, No. 89, s. 2

*Proceedings Before Equal Opportunities Tribunal*

**37. Proceedings before Equal Opportunities  
Tribunal**—(1) This section applies to any health care provider  
in respect of whom or of which an investigation has been  
35 conducted under this Part of this Act in relation to any action  
alleged to be in breach of the Code of Health Consumers'  
Rights.

(2) Subject to **subsection (3)** of this section and to **section 40** of  
this Act, civil proceedings before the Equal Opportunities  
40 Tribunal shall lie at the suit of the Commissioner against any  
person to whom this section applies for a breach, by that  
person, of the Code of Health Consumers' Rights.

(3) The Commissioner shall not take proceedings under **subsection (2)** of this section against any person to whom this section applies unless the Commissioner has given that person an opportunity to be heard.

(4) The Commissioner may, under **subsection (2)** of this section, bring proceedings on behalf of a class of persons, and may seek on behalf of persons who belong to the class any of the remedies described in **section 41** of this Act, where the Commissioner considers that a person to whom this section applies is carrying on a practice which affects that class and which is in breach of the Code of Health Consumers' Rights.

(5) Where proceedings are commenced by the Commissioner under **subsection (2)** of this section, the aggrieved person (if any) shall not be an original party to, or, unless the Tribunal otherwise orders, join or be joined in, any such proceedings.

Cf. 1977, No. 49, s. 38 (1)–(3); 1983, No. 56, s. 12 (1)

**38. Aggrieved person may bring proceedings before Equal Opportunities Tribunal**—Notwithstanding **section 37(2)** of this Act but subject to **section 40** of this Act, the aggrieved person (if any) may himself or herself bring proceedings before the Equal Opportunities Tribunal against a person to whom **section 37** of this Act applies if the aggrieved person wishes to do so, and—

(a) The Commissioner is of the opinion that the complaint does not have substance or that the matter ought not to be proceeded with; or

(b) In a case where the Commissioner would be entitled to bring proceedings, the Commissioner—

(i) Agrees to the aggrieved person bringing proceedings; or

(ii) Declines to take proceedings.

Cf. 1977, No. 49, s. 38 (4); 1983, No. 56, s. 12 (2)

**39. Remedies that may be sought**—In any proceedings before the Equal Opportunities Tribunal the Commissioner or the aggrieved person (as the case may be) may seek such of the remedies described in **section 41** of this Act as he or she thinks fit.

Cf. 1977, No. 49, s. 38 (5); 1983, No. 56, s. 12 (3)

**40. Limitation on right to bring proceedings**—Nothing in **section 37** or **section 38** of this Act authorises or permits the Commissioner or any aggrieved person to bring proceedings before the Equal Opportunities Tribunal in respect of any

5 action that is alleged to be in breach of the Code of Health Consumers' Rights in any case where the matter has been resolved under this Act by agreement between the parties concerned, unless a term of that agreement has not been complied with.

**41. Powers of Equal Opportunities Tribunal**—(1) If, in any proceedings under **section 37 or section 38** of this Act, the Tribunal is satisfied on the balance of probabilities that any action of the defendant is in breach of the Code of Health  
10 Consumers' Rights, it may grant one or more of the following remedies:

- (a) A declaration that the action of the defendant is in breach of the Code of Health Consumers' Rights:
- 15 (b) An order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order:
- (c) Damages in accordance with **section 44** of this Act:
- 20 (d) An order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the aggrieved person as a result of the breach:
- (e) Such other relief as the Tribunal thinks fit.

25 (2) In any proceedings under **section 37 or section 38** of this Act, the Tribunal may award such costs against the defendant as it thinks fit, whether or not it makes any other order, or may award costs against the plaintiff, or may decline to award costs against either party.

30 (3) Where the Commissioner is the plaintiff, any costs awarded against him or her shall be paid by the Commissioner, and the Commissioner shall not be entitled to be indemnified by the aggrieved person (if any).

35 (4) It shall not be a defence to proceedings under **section 37 or section 38** of this Act that the breach was unintentional or without negligence on the part of the defendant or any officer or employee or member of the defendant, but the Tribunal may take the conduct of the defendant or, as the case may require, of any officer or employee or member of the  
40 defendant into account in deciding what, if any, remedy to grant.

Cf. 1977, No. 49, s. 38 (6)-(8); 1983, No. 56, s. 12 (4)

**42. Right of Commissioner to appear in proceedings—**

- (1) The Commissioner may appear and be heard, in person or by counsel,—
- (a) In any proceedings under this Act before the Equal Opportunities Tribunal; and 5
  - (b) In any proceedings in—
    - (i) A District Court; or
    - (ii) The High Court; or
    - (iii) The Court of Appeal,—
 in relation to any proceedings that are or have been 10  
before the Equal Opportunities Tribunal under this Act,—
- whether or not the Commissioner is or was a party to the proceedings before the Equal Opportunities Tribunal.
- (2) Where, pursuant to **subsection (1)** of this section, the 15  
Commissioner appears in any proceedings of a kind described in that subsection, he or she shall, unless those proceedings are by way of appeal, have the right—
- (a) To call evidence on any matter (including evidence in rebuttal) that should be taken into account in the 20  
proceedings:
  - (b) To examine, cross-examine, and re-examine witnesses,— but shall have no greater rights than parties to the proceedings in respect of the calling of evidence or evidence in rebuttal, or in respect of the examination, cross-examination, and re-examination of witnesses. 25
- (3) Where, pursuant to **subsection (1)** of this section, the Commissioner, not being a party to any proceedings before the Tribunal, appears in those proceedings or in any proceedings in any Court in relation to those proceedings, the Tribunal or the 30  
Court, as the case may be, may make such order as it thinks fit—
- (a) As to the payment by any party to the proceedings before the Tribunal or the Court of the costs incurred by the Commissioner in so doing; or 35
  - (b) As to the payment by the Commissioner of any costs incurred by any of the parties to the proceedings before the Tribunal or the Court by reason of the appearance of the Commissioner.
- (4) Nothing in this section limits or affects— 40
- (a) **Section 41 (2)** of this Act; or
  - (b) Any power of a Court to award costs in any proceedings to which the Commissioner is a party.

Cf. 1977, No. 49, s. 38A; 1983, No. 56, s. 13

5 **43. Proof of exceptions**—Where by any provision of the Code of Health Consumers' Rights conduct is excepted from conduct that is in breach of the Code, the onus of proving the exception in any proceedings under this Part of this Act lies upon the defendant.

Cf. 1977, No. 49, s. 39

10 **44. Damages**—(1) In any proceedings under **section 37** or **section 38** of this Act, the Tribunal may award damages against the defendant for a breach of any of the provisions of the Code of Health Consumers' Rights in respect of any one or more of the following:

15 (a) Pecuniary loss suffered as a result of, and expenses reasonably incurred by the aggrieved person for the purpose of, the transaction or activity out of which the breach arose:

(b) Loss of any benefit, whether or not of a monetary kind, which the aggrieved person might reasonably have been expected to obtain but for the breach:

20 (c) Humiliation, loss of dignity, and injury to the feelings of the aggrieved person.

(2) Damages awarded under **subsection (1) (c)** of this section on behalf of any one aggrieved person shall not exceed \$2,000.

25 (3) Damages recovered by the Commissioner under this section shall be paid by the Commissioner to the aggrieved person on whose behalf the proceedings were brought or, if that person is an unmarried minor or is not of full mental capacity, in the discretion of the Commissioner to the Public Trustee.

30 (4) Where money is paid to the Public Trustee under **subsection (3)** of this section,—

(a) Section 12 of the Minors' Contracts Act 1969 shall apply in the case of an unmarried minor; and

35 (b) Section 66 of the Public Trust Office Act 1957 shall apply in the case of a person who is not of full mental capacity.

Cf. 1977, No. 49, s. 40; 1983, No. 56, s. 14

40 **45. Certain provisions of Human Rights Commission Act 1977 to apply**—Sections 41 to 44 and Part IV of the Human Rights Commission Act 1977 shall apply, with such modifications as are necessary, in respect of proceedings under **section 37** or **section 38** of this Act as if they were proceedings under section 38 of that Act.

## PART V

## MISCELLANEOUS PROVISIONS

*Miscellaneous Provisions*

**46. Procedure**—(1) Every investigation under **Part IV** of this Act by the Commissioner may be conducted in public or in private. 5

(2) Subject to **section 58** of this Act,—

(a) The Commissioner may hear or obtain information from such persons as the Commissioner thinks fit, including, where the Commissioner considers that cultural matters are a factor relevant to a complaint or investigation, information from such persons as the Commissioner thinks have knowledge of or experience in those matters: 10

(b) The Commissioner may make such inquiries as the Commissioner thinks fit: 15

(c) It shall not be necessary for the Commissioner to hold any hearing:

(d) No person shall be entitled as of right to be heard by the Commissioner. 20

(3) Subject to the provisions of this Act, the Commissioner and every health consumer advocate may regulate his or her procedure in such manner as he or she thinks fit.

**47. Duty to forward complaints**—Notwithstanding any provision in any enactment, where any letter appearing to be written by or on behalf of any health consumer in any health care institution is addressed to the Commissioner or to a health consumer advocate, the person for the time being in charge of that institution shall immediately forward the letter, unopened, to the Commissioner or, as the case may require, that health consumer advocate. 25 30

Cf. 1975, No. 9, s. 16

**48. Mediation conference**—(1) Where, in respect of any matter that is the subject of an investigation by the Commissioner, the Commissioner is of the opinion that it would be appropriate to do so, the Commissioner may call a conference of the parties concerned in an endeavour to resolve the matter by agreement between those parties. 35

(2) Any such conference may be called by a notice in writing signed by the Commissioner notifying the date, time, and place of the conference. 40

(3) In addition to the parties or their representatives, the Commissioner may also invite to attend the conference any other person whose attendance would in the Commissioner's opinion be likely to assist in resolving the matter by agreement  
5 between the parties.

(4) There may be paid, out of the funds of the Commissioner, to each party or to the representatives of each party, to the number determined by the Commissioner as being necessary to enable that party to be adequately represented, attending any  
10 conference called under this section and to any person (other than the Commissioner) attending any conference pursuant to **subsection (3)** of this section travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply as if the parties  
15 or their representatives and those persons were members of a statutory Board within the meaning of that Act.

(5) No evidence shall be admissible in any Court, or before any person acting judicially, of any information, statement, or admission disclosed or made to any person in the course of a  
20 conference called under this section.

Cf. 1987, No. 77, ss. 249, 250 (2)

**49. Right of entry**—(1) Where the Commissioner, or an employee of the Commissioner specifically or generally authorised in writing by the Commissioner for the purposes of  
25 this section, believes on reasonable grounds that information relevant to an investigation being conducted by the Commissioner under **Part IV** of this Act is to be found on any premises (other than a dwellinghouse) that are under the control of a health care provider, the Commissioner or  
30 employee may, subject to **subsections (2) to (6)** of this section and to **section 50** of this Act, enter upon those premises at any reasonable time to do one or more of the following things:

- (a) Interview any person on the premises:
- (b) Make such inspections, examinations, and inquiries as are  
35 necessary:
- (c) Require any person to produce documents in that person's possession or under that person's control, and allow copies of or extracts from any such documents to be made or taken:
- (d) Require any person to furnish any information or  
40 particulars that may be required by the Commissioner.

(2) The powers conferred by **subsection (1)** of this section—

- (a) May be used only for the purpose of any investigation being conducted by the Commissioner under **Part IV** of this Act; and
- (b) Shall not be used for the purpose of obtaining evidence of the commission of any offence. 5
- (3) Subject to **subsection (4)** of this section, no person shall exercise the power of entry conferred by **subsection (1)** of this section in respect of any premises under the control of a health care provider unless—
- (a) Written notice of the intention to exercise that power has been given to that health care provider at least 24 hours before the entry is to take place; and 10
- (b) That entry takes place within 7 days after the date on which the notice was given.
- (4) Nothing in **subsection (3)** of this section shall apply if, in the circumstances of the particular case, compliance with the requirements of that subsection would frustrate the object of the exercise of the power of entry. 15
- (5) Every person who enters any premises under the authority of **subsection (1)** of this section shall, on first entering those premises, and, if requested, at any subsequent time, produce to the health care provider or a representative of the health care provider evidence of— 20
- (a) That person's identity; and
- (b) That person's authority to enter the premises,— 25
- and shall also produce that evidence to any health consumer who is on the premises and who requests to see it.
- (6) Where any person enters any premises under the authority of **subsection (1)** of this section and is unable, despite reasonable efforts, to find on those premises the health care provider, that person shall, after the entry and inspection and before leaving those premises, leave on those premises a written notice addressed to the health care provider, which shall state— 30
- (a) The identity of the person who entered the premises; and 35
- (b) The person's authority to enter the premises; and
- (c) The date and time of the entry; and
- (d) The reasons for the entry.
- Cf. 1990, No. 61, s. 11

**50. Restriction on right of entry**—(1) Notwithstanding anything in **section 49** of this Act, the Commissioner or any employee of the Commissioner may be refused entry to any premises or to any part of any premises on the grounds that the exercise in respect of those premises or that part of those 40

premises of the right of entry conferred by that section might prejudice—

- (a) The security or defence of New Zealand; or
- (b) The investigation or detection of offences.

5 (2) Where the Attorney-General certifies in respect of any premises or any part of any premises that the exercise of the right of entry conferred by **section 49** of this Act in respect of any premises might prejudice—

- 10 (a) The security or defence of New Zealand; or
  - (b) The investigation or detection of offences,—
- that certificate shall be conclusive evidence that grounds exist under **subsection (1)** of this section for refusing entry to those premises or that part of those premises.

Cf. 1990, No. 61, s. 12

15 **51. Evidence**—(1) The Commissioner may from time to time, by notice in writing, require any person who in the Commissioner's opinion is able to give information relating to any matter under investigation by the Commissioner to furnish such information, and to produce such documents or things in  
20 the possession or under the control of that person, as in the opinion of the Commissioner are relevant to the subject-matter of the investigation.

(2) The Commissioner may summon before him or her and examine on oath any person who in the Commissioner's  
25 opinion is able to give information relating to the matter under investigation, and may for that purpose administer an oath to any person so summoned.

(3) Every such examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of  
30 section 108 of the Crimes Act 1961 (which relates to perjury).

Cf. 1977, No. 49, s. 73 (1), (2)

**52. Protection and privileges of witnesses, etc.—**

(1) Except as provided in **section 53 (2)** of this Act, every person  
35 shall have the same privileges in relation to the giving of information to, the answering of questions put by, and the production of documents and things to the Commissioner or any employee of the Commissioner, as witnesses have in any Court.

(2) No person shall be required to supply any information to  
40 or to answer any question put by the Commissioner or any employee of the Commissioner in relation to any matter, or to produce to the Commissioner or any employee of the Commissioner any document or thing relating to any matter, in

any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person by the provisions of any Act or regulations, other than the Official Information Act 1982 or the State Sector Act 1988.

5

(3) No person shall be liable to prosecution for an offence against any enactment, other than **section 63** of this Act, by reason of that person's compliance with any requirement of the Commissioner or any employee of the Commissioner under **section 49** or **section 51** of this Act.

10

(4) Where the attendance of any person is required by the Commissioner under **section 51** of this Act, the person shall be entitled to the same fees, allowances, and expenses as if the person were a witness in a Court and, for the purpose,—

(a) The provisions of any regulations in that behalf under the Summary Proceedings Act 1957 shall apply accordingly; and

15

(b) The Commissioner shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or to increase, any amounts payable under the regulations.

20

Cf. 1977, No. 49, s. 73 (3)–(7); 1982, No. 156, s. 50

### **53. Disclosure of certain matters not to be required—**

(1) Where—

(a) The Prime Minister certifies that the giving of any information or the production of any document or thing might prejudice—

25

(i) The security or defence of New Zealand, or the international relations of the Government of New Zealand; or

30

(ii) Any interest protected by section 7 of the Official Information Act 1982 (which relates to the Cook Islands, Niue, Tokelau, and the Ross Dependency); or

(b) The Attorney-General certifies that the giving of any information or the production of any document or thing—

35

(i) Might prejudice the prevention, investigation, or detection of offences; or

(ii) Might involve the disclosure of proceedings of Cabinet, or any committee of Cabinet, relating to matters of a secret or confidential nature, and such disclosure would be injurious to the public interest,—

40

neither the Commissioner nor any employee of the Commissioner shall require the information to be given, or, as the case may be, the document or thing to be produced.

5 (2) Except as provided in **subsection (1)** of this section, the rule of law which authorises or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest, shall not apply in respect of any investigation by or proceedings before  
10 the Commissioner.

Cf. 1975, No. 9, s. 20

**54. Medical records not to be made available without health consumer's consent**—(1) Notwithstanding anything in **section 49** or **section 51** of this Act, no person shall be required  
15 under this Act to supply to the Commissioner or any other person any information concerning the medical history of any health consumer who is receiving or has received services provided by a health care provider, without the prior consent of—

20 (a) The health consumer; or  
(b) The health consumer's representative, being—  
(i) Where the health consumer is dead, the health consumer's personal representative; or  
25 (ii) Where the health consumer is under the age of 16 years, the health consumer's parent or guardian; or  
(iii) Subject to **subparagraphs (i) and (ii)** of this paragraph, where the health consumer is unable to give his or her consent, a person appearing to the  
30 Commissioner to be lawfully acting on the health consumer's behalf or in the health consumer's interests.

(2) Nothing in this section prevents the disclosure of information in accordance with any authority given pursuant to  
35 section 62 (4) (k) of the Hospitals Act 1957 or section 50 (4) (1) of the Area Health Boards Act 1983.

**55. Proceedings not to be questioned or subject to review**—No proceeding of the Commissioner shall be held bad for want of form, and, except on the ground of lack of  
40 jurisdiction, no proceeding or decision of the Commissioner shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

Cf. 1975, No. 9, s. 25

**56. Proceedings privileged**—(1) This section applies to the Commissioner, every health consumer advocate, and every person engaged or employed in connection with the work of the Commissioner.

(2) Subject to **subsection (3)** of this section,— 5

(a) No proceedings, civil or criminal, shall lie against any person to whom this section applies for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties under this Act, unless it is shown that he or she acted in bad faith: 10

(b) No person to whom this section applies shall be required to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions. 15

(3) Nothing in **subsection (2)** of this section applies in respect of proceedings for—

(a) An offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961; or 20

(b) The offence of conspiring to commit an offence against section 78 or section 78A (1) or section 105 or section 105A of the Crimes Act 1961.

(4) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner or a health consumer advocate under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court. 25

(5) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by the Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand. 30

Cf. 1975, No. 9, s. 26; 1982, No. 164, s. 5 35

**57. Corrupt use of official information**—Every person to whom **section 56** of this Act applies shall be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be an official.

**58. Adverse comment**—The Commissioner shall not, in any report or recommendation made or published under any of **sections 13, 14, 33, and 34 (2) (b)** of this Act, make any comment that is adverse to any person unless— 40

- (a) That person has been given a reasonable opportunity—  
 (i) To be heard; and  
 (ii) To make a written statement in answer to the  
 adverse comment; and
- 5 (b) Where that person so requires, there is included in or  
 appended to the report or recommendation either—  
 (i) The written statement referred to in **paragraph (a)**  
 (ii) of this section; or  
 (ii) A fair and accurate summary of that  
 10 statement,—  
 whichever the Commissioner considers is more  
 appropriate in the circumstances.

Cf. 1977, No. 49, s. 78 (2)

15 **59. Money to be appropriated by Parliament for purposes of this Act**—All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

20 **60. Delegation of functions or powers of Commissioner**—(1) The Commissioner may from time to time delegate to any person holding office under the Commissioner all or any of the Commissioner's functions and powers under this Act or any other Act.

- (2) Every delegation under this section shall be in writing.
- 25 (3) No delegation under this section shall include—  
 (a) The power to delegate under this section; or  
 (b) The functions of the Commissioner under **Part II** of this Act; or  
 (c) The power to decide whether or not to make any  
 30 complaint or initiate any proceedings pursuant to **section 35 or section 37** of this Act; or  
 (d) The power to appoint any health consumer advocate; or  
 (e) The power to make any report or recommendation under this Act.

35 (4) The power of the Commissioner to delegate under this section does not limit any power of delegation conferred on the Commissioner by any other Act.

40 (5) Subject to any general or special directions given or conditions imposed by the Commissioner, the person to whom any functions or powers are delegated under this section may exercise any functions or powers so delegated to that person in the same manner and with the same effect as if they had been

conferred on that person directly by this section and not by delegation.

(6) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. 5

(7) Any delegation under this section may be made—

(a) To a specified person or to persons of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices: 10

(b) Subject to such restrictions and conditions as the Commissioner thinks fit:

(c) Either generally or in relation to any particular case or class of cases.

(8) No such delegation shall affect or prevent the exercise of any function or power by the Commissioner, nor shall any such delegation affect the responsibility of the Commissioner for the actions of any person acting under the delegation. 15

(9) Any person purporting to exercise any power of the Commissioner by virtue of a delegation under this section shall, when required to do so, produce evidence of that person's authority to exercise the power. 20

Cf. 1975, No. 9, s. 28

**61. Revocation of delegations**—(1) Every delegation under section 60 of this Act shall be revocable in writing at will. 25

(2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the Commissioner by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of the Commissioner. 30

**62. Liability of employer and principals**—(1) Subject to subsection (4) of this section, anything done or omitted by a person as the employee of a health care provider shall, for the purposes of this Act, be treated as done or omitted by that health care provider as well as by the first-mentioned person, whether or not it was done with that health care provider's knowledge or approval. 35

(2) Anything done or omitted by a person as the agent of a health care provider shall, for the purposes of this Act, be treated as done or omitted by that health care provider as well as by the first-mentioned person, unless it is done or omitted without that health care provider's express or implied authority, precedent or subsequent. 40

5 (3) Anything done or omitted by a person as a member of a health care provider (being a health care provider that is an area health board, or the Children's Health Camps Board, or a camp committee under the Children's Health Camps Act 1972) shall, for the purposes of this Act, be treated as done or omitted by that health care provider as well as by the first-mentioned person, unless it is done or omitted without that health care provider's express or implied authority, precedent or subsequent.

10 (4) In proceedings under this Act against any health care provider in respect of an act alleged to have been done by an employee of that health care provider, it shall be a defence for that health care provider to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing as an employee of that health care provider acts of that description.

Cf. 1977, No. 49, s. 33

20 **63. Offences**—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$2,000 who,—

(a) Without reasonable excuse, obstructs, hinders, or resists the Commissioner or any other person in the exercise of their powers under this Act:

25 (b) Without reasonable excuse, refuses or fails to comply with any lawful requirement of the Commissioner or any other person under this Act:

30 (c) Makes any statement or gives any information to the Commissioner or any other person exercising powers under this Act, knowing that the statement or information is false or misleading:

(d) Represents directly or indirectly that he or she holds any authority under this Act when he or she does not hold that authority.

Cf. 1975, No. 9, s. 30

35 **64. Regulations**—(1) The Governor-General may from time to time, by Order in Council, make, in accordance with the recommendation of the Commissioner, regulations prescribing a Code of Health Consumers' Rights.

40 (2) The Governor-General may from time to time, by Order in Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

*Amendments to Other Enactments*

**65. Amendment to Higher Salaries Commission Act 1977**—The Fourth Schedule to the Higher Salaries Commission Act 1977 (as substituted by section 14 of the Higher Salaries Commission Amendment Act 1988) is hereby amended by inserting, after the item relating to the Wanganui Computer Centre Privacy Commissioner, the following item: 5

“The Health Commissioner.”

**66. Amendment to Official Information Act 1982**—The Official Information Act 1982 is hereby amended by inserting 10 in the First Schedule (as substituted by section 23 (1) of the Official Information Amendment Act 1987), in its appropriate alphabetical order, the following item:

“The Health Commissioner.”

**67. Amendment to Films Act 1983**—Part II of the Schedule to the Films Act 1983 is hereby amended by inserting, 15 in its appropriate alphabetical order, the following item:

“The Health Commissioner.”

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## SCHEDULE

Section 15

## PROVISIONS APPLYING IN RESPECT OF COMMISSIONER

**1. Employment of experts**—(1) The Commissioner may, as and when the need arises, appoint any person who, in the Commissioner's opinion, possesses expert knowledge or is otherwise able to assist in connection with the exercise by the Commissioner of the Commissioner's functions to make such inquiries or to conduct such research or to make such reports or to render such other services as may be necessary for the efficient performance by the Commissioner of the Commissioner's functions.

(2) The Commissioner shall pay persons appointed by the Commissioner under this clause, for services rendered by them, fees or commission or both at such rates as the Commissioner thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Commissioner.

**2. Staff**—(1) Subject to the provisions of this clause, the Commissioner may appoint such officers and employees (including acting or temporary or casual officers and employees) as may be necessary for the efficient carrying out of the Commissioner's functions, powers, and duties under this Act.

(2) The Commissioner, in making an appointment under this clause, shall give preference to the person who is best suited to the position.

(3) Subject to **section 21** of this Act, the number of persons that may be appointed under this clause, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Minister.

(4) Officers and employees appointed under this clause shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Commissioner from time to time determines in agreement with the State Services Commissioner, or as the Minister from time to time determines in any case where the Commissioner and the State Services Commissioner fail to agree.

**3. Salaries and allowances**—(1) There shall be paid to the Commissioner—

(a) A salary at such rate as the Higher Salaries Commission from time to time determines; and

(b) Such allowances as are from time to time determined by the Higher Salaries Commission.

(2) Subject to the Higher Salaries Commission Act 1977, any determination made under **subclause (1)** of this clause may be made so as to come into force on a date to be specified for that purpose in the determination, being the date of the making of the determination, or any other date, whether before or after the date of the making of the determination.

(3) Every determination made under **subclause (1)** of this clause in respect of which no date is specified as provided in **subclause (2)** of this clause shall come into force on the date of the making of the determination.

(4) There shall also be paid to the Commissioner, in respect of time spent in travelling in the exercise of the Commissioner's functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply

SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF COMMISSIONER—*continued*

accordingly as if the Commissioner were a member of a statutory Board and the travelling were in the service of the statutory Board.

(5) The Deputy Commissioner, during the period when he or she acts as the Commissioner, shall be paid a salary at the rate for the time being payable to the Commissioner, and shall also be entitled to such allowances and travelling allowances and expenses as are for the time being payable to the Commissioner.

**4. Superannuation or retiring allowances**—(1) For the purpose of providing a superannuation fund or retiring allowance for the Commissioner and for any of the officers or employees of the Commissioner, sums by way of subsidy may from time to time be paid into any scheme under the National Provident Fund Act 1950 containing provision for employer subsidy or into any other employer-subsidised scheme approved by the Minister of Finance for the purposes of this clause.

(2) Notwithstanding anything in this Act, any person who, immediately before being appointed as the Commissioner or, as the case may be, becoming an officer or employee of the Commissioner, is a contributor to the Government Superannuation Fund under Part II or Part II<sub>A</sub> of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as the Commissioner or, as the case may be, to be an officer or employee of the Commissioner; and that Act shall apply to that person in all respects as if that person's service as the Commissioner or, as the case may be, as such an officer or employee were Government service.

(3) Subject to the Government Superannuation Fund Act 1956, nothing in **subclause (2)** of this clause entitles any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

(4) For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with **subclause (2)** of this clause, to a person who holds office as the Commissioner or, as the case may be, is in the service of the Commissioner as an officer or employee and (in either case) is a contributor to the Government Superannuation Fund, the term "controlling authority", in relation to any such person, means the Commissioner.

**5. Application of certain Acts to Commissioner and staff**—No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason of that person's appointment as the Commissioner, or the Deputy Commissioner, or a person appointed under **clause 1** or **clause 2** of this Schedule.

**6. Services for Commissioner**—(1) The Crown, acting through any department, may from time to time, at the request of the Commissioner, execute any work or enter into any arrangements for the execution or provision by the department for the Commissioner of any work or service,

SCHEDULE—*continued*

PROVISIONS APPLYING IN RESPECT OF COMMISSIONER—*continued*

or for the supply to the Commissioner of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

(2) The Commissioner and the Human Rights Commission may from time to time enter into any arrangements for the provision, by the Commission to the Commissioner, of office accommodation and other services, on and subject to such terms and conditions as may be agreed.

**7. Funds of Commissioner**—The funds of the Commissioner shall consist of—

- (a) Any money appropriated by Parliament for the purposes of the Commissioner and paid to the Commissioner for the purposes of the Commissioner;
- (b) All other money lawfully received by the Commissioner for the purposes of the Commissioner;
- (c) All accumulations of income derived from any such money.

**8. Bank accounts**—(1) The Commissioner shall open at any bank or banks such accounts as are necessary for the exercise of the Commissioner's functions and powers.

(2) All money received by the Commissioner, or by any officer or employee of the Commissioner, shall, as soon as practicable after it has been received, be paid into such bank accounts of the Commissioner as the Commissioner from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised in such manner as the Commissioner thinks fit.

**9. Investment of money**—Any money that belongs to the Commissioner and that is not immediately required for expenditure by the Commissioner may be invested pursuant to section 25 of the Public Finance Act 1989.

**10. Seal**—The Commissioner's seal of office shall be judicially noticed in all Courts and for all purposes.

**11. Exemption from income tax**—The income of the Commissioner shall be exempt from income tax.