

House of Representatives
Supplementary Order Paper

Tuesday, 6 November 2001

Health and Disability Services (Safety) Bill

Proposed amendments

Hon Annette King, in Committee, to move the following amendments:

Clause 1

To omit *subclauses (2) to (3)* (lines 11 to 18 on page 2).

Clauses 1A and 1B

To insert, before *clause 2*, the following clauses:

1A Commencement

- (1) **Sections 4 to 4B, Part 3, sections 19, 19A, and 20 to 22, and Schedules 1 to 3**, come into force on 1 October 2002.
- (2) **Sections 23 and 24 (1), and Schedules 4 and 5** come into force on 1 October 2004.
- (3) The rest of this Act comes into force on 1 July 2002.

1B Purpose

The purpose of this Act is to—

- (a) promote the safe provision of health and disability services to the public; and
- (b) enable the establishment of consistent and reasonable standards for providing health and disability services to the public safely; and
- (c) encourage providers of health and disability services to take responsibility for providing those services to the public safely; and
- (d) encourage providers of health and disability services to the public to improve continuously the quality of those services.

Clause 2(1)

To omit the definition of **affected providers** (lines 24 to 28 on page 2), and substitute the following definitions:

affected consumers, in relation to any service standards or proposed service standards for providing health or disability services of any kind, means people for whom services of that kind are provided

affected providers, in relation to any service standards or proposed service standards for providing health or disability services of any kind, means people providing services of that kind

auditing agency means a person for the time being designated under **section 6(1)**

audit report means a written report, prepared by an auditing agency, on the provision of health care services of a particular kind; and—

- (a) in relation to an auditing agency and a certified provider, means an audit report by the agency on the person's present and likely future provision of health care services of a kind the person is certified to provide, prepared in the light of—
 - (i) the relevant service standards; and
 - (ii) any conditions subject to which the person is certified to provide services of that kind; and
 - (iii) any requirements the person is required to meet by virtue of an exemption under **section 5D(1)** from an element of those standards; and
 - (iv) any conditions subject to which the person is exempted from an element of those standards; and
- (b) in relation to an auditing agency and a person intending to provide but not yet certified to provide health care services of any kind, means an audit report by the agency on the person's likely future provision of services of that kind, prepared in the light of the relevant service standards

To omit from the definition of **authorised person** the word "premises" at line 31 on page 2, and substitute the word "places".

To insert, after the definition of **authorised person** (lines 29 to 33 on page 2), the following definition:

certified provider means a person for the time being certified under **section 5G(1)**

To omit the definition of **designated agency** (lines 4 and 5 on page 3).

To omit from the definition of **The Director-General** the word "The" where it first occurs (at line 6 on page 3).

To omit the definition of **health or disability services** (lines 21 to 32 on page 3), and substitute the following definition:

health or disability services has the meaning given to it by **section 2AA(1)**

To omit from the definition of **hospital care** the word “classes” (at line 2 on page 4), and substitute the word “kinds”.

To omit from *paragraph (b)* of the definition of **hospital care** the word “maintained” (at line 11 on page 4), and substitute the words “for whom the services are provided”.

To omit from the definitions of **The Minister** and **The Ministry** the word “The” where it first occurs (at lines 15 and 19 on page 4).

To insert, before the definition of **residential disability care** (lines 31 to 35 on page 4), the following definitions:

place includes vehicle

relevant service standards, in relation to health care services of any kind, means service standards (whether 1 set or 2 or more sets) for providing services of that kind

To omit the definition of **rest home care** (lines 1 to 13 on page 5), and substitute the following definition:

rest home care has the meaning given to it by **section 2AB(2)**

To omit the definition of **service standards** (lines 14 to 16 on page 5), and substitute the following definition:

service standards means standards for the time being approved under **section 5A** (as from time to time amended by amendments approved under **section 5AA(1)**).

Clauses 2AA and 2A

To omit *clause 2A* (lines 2 to 26 on page 7) and substitute the following clauses:

2AA Health or disability services defined

(1) In this Act, **health or disability services**—

- (a) means services of any of the following kinds:
 - (i) chiropractic services, dental services, fertility services, geriatric services, gynaecological services, habilitation services, maternity services, medical services, mental health services, obstetric services, osteopathy services, rehabilitation services, physiotherapy services, and surgical services;
 - (ii) collecting, storing, or transporting human tissue or human bodily substances for the purposes of, or in connection with, the provision or prospective provision of health or disability services;
 - (iii) services, provided to people with disabilities or people who are frail (whether because of their

- age or for some other reason), for their care or support or to promote their independence; and
- (b) includes services intended to prevent, or lessen the prevalence or severity of, illness or injury; and
 - (c) includes any services within the meaning of the New Zealand Public Health and Disability Services Act 2000; and
 - (d) includes services intended to enable the detection, the diagnosis, the determination of the nature or extent or prognosis, or the monitoring, of any illness, injury, or other condition, the treatment of which (or the treatment of the effects of which) is or would be providing health or disability services of any kind, for example—
 - (i) biochemical, chemical, cytogenetic, cytological, haematological, histopathological, immunological, microbiological, sensory, or serological analysis, examination, scanning, screening, or testing;
 - (ii) examining, scanning, screening, or testing people using electro-magnetic or ionising radiation, magnetism, or sound; and
 - (e) includes administering the provision of health or disability services.
- (2) **Subparagraphs (i) and (ii) of paragraph (d) of subsection (1) do not limit the generality of that paragraph or of paragraph (a) of that subsection.**

2AB Rest home care defined

- (1) This subsection applies to services that—
- (a) are residential care provided for the care or support of, or to promote the independence of, people who are frail (whether because of their age or for some other reason); and
 - (b) neither include nor are provided together with geriatric services.
- (2) In this Act, **rest home care** means services to which **subsection (1)** applies that are provided for 3 or more people unrelated by blood or marriage (or a relationship in the nature of marriage) to the person providing the services—
- (a) in premises held out by the person providing the services as being principally a residence for people who are frail because of their age; and
 - (b) in consideration of payment (whether made or to be made, and whether by the Crown, the people for whom the services are provided, or any other person).

- 2A Act may be applied to other health or disability services**
- (1) The Governor-General may, by Order in Council made on the Minister's recommendation, declare health or disability services of any kind to be services to which this Act applies.
 - (2) The Minister must not recommend the making of an order unless satisfied that—
 - (a) service standards for services of the kind concerned are in force, or will be in force within 12 months of the commencement of the order; and
 - (b) the order will come into force late enough to give affected providers a reasonable time to comply with the standards, and in any event no earlier than 12 months after it is made.
 - (3) An order cannot be revoked by Order in Council; and cannot be amended by Order in Council except to correct an error or omission.

Clause 3

To omit *subclause (1)(c)* (lines 33 and 34 on page 7), and substitute the following paragraph:

- (c) a children's health camp operated by Children's Health Camps—The New Zealand Foundation for Child and Family Health and Development.

To omit *subclause (4)* (lines 6 to 14 on page 8).

Clause 4

To omit *clause 4* (lines 15 to 41 on page 8 and 1 to 6 on page 9), and substitute the following clauses:

- 4 Providers of health care services to meet service standards**
- A person providing health care services of any kind must do so—
- (a) while certified by the Director-General to provide health care services of that kind; and
 - (b) while meeting all relevant service standards; and
 - (c) in compliance with any conditions subject to which the person was certified by the Director-General to provide health care services of that kind; and
 - (d) in compliance with this Act; and
 - (e) if the services are rest home care, or geriatric services that are hospital care, in compliance with any applicable regulations under **section 19B(1)(a)**.
- 4A Certification not to have effect as professional qualification**
- Section 4** does not prevent an individual person who is not certified by the Director-General to provide health care services of any kind from providing health care services of that

kind as the agent, employee, officer, or servant of some other person who is certified by the Director-General to provide health care services of that kind.

4B Transitional arrangements for existing providers

- (1) The provision before 1 October 2004 of hospital care complies with **section 4** if it comprises—
 - (a) children’s health services provided in premises licensed as a children’s hospital; or
 - (b) convalescent services provided in premises licensed as a convalescent hospital; or
 - (c) geriatric services provided in premises licensed as a geriatric hospital; or
 - (d) maternity services provided in premises licensed as a maternity hospital; or
 - (e) medical services provided in premises licensed as a medical hospital; or
 - (f) mental health services provided in premises licensed as a psychiatric hospital; or
 - (g) surgical services provided in premises licensed as a surgical hospital.
- (2) In **subsection (1), licensed** means licensed under the Hospitals Act 1957.
- (3) The provision of residential disability care before 1 October 2004 complies with **section 4** if the care is provided in a home registered or deemed to be registered under Part II of the Disabled Persons Community Welfare Act 1975.
- (4) The provision of rest home care before 1 October 2004 complies with **section 4** if the care is provided—
 - (a) in a home within the meaning of the Old People’s Homes Regulations 1987; and
 - (b) under the authority and in accordance with the terms of a licence granted under those regulations.
- (5) This section expires on 1 October 2004.

Clauses 5A to 6

To omit the headings before *clause 5A*, *clauses 5A to 6*, and the headings between those clauses (lines 8 to 34 on page 9, pages 10 and 11, and lines 1 and 2 on page 12), and substitute the following headings and clauses:

Part 2
Service standards, and certification and audit of providers

Service standards

5A Minister may approve service standards

The Minister may, by written notice describing by name the standards concerned, approve standards for providing health or disability services of any kind.

5AA Amendments and revocations

- (1) The Minister may, by written notice describing by name both the standards concerned and the amendments concerned, approve amendments of service standards.
- (2) The Minister may, by written notice describing by name the standards or amendments concerned, revoke—
 - (a) the approval under **section 5A** of any service standards:
 - (b) the approval under **subsection (1)** of any amendments of service standards.

5AB Power not to be delegated

- (1) The Minister may not delegate the power to approve standards or amendments of standards, or the power to revoke approvals of standards or amendments of standards.
- (2) **Subsection (1)** overrides section 28 of the State Sector Act 1988.

5AC Status of notices

- (1) A notice under **section 5A** or **section 5AA** is regulations for the purposes of the Regulations (Disallowance) Act 1989.
- (2) The Director-General may sign a written certificate that, on a day stated in the certificate, a document (or a document and 1 or more amendments to it) attached to the certificate constituted service standards for providing health or disability services of a kind or kinds stated in the certificate; and—
 - (a) in the absence of proof to the contrary, the certificate is proof of the matters stated in it; and
 - (b) a court or person acting judicially must take judicial notice of the Director-General's signature.

5AD Copies of standards to be available

The Director-General must take all practicable steps to ensure that—

- (a) there are available for purchase at a reasonable price during ordinary business hours, at places designated by the Director-General for the purpose, enough copies of all service standards and amendments of service standards for the time being in force; and
- (b) copies of those standards and amendments, and a list of those places, are available for inspection free of charge during ordinary office hours, at the offices of the Ministry.

5AE Criteria for approval of standards

- (1) The Minister must not approve standards for providing health or disability services of any kind unless the Minister—
 - (a) has consulted (as required by **section 5AG**) on either—

- (i) whether standards contained in an existing document or documents should be approved as service standards for providing services of that kind; or
 - (ii) what service standards for providing services of that kind should be approved; and
 - (b) has considered the outcome of the consultation; and
 - (c) if the Minister consulted on what service standards for providing services of that kind should be approved,—
 - (i) in the light of the consultation, has created an initial draft of the proposed standards; and
 - (ii) has consulted further (as required by **section 5AG**) on whether the initial draft should be approved as service standards for providing services of that kind; and
 - (d) is satisfied that requiring providers of services of that kind to provide them in compliance with the standards approved would be in the public interest, having regard to—
 - (i) the extent to which compliance would be likely to ensure the safe provision of services of that kind to the public; and
 - (ii) the likely costs to providers of compliance.
- (2) The Minister may consult under **subsection (1)(a)(ii)** by reference to an existing document or documents relating to providing health or disability services.
- (3) Consultation under **section 5E** in relation to service standards for providing health care services of any kind is compliance with **subsection (1)(a)(ii)** for the purpose of approving new standards for providing some or all of the health care services of that kind.

5AF Criteria for approval of amendments

- (1) The Minister must not approve amendments of service standards for providing health or disability services of any kind unless the Minister—
- (a) has consulted (as required by **section 5AG**) on whether the amendments should be made to the standards; and
 - (b) has considered the outcome of the consultation; and
 - (c) is satisfied that requiring providers of services of that kind to provide them in compliance with the standards as amended by the amendments approved would be in the public interest, having regard to—
 - (i) the extent to which compliance would be likely to ensure the safe provision of services of that kind to the public; and
 - (ii) the likely costs to providers of compliance.

- (2) **Subsection (1)** does not prevent the approval of amendments that are a modified version of proposed amendments consulted on under **paragraph (a)** of that subsection.
- (3) **Paragraphs (a) and (b) of subsection (1)** do not apply to amendments made to service standards solely to correct an error or omission.

5AG Consultation

If required by **section 5AE or section 5AF or section 5E** to consult on a matter relating to health or disability services of any kind, the Minister—

- (a) must make reasonable attempts to consult—
 - (i) organisations known to the Minister to represent affected consumers; and
 - (ii) organisations known to the Minister to represent affected providers; and
 - (iii) all Crown entities (within the meaning of section 2(1) of the Public Finance Act 1989) whose functions are, include, or are capable of including, purchasing services of that kind; and
 - (iv) a reasonably representative sample of affected providers; and
 - (v) a reasonably representative sample of affected consumers or (if the Minister thinks it more appropriate) a reasonably representative sample of people who would be entitled to consent on behalf of affected consumers to the provision of services of that kind to affected consumers; and
- (b) if services of that kind are usually provided by people who must be registered or licensed by, or be members of, some body established or recognised by law before they may lawfully provide services of that kind, must also consult that body.

5AH Contents of standards

- (1) Service standards may include elements of any or all of the following kinds:
 - (a) general statements of appropriate care delivery outcomes for providers of health care services of all kinds;
 - (b) statements of appropriate care delivery outcomes for providers of health or disability services of any kind;
 - (c) statements of appropriate care delivery outcomes for particular aspects of providing health or disability services of any kind;
 - (d) statements of appropriate outcomes, procedures, or techniques for particular aspects of providing health or disability services of any kind;

- (e) technical recommendations or specifications for particular aspects of providing health or disability services of any kind:
 - (f) technical recommendations or specifications for equipment, facilities, goods, or materials, used in providing health or disability services, or health or disability services of any kind:
 - (g) in the case of hospital care or rest home care, a means by which there can be ascertained—
 - (i) minimum numbers of nursing and other care staff who must be on duty (at any time, or at different times) in premises in which the care is being provided; and
 - (ii) any minimum qualifications any of them must have.
- (2) Statements of appropriate outcomes may include either or both of the following:
- (a) descriptions of means for achieving those outcomes:
 - (b) criteria for assessing whether outcomes are appropriate.
- (3) **Subsections (1) and (2)** do not limit the generality of **section 5A**.

5C Commencement of approvals and revocations

- (1) The following come into force on a day specified in the notice concerned:
- (a) an approval of service standards:
 - (b) an approval of amendments to service standards:
 - (c) the revocation of the approval of any service standards or amendments of service standards.
- (2) The day must be no earlier than 6 months after the day the notice is given.
- (3) **Subsection (2)** does not apply to the approval of any of the service standards referred to in **section 5F(1)**.
- (4) **Subsection (2)** does not apply to the approval of amendments to service standards that are being made solely to correct an error or omission.

5D Minister may grant exemptions

- (1) The Minister may at any time (whether before or after the commencement of the standards concerned), by notice in the *Gazette*,—
- (a) exempt any person from any stated element of any stated service standards; or
 - (b) amend or revoke any exemption.
- (2) The exemption—
- (a) must require the person to meet some other requirement stated in the notice, instead of the element concerned; and

- (b) may be unconditional, or subject to any conditions stated in the notice.
- (3) The Minister must not exempt any person from an element of any service standards (or amend the exemption of any person from an element of any service standards) unless—
 - (a) the person has paid the prescribed fee (if any); and
 - (b) the Minister is satisfied that—
 - (i) there are exceptional circumstances justifying the exemption (or the exemption as amended); and
 - (ii) the safety of affected consumers will not be compromised if the person provides services meeting only the other requirement stated in the notice (or the other requirement stated in the notice as amended) rather than that element.
- (4) If not earlier revoked, the exemption expires on the earliest of—
 - (a) the day 3 years after the date of the notice granting it;
 - (b) a day stated in the notice for the purpose;
 - (c) the day on which the certification of the person concerned to provide health or disability services of the kind concerned expires or is cancelled.
- (5) For the purposes of this Act, a person exempted by a notice under this section from an element of any service standards meets the standards if the person—
 - (a) meets—
 - (i) the rest of the standards; and
 - (ii) the other requirement stated in the notice instead of that element; and
 - (b) complies with any conditions stated in the notice.

5E Standards to be reviewed regularly

- (1) The Minister must from time to time consult (as required by **section 5AG**) on whether the service standards for providing health care services of any kind should—
 - (a) continue in force unamended; or
 - (b) to encourage the providers of health care services of that kind to improve the quality of those services,—
 - (i) be amended; or
 - (ii) be replaced by 1 or more new sets of service standards.
- (2) The Minister must consult no later than 4 years after the most recent of the following days:
 - (a) the day the approval of the standards came into force;
 - (b) the day the approval of the most recent amendment of the standards came into force;
 - (c) the day the most recent consultation on the standards under this section was begun.

5F Previous consultation sufficient for certain initial standards

- (1) Paragraphs (a) to (c) of section 5AE(1) do not apply to any of the following:—
- (a) the first standards for providing hospital care, residential disability care, and rest home care approved under this Act that relate only to infection control;
 - (b) the first standards for providing hospital care, residential disability care, and rest home care approved under this Act that relate only to patient restraint;
 - (c) the first standards for providing hospital care, residential disability care, and rest home care approved under this Act (not being standards that relate only to infection control or patient restraint);
 - (d) the first standards for providing mental health services approved under this Act.
- (2) Until the commencement of an order under section 2A(1) declaring mental health services provided otherwise than as part of hospital care, residential disability care, or rest home care to be services to which this Act applies,—
- (a) the standards referred to in subsection (1)(d) have effect only as standards for providing mental health services provided as part of hospital care, residential disability care, or rest home care; and
 - (b) the application of section 4 to persons providing mental health services is limited accordingly.

*Certification of providers***5G Director-General may certify providers**

- (1) The Director-General may, by written notice to any person, certify the person to provide health care services of any kind.
- (2) The notice must state—
- (a) the name of the person; and
 - (b) the kind or kinds of health care services to which it relates; and
 - (c) the day on which it takes effect; and
 - (d) any conditions subject to which the person is certified to provide the services; and
 - (e) the day on which it expires.

5H Criteria for certification

- (1) The Director-General must certify a person to provide health care services of any kind if, and only if,—
- (a) the person has—
 - (i) applied in writing to the Director-General to be certified to provide health care services of that kind; and

- (ii) paid to the Director-General the fee (if any) prescribed for certification to provide health care services (or health care services of that kind); and
 - (b) an auditing agency has given the Director-General a copy of a recent audit report on the provision of health care services of that kind by the person; and
 - (c) the Director-General is satisfied that the person meets relevant service standards that—
 - (i) are already in force; or
 - (ii) will be in force on the day on which the notice certifying the person to provide health care services of that kind takes effect.
- (2) For the purposes of satisfying himself or herself that the person meets the service standards, the Director-General—
- (a) is entitled to rely on the audit report; but
 - (b) may have regard to any other relevant matter.

5I Conditions

- (1) Conditions stated under **section 5G(2)(d)** may be any conditions the Director-General thinks necessary or desirable to help achieve the purposes of this Act.
- (2) The conditions may include—
- (a) requirements that the person concerned must obtain audit reports on the provision of the services concerned at stated dates or intervals;
 - (b) requirements that the person concerned must at stated dates or intervals—
 - (i) assess its provision of the services concerned; and
 - (ii) prepare, and give to the Director-General, a report on the results of its assessment;
 - (c) requirements that, on written demand by the Director-General, the person concerned must give the Director-General, in writing,—
 - (i) any information about the person's provision of the services concerned (or any of them) the Director-General reasonably requires; or
 - (ii) any information about the person's provision of the services concerned (or any of them) stated in the notice;
 - (d) requirements that the person concerned must keep the Director-General informed of who the person's auditing agency is.
- (3) **Subsection (2)** does not limit the generality of **subsection (1)**.

5J Expiry of certification

- (1) The day on which a notice under **section 5G** expires may be any day (no later than 5 years after it takes effect) that the Director-General in his or her absolute discretion decides.
- (2) The Director-General must not decide a day more than 3 years after the notice takes effect unless—
 - (a) the person concerned is already certified to provide health care services of the kind concerned; and
 - (b) the Director-General is satisfied that the person has been improving, and is likely to continue to improve, the quality of the health care services of that kind provided by the person.
- (3) Unless earlier cancelled, a person's certification to provide health care services of any kind expires on the day on which the notice certifying the person to provide health care services of that kind expires.
- (4) In order to enable a person already certified to provide health care services of any kind to continue to provide those services,—
 - (a) the Director-General may again certify the person to provide health care services of that kind before the existing certification expires; and
 - (b) in relation to the new certification, the Minister may under **section 5D** exempt the person (or exempt the person again) from any stated element of the service standards concerned.

5K Cancellation of certification

- (1) The Director-General must cancel the certification of a person to provide health care services of any kind if satisfied that—
 - (a) the person does not meet the relevant service standards (whether because the quality of the services provided by the person has changed, or because the standards have been amended or replaced); or
 - (b) there are no longer in force service standards for providing health care services of that kind; or
 - (c) the person has asked the Director-General in writing to cancel it.
- (2) The Director-General may cancel the certification of a person to provide health care services of any kind if—
 - (a) the Director-General has cancelled the designation of the auditing agency that prepared the audit report on the provision by the person of health care services of that kind most recently sent to the Director-General; and
 - (b) the Director-General has given the person a notice in writing, stating that the designation has been cancelled and explaining the effect of this subsection, and asking the person to do 1 or more of the following things:

- (i) send to the Director-General a copy of the most recently prepared audit report on the person's provision of health care services of that kind:
 - (ii) obtain a new audit report from another auditing agency on the person's provision of health care services of that kind, and send a copy to the Director-General:
 - (iii) arrange to obtain, at the time when an audit report will be required in any event, an audit report from another auditing agency on the person's provision of health care services of that kind, and tell the Director-General in writing the name of the new agency:
 - (iv) give the Director-General, in writing, any information relating to the person's provision of health care services of that kind the Director-General asks for; and
 - (c) more than 3 months has passed since the person was given the notice, and the person has failed or refused to comply with it.
- (3) The Director-General may cancel the certification of a person to provide health care services of any kind if,—
- (a) having made reasonable efforts to do so, the Director-General has not been able to satisfy himself or herself that the person meets the relevant service standards; or
 - (b) the Director-General is satisfied that the person has failed or refused to comply with—
 - (i) a provision of this Act other than **section 4**; or
 - (ii) a condition subject to which the person is certified to provide services of that kind; or
 - (iii) a requirement or condition stated in a notice under **section 5D**; or
 - (iv) if the services are rest home care, or geriatric services that are hospital care, any applicable regulations under **section 19B(1)(a)**.
- (4) **Subsection (2)** does not limit the circumstances in which the Director-General may cancel the certification of a person to provide health care services of any kind under **subsection (3)(a)**.
- (5) The cancellation of a person's certification must be effected by written notice to the person, stating—
- (a) the name of the person; and
 - (b) the kind or kinds of health care services to which it relates.

5L Providers to give Director-General certain information

- (1) The Director-General must not certify a person to provide health care services of any kind unless the person has given the Director-General—

- (a) written notice of the name, address, and telephone number of a person who is for the time being the person whom the Director-General should contact about the services; and
 - (b) if the services are to be provided at fixed locations, written notice of the locations.
- (2) A certified provider must promptly give the Director-General written notice of all changes in the name, address, or telephone number of the person who is for the time being the person whom the Director-General should contact about the services.
- (3) A certified provider must promptly give the Director-General written notice of any new fixed location at which the services are being provided.
- (4) A certified provider must promptly give the Director-General written notice,—
 - (a) in the case of a body corporate (other than a District Health Board, some other body corporate that is a Crown entity, a corporation sole, or a Trust Board incorporated under the Charitable Trusts Act 1957), of any change in the membership of its governing body:
 - (b) in the case of a Trust Board incorporated under the Charitable Trusts Act 1957, of any change in its membership:
 - (c) in the case of any other trust, of any change in the trustees:
 - (d) in the case of a partnership, of any change in the partners.
- (5) A person certified to provide health care services of any kind must promptly give the Director-General written notice of—
 - (a) any incident or situation (for example, a fire, flood, or failure of equipment or facilities) that has put at risk, may have put at risk, puts at risk, or may be putting at risk the health or safety of people for whom the person was or is providing the services; and
 - (b) any investigation commenced by a member of the police into any aspect of the services, their provision, or any premises in which they were provided; and
 - (c) any death of a person to whom the person was providing the services, or occurring in any premises in which they were provided, that is required to be reported to a coroner under the Coroners Act 1988.

Auditing agencies

6 Director-General may designate persons to audit providers

- (1) The Director-General may, by notice in the *Gazette*, designate any person to audit the provision or likely future provision of health care services (or health care services of any kind) by providers or prospective providers.
- (2) The notice must state any conditions subject to which the designation is given.

6A Criteria for designating external agencies

The Director-General must designate a person who is not an employee of the Ministry to audit the provision of health care services of any kind by certified providers if, and only if,—

- (a) the person has—
 - (i) applied in writing to the Director-General to be designated to audit the provision of services of that kind by certified providers; and
 - (ii) paid to the Director-General the fee (if any) prescribed for designation to audit the provision of services of that kind; and
- (b) the Director-General is satisfied that the person—
 - (i) has the technical expertise to audit the provision of services of that kind; and
 - (ii) has in place effective systems for auditing the provision of services of that kind; and
 - (iii) has in place effective arrangements to avoid or manage any conflicts of interest that may arise in auditing the provision of services of that kind; and
 - (iv) will administer those systems and arrangements properly and competently, and in compliance with any conditions subject to which the designation is given; and
 - (v) will comply with this Act.

6B Criteria for designating employees of Ministry

- (1) The Director-General must designate an employee of the Ministry to audit the provision of health care services of any kind by certified providers if, and only if, satisfied that—
 - (a) it is necessary or desirable to do so to enable providers or prospective providers who cannot find a convenient or appropriate auditing agency to audit their provision or likely future provision of health care services of any kind; and
 - (b) the Ministry—
 - (i) has in place effective systems for auditing the provision of services of that kind; and

- (ii) has in place effective arrangements to avoid or manage any conflicts of interest that may arise in auditing the provision of services of that kind; and
- (c) the person—
 - (i) has the technical expertise to audit the provision of services of that kind; and
 - (ii) will administer those systems and arrangements properly and competently, and in compliance with any conditions subject to which the designation is given; and
 - (iii) will comply with this Act.
- (2) An auditing agency who is an employee of the Ministry may refuse to audit the provision of health care services by any person unless the person has paid the prescribed fee (if any).

Clauses 7A to 9

To omit *clauses 8 and 9* (lines 15 to 39 on page 12, and lines 1 to 14 on page 13), and substitute the following clauses:

- 7A Agency to give Director-General copy of audit report**
Promptly after giving a certified provider or prospective provider an audit report, an auditing agency must give a copy to the Director-General.
- 8 Cancellation of designation**
- (1) The Director-General may at any time, by notice in the *Gazette*, cancel the designation under **section 6(1)** of an auditing agency who is not an employee of the Ministry—
 - (a) if no longer satisfied (or unable, after making reasonable efforts, to obtain from the agency enough evidence to continue to be satisfied) of the matters stated in **section 6A**; or
 - (b) if satisfied that the agency has, without reasonable excuse, failed or refused to comply with—
 - (i) a provision of this Act; or
 - (ii) a condition to which the designation was subject; or
 - (c) if asked by the agency in writing to do so.
 - (2) The Director-General may at any time, by notice in the *Gazette*, cancel the designation under **section 6(1)** of an employee of the Ministry.
 - (3) The cancellation takes effect—
 - (a) on a day stated in the notice; or
 - (b) if no day is stated in the notice, on the day after the date on which the notice is published in the *Gazette*.

8A Expiry of designation

- (1) The designation of an auditing agency under **section 6(1)** expires after 3 years.
- (2) The designation under **section 6(1)** of an employee of the Ministry expires when he or she ceases to be an employee of the Ministry.

9 Procedure for cancelling private agency's designation

- (1) Before cancelling the designation of an auditing agency other than an employee of the Ministry, the Director-General must—
 - (a) give the agency written notice of—
 - (i) the reasons for proposing to cancel it; and
 - (ii) the fact that the agency has a reasonable time within which to show that it should not be cancelled; and
 - (b) give the agency a reasonable time within which to show that the designation should not be cancelled; and
 - (c) consider any arguments and evidence advanced by the agency during that reasonable time that may tend to show that the designation should not be cancelled.
- (2) Promptly after cancelling the designation of an auditing agency that is not an employee of the Ministry, the Director-General must make reasonable efforts to give certified providers known to the Director-General to have had audit reports prepared by the agency written notice of—
 - (a) the cancellation and the reasons for it; and
 - (b) the effect of **section 5K(2)**.

Clauses 10 to 12B

To omit *clauses 10 to 12B*, and the heading between *clauses 11 and 11A* (lines 15 to 39 on page 13, 1 to 32 on page 14, and 1 to 37 on page 15).

Clauses 13 and 13A

To omit *clause 13* and the heading immediately before it (lines 3 to 44 on page 16, and 1 to 4 on page 17), and substitute the following heading and clauses:

Inspection of places

13 General right to inspect places

- (1) An authorised person who believes on reasonable grounds that health care services are being provided in any place may at any reasonable time exercise any of the powers in **section 13B(1)** reasonably necessary to find out all or any of the following matters:
 - (a) whether health care services are in fact being provided there;
 - (b) whether health care services being provided there are being provided in compliance with **section 4**;
 - (c) whether health care services being provided there are being provided in a safe and satisfactory manner:

- (d) whether the place is safe and sanitary:
 - (e) whether the provision of health care services there has been satisfactorily audited by an auditing agency.
- (2) An authorised person who believes on reasonable grounds that there is in any place any document, equipment, or device relating to, or used or to be used in relation to, the provision of health care services in any other place may at any reasonable time exercise any of the powers in **section 13B(1)** reasonably necessary to find out all or any of the following matters:
- (a) whether health care services are in fact being provided in the other place:
 - (b) whether health care services being provided in the other place are being provided in compliance with **section 4**:
 - (c) whether health care services being provided in the other place are being provided in a safe and satisfactory manner:
 - (d) whether the other place is safe and sanitary:
 - (e) whether the provision of health care services in the other place has been satisfactorily audited by an auditing agency.

13A Right to monitor certain places

- (1) In addition to the powers stated in **paragraphs (b) to (e) of section 13B(1)**, an authorised person may at any time exercise any of the powers stated in **subsection (2)** if he or she has entered and inspected a place under **section 13(1)(a)** and is satisfied that health care services of any kind are being provided there—
- (a) by a person not certified by the Director-General to provide services of that kind; or
 - (b) in contravention of a cessation order or a closing order.
- (2) The powers of an authorised person referred to in **subsection (1)** are the powers to—
- (a) remain in the place for as long as he or she wishes, in any part or parts of the place he or she wishes to be in; and
 - (b) inspect, investigate, supervise, or watch, any thing, process, or transaction in the place he or she wishes; and
 - (c) record (by audio, film, photograph, video, or any other means of recording) any thing, process, situation, or transaction in the place he or she wishes.

13B Powers of authorised persons

- (1) The powers referred to in **section 13**, in relation to any place, are the powers to—
- (a) enter and inspect the place:
 - (b) inspect any equipment or device in the place believed on reasonable grounds to be, have been, or be intended

- to be used in the provision of health care services (whether in the place or elsewhere):
- (c) take possession of and remove any equipment or device inspected:
 - (d) inspect any document in the place believed on reasonable grounds to relate to the provision of health care services (whether in the place or elsewhere):
 - (e) take or make copies of, or of extracts from, any document inspected; and for that purpose—
 - (i) take possession of and remove the document from the place, for any reasonable period:
 - (ii) in the case of a document stored otherwise than on paper, take any reasonable steps to reproduce, in usable form, any or all of the information in it.
- (2) An authorised person exercising powers under **subsection (1) or section 13A(2)** may be accompanied by a member of the police, and any assistants necessary in all the circumstances.

13C Requirement to answer questions

- (1) In exercising any of the powers conferred by **section 13B**, an authorised person may require any person appearing to be in charge of, or to be employed in, or to be undertaking or have recently undertaken any work in, the place concerned (or any part of it) to answer any question the authorised person may reasonably ask for the purpose of—
- (a) ascertaining whether the health or safety of people for whom health care services are or may be provided may be at risk; or
 - (b) safeguarding the health or safety of people for whom health care services are or may be provided; or
 - (c) exercising those powers.
- (2) The person is not required to answer the question if the answer may tend to incriminate him or her.

Clause 14

To insert, before *subclause (1)* (lines 5 to 18 on page 17), the following subclause:

- (1A) An authorised person may not under **section 13B(1)(a)** enter any place that is a dwellinghouse, except—
- (a) with the consent of an occupier; or
 - (b) pursuant to a search warrant under this section.

To omit from *subclause (1)* the words “other premises” (at line 11 on page 17), and substitute the words “another place”.

To omit from *subclause (1)(c)* the word “premises are” (at line 17 on page 17), and substitute the words “place is”.

Clause 16

To omit the words “**section 13** in respect of any premises” (at line 27 on page 17), and substitute the words “**sections 13A to 13C** in respect of any place”.

To insert in *paragraphs (a) and (b)*, after the word “charge” (at lines 28 and 31 on page 17), the words “of the place concerned”.

Clause 17(1)

To omit the words “premises under **section 13**, no person in charge of the premises”, and substitute the words “place under **section 13A or section 13B**, no person in charge”.

Clause 17A(1)

To omit *paragraph (c)* (lines 29 to 33 on page 18).

Clause 18

To omit the word “premises” (at lines 2, 3, 4, 9, 22, and 27, on page 21 and lines 2 and 4 on page 22), and substitute in each case the word “place”.

To omit the words “premises are” (at line 7 on page 21), and substitute the words “place is”.

To omit *paragraph (d)* (lines 16 to 20 on page 21).

To omit the words “premises concerned were” (at lines 19 and 20 on page 22), and substitute the words “place concerned was”.

Clause 18A

To insert, after *clause 18*, the following clause:

18A Director-General may revoke cessation or closing order

The Director-General may revoke a cessation order or a closing order if satisfied that—

- (a) the reasons for which it was issued no longer apply; and
- (b) it is unlikely that those reasons will apply again in the short term; and
- (c) there are no other reasons that would justify the issue of a cessation order or a closing order in respect of the person or place concerned.

Clauses 19 to 19B

To omit *clause 19* and the heading following it (lines 23 to 38 on page 22 and 1 to 8 on page 23), and substitute the following headings and clauses:

Part 4 Miscellaneous

Appeals

19 Rights of appeal

- (1) A person may appeal to a District Court against the cancellation under **section 5K** of the person’s certification to provide health care services of any kind.
- (2) An auditing agency may appeal to a District Court against the cancellation under **section 8(1)** of the agency’s designation.
- (3) A person in respect of whom a cessation order or a closing order is served may appeal to a District Court against it.

- (4) An appeal against a cessation order or a closing order must be brought within 14 days after it is served.
- (5) The Court's decision is final.

19A Suspension of cancellation or order

- (1) At any time after an appeal against the cancellation of a person's certification to provide health care services of any kind has been lodged, the District Court may suspend the cancellation until the appeal has been disposed of, if (and only if) it is satisfied that it is not necessary in the public interest for the person to be prevented from providing health care services of that kind until then.
- (2) At any time after an appeal against a cessation order or a closing order has been lodged, the District Court may suspend the operation of the order until the appeal has been disposed of, if (and only if) it is satisfied that it is not necessary in the public interest for the person to be prevented from providing health care services of that kind concerned or (as the case may be) using the place concerned until then.
- (3) A suspension may be unconditional, or subject to any conditions the Court thinks fit.
- (4) The Court may at any time cancel the suspension.
- (5) Except as provided in **subsections (1) and (2)**,—
 - (a) the lodging of an appeal against the cancellation under **section 5K** of a person's certification to provide health care services of any kind does not affect the operation of the cancellation:
 - (b) the lodging of an appeal against a cessation order or a closing order does not affect the operation of the order.
- (6) The lodging of an appeal against the cancellation under **section 8(1)** of an auditing agency's designation does not affect the operation of the cancellation.

Regulations

19B Regulations

- (1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:
 - (a) prescribing in respect of services that are hospital care or rest home care, a means by which there can be ascertained—
 - (i) minimum numbers of nursing and other care staff who must be on duty (at any time, or at different times) in premises in which the care is being provided; and
 - (ii) any minimum qualifications any of them must have.

- (b) prescribing fees for the purposes of this Act, or a means by which fees for the purposes of this Act may be calculated or ascertained;
 - (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) While regulations under **subsection (1)(a)** are in force in respect of health care services of any kind, any part of the service standards for providing health care services of that kind that states minimum levels of staffing in premises in which services of that kind are being provided does not apply.

Offences

Clause 20

To omit from *subclause (1)(a)* the expression “**section 4(1)**” at line 35 on page 23, and substitute the expression “**section 4**”.

To omit *subclause (3)* (lines 11 to 14 on page 24), and substitute the following subclause:

- (3) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$1000, who—
 - (a) intentionally obstructs, hinders, or resists an authorised person exercising or attempting to exercise powers under any of **sections 13A to 13C**; or
 - (b) intentionally fails to answer a question (other than a question whose answer may tend to incriminate the person) asked by an authorised person under **section 13C**; or
 - (c) when asked a question by an authorised person under **section 13C**, gives an answer the person knows to be false or misleading.

Clause 20A

To omit from *paragraph (a)* the words “any person was certified by a designated agency” (at lines 19 and 20 on page 24), and substitute the words “a person was certified by the Director-General”.

To omit from *paragraph (b)* the word “any” where it first occurs (at line 21 on page 24), and substitute the word “a”.

To omit from *paragraph (c)* the words “or section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992” (at lines 26 to 28 on page 24).

To insert in *paragraph (d)*, after the word “registered” (at line 30 on page 24), the words “or deemed to be registered”.

To omit *paragraph (e)* (lines 33 to 35 on page 24), and substitute the following paragraphs:

- (da) that at any time rest home care was provided in a home within the meaning of the Old People’s Homes Regulations 1987:

- (e) that at any time rest home care was provided under the authority and in accordance with the terms of a licence granted under the Old People's Homes Regulations 1987.

Clause 20B(c)

To omit the word "premises" (at line 15 on page 25), and substitute the word "place".

Clause 21

To omit *section 21* (lines 2 to 25 on page 26), and substitute the following headings and clause:

Limitations on licensing and registration

**21 Limitations on licensing and registration after
30 September 2002**

- (1) After 30 September 2002,—
 - (a) no licence may be issued under Part V of the Hospitals Act 1957, unless—
 - (i) the premises concerned are already a licensed hospital within the meaning of section 118 of that Act; or
 - (ii) the licence is a substituted licence issued under section 128A of that Act:
 - (b) no home may be registered under section 18 of the Disabled Persons Community Welfare Act 1975, unless it is intended to accommodate people who will move there from a home already so registered:
 - (c) no licence may be granted in respect of any premises under the Old People's Homes Regulations 1987, unless—
 - (i) the premises are already a home (within the meaning of those regulations); or
 - (ii) the licence is a substituted licence granted under regulation 28 of those regulations.
- (2) The following enactments are repealed:
 - (a) subsections (1) and (2) of section 119, and section 134(1), of the Hospitals Act 1957:
 - (b) subsections (1), (2), and (6) of section 18 of the Disabled Persons Community Welfare Act 1975:
 - (c) section 4(1) of the Disabled Persons Community Welfare Amendment Act 1997.
- (3) Regulations 4, 21, and 22 of the Old People's Homes Regulations 1987 are revoked.
- (4) This section expires on 1 January 2004.

*Amendments, repeals, revocations, and savings**Clause 22*

To insert, after *subclause (1)* (lines 26 to 28 on page 26), the following subclause:

- (1A) The following enactments are consequentially repealed:
- (a) section 10 of the Dietitians Amendment Act 1999 (1999 No 130):
 - (b) so much of the Schedule of the Medicines Amendment Act 1999 (1999 No 117) as relates to section 24 of the Misuse of Drugs Act 1975.

To omit paragraph (b) of the definition of **hospital care institution** in *subclause (3)* (lines 27 to 31 on page 27), and substitute the following paragraph:

- (b) at a time before 1 October 2004, includes a licensed hospital (within the meaning of section 118 of the Hospitals Act 1957)

To omit paragraph (b) of the definition of **hospital care operator** in *subclause (3)* (lines 36 to 38 on page 27 and 2 and 3 on page 28), and substitute the following paragraph:

- (b) at a time before 1 October 2004, includes the licensee of a licensed hospital (within the meaning of section 118 of the Hospitals Act 1957)

To omit from paragraph (b) of the definition of **residential disability care institution** in *subclause (3)* the words “the commencement of **section 23**” (at lines 10 and 11 on page 28), and substitute the expression “1 October 2004”. To omit from paragraph (b) of the definition of **residential disability care operator** in *subclause (3)* the words “the commencement of **section 23**” (at lines 17 and 18 on page 28), and substitute the expression “1 October 2004”. To omit from paragraph (b) of the definition of **rest home** in *subclause (3)* the words “the commencement of **section 23**” (at lines 27 and 28 on page 28), and substitute the expression “1 October 2004”.

To insert in paragraph (a) of the definition of **rest home operator** in *subclause (3)*, after the word “home” at line 35 on page 28, the word “care”.

To omit from paragraph (b) of the definition of **rest home operator** in *subclause (3)* the words “the commencement of **section 23**” (at lines 36 and 37 on page 28), and substitute the expression “1 October 2004”.

Clause 23

To insert, after *subclause (1)* (lines 4 and 5 on page 29), the following subclause:

- (1A) Section 138 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 is repealed.

To omit *subclause (3)* (lines 8 and 9 on page 29)

Clause 25

To insert, after *clause 24* (lines 10 to 22 on page 29), the following clause:

25 Statutory references to psychiatric hospitals

After 30 September 2002, a reference to a psychiatric hospital in an enactment must be read as a reference to a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, unless—

- (a) the term **psychiatric hospital** is defined in or for the purposes of the enactment; or
- (b) the reference is part of a provision referring to Part V of the Hospitals Act 1957.

Schedule 1 (page 30)

To omit from the form the words “other premises” where they first occur, and substitute the words “another place”.

To omit from *paragraph (a)* of the form the expression “**section 4(1)**”, and substitute the expression “**section 4**”.

To omit from the form the words “other premises” where they secondly occur, and substitute the words “other place”.

Schedule 2

To omit so much of that schedule as relates to section 4 of the Occupational Therapy Act 1949 (on pages 31 and 32), section 4 of the Nurses Act 1977 (on page 43), or section 3 of the Psychologists Act 1981 (on page 46).

To omit from proposed new *section 28(1)* of the Dietitians Act 1950 (on page 34) the expression “\$500”, and substitute the expression “\$10,000”.

To omit *paragraph (b)* of the proposed new definition of **sheltered workshop** in section 2 of the Disabled Persons Employment Promotion Act 1960 (on page 35).

To omit the items relating to section 3(1) of the Social Security Act 1964 (on page 36), and substitute the following items:

Repeal the definition in section 3(1) of **residential care disability services** and substitute the following:

“**residential care disability services** means disability services that—

- “(a) are supplied to a person who is residing for the time being in a hospital care institution or rest home within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act **2001**; and
- “(b) are provided in compliance with **section 4** of that Act”.

Omit from the definition in section 3(1) of **residential care services** the words “an appropriately licensed or registered home” and substitute the words “a residential disability care institution or rest home within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act **2001**”.

To omit from the proposed new section 75(1) of the Social Security Act 1964 (on page 37) the words “hospital and health service within the meaning of the Health and Disability Services Act 1993”, and substitute the words “district health board within the meaning of the New Zealand Public Health and Disability Act 2000”.

To insert, after the item relating to section 27G(3) of the Social Security Act 1964 (on page 37), the following items:

Omit from section 69F(1) the words “that the person”.

Repeal section 69F(1)(c) and substitute the following:

“(c) that the person—

“(i) is frail, solely or principally because of age; and

“(ii) requires residential care disability services; and”.

To omit from proposed new *section 24(1)* of the Misuse of Drugs Act 1975 (on page 39) the word “provides”, and substitute the word “supplies”.

To insert in proposed new *section 24* of the Misuse of Drugs Act 1975, after *subsection (1)* (on page 39), the following subsection:

“(1A) Every registered midwife or designated practitioner commits an offence against this Act who prescribes, administers, or supplies a controlled drug for or to a person who the midwife or practitioner has reason to believe is dependent on that or any other controlled drug, in the course of, or for the purpose of, the treatment of the person for dependency.

To omit from proposed new *section 24(7)(a)* of the Misuse of Drugs Act 1975 (on page 41) the word “provide”, and substitute the word “supply”.

To omit from proposed new *section 24(7)(b)* of the Misuse of Drugs Act 1975 (on page 42) the word “provided”, and substitute the word “supplied”.

To omit from *paragraph (b)* of the proposed new definition of **home** in section 2 of the Disabled Persons Community Welfare Act 1975 (on page 42) the words “, a hospital (within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992),”.

To omit the items relating to sections 9(3) and 28(1) of the Psychologists Act 1981 (on page 46), and substitute the following item:

Repeal the definition of **hospital** in section 28(1) and substitute:

“**hospital** means a hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act 2001”.

To omit the item relating to section 2(1) of the Medicines Act 1981 (on pages 46 and 47), and substitute the following item:

Repeal the definition of **hospital** in section 2(1) and substitute:

“**hospital** includes a hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act 2001”.

To omit *paragraph (b)* of the proposed new definition of **hospital** in section 2(1) of the Goods and Services Tax Act 1985 (on page 47).

To omit from the items relating to the definitions of **hospital** and **medical superintendent** in section 2 of the Dental Act 1988 (on page 48) the expression “paragraph (a)”, and substitute in each case the expression “paragraphs (a) and (b)”.

To omit *subparagraph (iii)* of proposed new section 14(2)(c) of the Children, Young Persons, and Their Families Act 1989 (on page 48).

To omit from proposed new *section 142(5)* of the Children, Young Persons, and Their Families Act 1989 (on page 49) the expression “353”, and substitute the expression “363”.

To omit from proposed new *section 142(6)* of the Children, Young Persons, and Their Families Act 1989 (on page 50) the word “hospital”, and substitute the words “residential disability”.

To omit the proposed amendment to section 147(2) of the Children, Young Persons, and Their Families Act 1989 (on page 50), and substitute the following item:

Omit from section 147(2) the words “the controlling authority of a home registered under the Disabled Persons Community Welfare Act 1975” and substitute the words “a residential disability care operator within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act **2001**”.

To omit the items relating to the Education Act 1989 (on page 50), and substitute the following items:

Education Act 1989 (1989 No 80)

Omit from paragraph (c) of the definition of **special institution** in section 92(1) the words “or a hospital (within the meaning of section 2 of the Hospitals Act 1957, section 2 of the Mental Health Act 1969, or section 2 of the Area Health Boards Act 1983)” and substitute the words “a hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act **2001**”.

Repeal paragraphs (c), (e), and (f) of section 308(2) and for paragraph (e) substitute:

“(e) hospital care institutions within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act **2001**.”

To omit the item relating to the Employment Contracts Act 1991 (on page 51).

To omit the items relating to the Mental Health (Compulsory Assessment and Treatment) Act 1992 (on pages 51 and 52), and substitute the following item:

Repeal the definition of **hospital** in section 2(1) and substitute:

“**hospital**—

“(a) means premises that—

“(i) are used to provide hospital mental health care in accordance with **section 4** of the Health and Disability Services (Safety) Act **2001**; or

“(ii) are not yet used, but are intended to be used, to provide hospital mental health care, and are occupied by a person certified under that Act to provide hospital mental health care;—

but where only parts of any premises are used (or intended to be used) to provide hospital mental health care, means only those parts; and

“(b) at a time before 1 October 2004, includes premises licensed or deemed to be licensed as a psychiatric hospital pursuant to Part V of the Hospitals Act 1957

“**hospital mental health care** means hospital care (within the meaning of the Health and Disability Services (Safety) Act 2001) that is, or consists principally of, mental health services”.

To omit *paragraphs (b) and (c)* of the proposed new definition of **health care institution** in section 2 of the Health and Disability Commissioner Act 1994 (on pages 52 and 53), and substitute the following paragraph:

“(c) a children’s health camp operated by Children’s Health Camps—The New Zealand Foundation for Child and Family Health and Development; or

To omit the items relating to the Births, Deaths, and Marriages Registration Act 1995 and the Medical Practitioners Act 1995 (on page 54), and substitute the following items:

Births, Deaths, and Marriages Registration Act 1995

(1995 No 16)

Repeal the definition of **hospital** in section 2 and substitute:

“**hospital** means a hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act 2001”.

Medical Practitioners Act 1995 (1995 No 95)

Repeal paragraphs (a) and (b) of the definition of **hospital** in section 2(1) and substitute:

“(a) any hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act 2001.”.

Repeal paragraphs (a) and (b) of section 152(4) and substitute:

“(a) a hospital care operator within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act 2001.”.

To add the following item:

Employment Relations Act 2000 (2000 No 24)

Omit clause 11 of Part A of Schedule 1 and substitute:

“11 The operation of—

“(a) a hospital care institution within the meaning of **section 22(3)** of the Health and Disability Services (Safety) Act 2001; or

“(b) a service necessary for the operation of such an institution.”

Schedule 3

To omit proposed new *paragraph (b)* of regulation 4 of the Health (Retention of Health Information) Regulations 1996 (on pages 58 and 59).

Schedule 4

To omit the item relating to the Hospitals Amendment Act 1981 on page 60.

Explanatory note

As introduced, this Bill established a system under which the Ministry of Health designated private sector “designated agencies”, and these agencies both “certified” (in effect, registered) providers of health care services and from time to time audited the provision of health care services by the providers they certified.

The principal change effected by the amendments proposed in this Supplementary Order Paper is that, while the Ministry will continue to designate agencies, it will also certify providers; and the function of designated agencies (now to be called “auditing agencies”) will be limited to auditing the provision of health care services by certified providers.

The amendment to *clause 1* omits the subclauses relating to the Bill’s commencement, which is now dealt with in new *clause 1A*.

Proposed *new clause 1A* must be read together with *clause 4B* (which provides for a 2-year transitional period during which institutions already licensed or registered under the present system will be able to continue operating without being certified). It has the effect that—

- the provisions requiring providers of health care services to be certified and comply with service standards, and various enforcement provisions, come into force on 1 October 2002;
- the provisions repealing and revoking the legislation supporting the present system come into force on 1 October 2004 (that is to say, at the end of the transitional period);
- the rest of the Bill (including the provisions enabling providers to become certified and auditing agencies to become designated) comes into force on 1 July 2002.

Proposed *new clause 1B* is a purpose clause. It provides that the Bill’s purpose is to—

- promote the safe provision of health and disability services to the public; and
- enable the establishment of consistent and reasonable standards for providing health and disability services to the public safely; and
- encourage providers of health and disability services to take responsibility for providing those services to the public safely; and
- encourage providers of health and disability services to the public to improve continuously the quality of those services.

The amendments to *clause 2(1)*, which defines terms used in the Bill, fall into 2 classes. Some, such as the new definitions of **auditing agency** and **audit report**, reflect the other amendments made. Others are miscellaneous amendments, of which the most significant is a definition of **affected consumers** (for the purpose of the provisions of the Bill requiring the Minister to consult on the approval of service standards). In addition, the definitions of **health or disability services** and **rest home care** have been removed; and those expressions are now defined in new *clauses 2AA* and *2AB*.

New clause 2AA contains a redrafted definition of **health or disability services**, extending its meaning to cover—

- collecting, storing, and transporting human tissue or human bodily substances in connection with the provision of health and disability services; and
- any services within the meaning of the New Zealand Public Health and Disability Services Act 2000); and
- “services intended to enable the detection, the diagnosis, the determination of the nature or extent or prognosis, or the monitoring, of any illness, injury, or other condition, the treatment of which (or the treatment of the effects of which) is or would be providing health or disability services of any kind” (which enables providers of various scanning, screening, and testing services to be required to meet service standards approved under the Bill).

New clause 2AB contains a redrafted definition of **rest home care** that limits its meaning so as not to include geriatric services.

The redrafted *clause 2A* reflects the fact that consultation on whether the application of the Bill should be extended to the provision of health or disability services of other kinds will now be undertaken as part of the process by which service standards for providing such services are approved.

The amendment to *clause 3(1)* reflects the fact that the management of Children’s Health Camps has now passed to the organisation known as Children’s Health Camps—The New Zealand Foundation for Child and Family Health and Development.

Clause 3(4) (which defers the application of the certification provisions of the Bill to the institution known as Ashburn Hall) is omitted because, with the passage of time and the undertaking of certain improvements at Ashburn Hall, it will be possible for the Bill to apply to Ashburn Hall in the same way as it applies to other institutions.

New clause 4 (which requires health care service providers to be certified, meet the service standards applicable to the services they provide, and comply with the Bill) is to the same effect as the present clause, but has been recast a little to reflect the other amendments being made to the Bill. Also, it omits the subclause relating to the effect of exemptions under *clause 5D*, which are now dealt with in that clause.

New clause 4A makes clear that people who are agents, employees, officers, or servants of a certified provider do not themselves have to be certified. It thus also make clear that an individual whose certification is cancelled may

continue to work in his or her profession as the agent, employee, officer, or servant of a certified provider (unless, of course, he or she is also deregistered under legislation relating to the practice of that profession).

New clause 4B provides for the transitional period during which institutions licensed or registered under the present system on 30 September 2002 will be able to continue operating without being certified. Those provisions of the enactments under which they were licensed or registered that enable their licence or registration to be revoked in appropriate cases will continue in force during the transitional period; but no new licensing or registration will be possible.

At present, *clause 5A* empowers the Minister to issue service standards, *clause 5B* requires certain consultation to be undertaken before service standards are issued, *clause 5C* relates to the commencement of service standards, and *clause 5D* empowers the Minister in certain cases to grant exemptions from the requirement to meet service standards. It is now proposed to replace *clauses 5A to 5D* with 13 new clauses (*5A to 5F*).

New clause 5A empowers the Minister to approve service standards.

New clause 5AA provides for the approval of amendments of service standards, and the revocation of approvals and amendments.

New clause 5AB provides that the power to approve service standards cannot be delegated.

New clause 5AC provides that the Regulations (Disallowance) Act 1989 applies to a notice approving service standards; so it must be published as a statutory regulation, and can be disallowed under that Act (with the consequential disallowance of the standards), and also empowers the Director-General of Health to certify that particular documents are in fact service standards.

New clause 5AD requires the Director-General to keep available for inspection or purchase copies of all service standards in force.

New clause 5AE states the process the Minister is to follow, and the criteria the Minister is to have regard to, in approving service standards for delivering health or disability services of any kind. The Minister must—

- consult (under *new clause 5AG*) on either whether some existing document may contain suitable standards, or in general terms on what service standards for providing services of that kind should be approved:
- consider the outcome of the consultation:
- if the initial consultation was in general terms, create an initial draft of proposed standards and consult further:
- be satisfied that requiring providers to comply with the standards approved would be in the public interest, having regard to—
 - the extent to which compliance would be likely to ensure the safe provision of services to the public; and
 - likely compliance costs.

New clause 5AF states the process the Minister is to follow, and the criteria the Minister is to have regard to, in approving amendments of service standards, and parallels *new clause 5AE*.

New clause 5AG is a general provision about consultation by the Minister. When required under *new clause 5AE* or *new clause 5AF* or *new clause 5E* to consult on a matter relating to health or disability services of any kind,—

- the Minister must consult organisations representing affected consumers, organisations representing affected providers, reasonably representative samples of affected consumers (or people entitled to consent to treatment on behalf of affected consumers) and affected providers, and all Crown entities whose functions are or include purchasing services of that kind; and
- if the services are usually provided by people who must be registered or licensed, the Minister must also consult the registration or licensing body.

New clause 5AH states matters that service standards may contain.

New clause 5C relates to the commencement of service standards and amendments to them; and provides that neither service standards (other the initial standards to be approved under the Bill for services at present provided in premises licensed or registered as hospitals, residential disability homes, or rest homes) nor amendments to them (other than amendments correcting errors or omissions) can come into force until at least 6 months after they are approved.

New clause 5D provides for the granting of exemptions in respect of elements of service standards; and in addition states the effect of exemptions (a matter at present dealt with in *clause 4*).

New clause 5E requires the Minister to undertake consultation on existing service standards at least every 4 years, to see if they should continue in force unamended, or be amended, or be replaced by new service standards.

New clause 5F provides that the consultation process required by *new clause 5AE* does not apply to some initial service standards to be approved for services at present provided in premises licensed or registered as hospitals, residential disability homes, or rest homes (because there has already been extensive consultation on these standards).

New clauses 5G to 5L (which provide for the certification of providers by the Ministry) are, effectively, replacements for *clauses 12A and 12B* (which provide for the certification of providers by designated agencies, and are to be omitted).

New clause 5G empowers the Director-General of Health to certify people or organisations to provide health care services of any kind. Certification will be for a fixed period, and may be subject to conditions.

New clause 5H states the criteria providers must satisfy if they are to be certified. They are that—

- the person has applied in writing to be certified, and paid the prescribed fee:

- the Director-General has been given a copy of a recent audit report on the person's provision of health care services of the kind concerned;
- the Director-General is satisfied that the person meets the service standards for providing health care services of that kind.

The Director-General is entitled to rely on the audit report in coming to a decision, but may have regard to any other relevant matter.

New clause 5I relates to the conditions subject to which providers may be certified.

New clause 5J makes clear that certification expires after a period (not longer than 5 years) fixed when it is granted, but can be renewed before it expires. The period must be no more than 3 years unless—

- the person being certified is already certified to provide health care services of the kind concerned; and
- the Director-General is satisfied that the person has been improving, and is likely to continue to improve, the quality of the health care services of that kind.

New clause 5K relates to the cancellation of certification. Of particular importance is *subclause (2)*, which empowers the Director-General to—

- require providers whose auditing agency has had its designation cancelled to forward a recent audit report, obtain and forward a new audit report, or make arrangements to have their next scheduled audit undertaken by a new agency and give the Director-General details; and
- cancel their certification if providers fail to comply within 3 months.

New clause 5L requires providers of health care services to notify the Director-General of—

- the name, address, and telephone number of a person the Director-General should contact about the services;
- all changes in the name, address, or telephone number of the person the Director-General should contact about the services;
- fixed locations where the services are to be provided;
- if the provider is a body corporate, any change in the membership of its governing body;
- if the provider is a trust or partnership, any change in the trustees or partners;
- any incident or situation (for example, a fire, flood, or failure of equipment or facilities) putting the health or safety of people for whom the services are provided at risk;
- any police investigation into an aspect of the services, their provision, or any premises in which they were provided;
- any death of a person to whom the services were provided, or occurring in any premises in which they were provided, that is required to be reported to a coroner under the Coroners Act 1988.

New clauses 6 to 6B replace existing *clause 6* (which related to the designation of designated agencies to certify and audit providers of health care services), and reflect the role now proposed for auditing agencies.

New clause 6 provides for the designation of auditing agencies.

New clause 6A (which states the criteria for the designation of external auditing agencies) now provides for prospective agencies to pay a fee for designation.

New clause 6B states the criteria for the designation of employees of the Ministry as auditing agencies. Ministry employees will be designated only to enable the auditing of “providers or prospective providers of health care services who cannot find a convenient or appropriate auditing agency to audit their provision of those services”. They will be able to charge fees for the auditing they do.

New clauses 7A to 9 reflect the new certification and auditing provisions of the Bill.

New clause 7A requires auditing agencies to forward copies of audit reports to the Director-General (so that the Director-General is informed about matters relevant to continuing certification, and possible cancellation of certification).

New clause 8 relates to the cancellation of certification, and is to the same effect as the present clause (but with additional provisions relating to the cancellation and expiry of the certification of employees of the Ministry).

New clause 9 requires the Director-General to notify private auditing agencies of the cancellation of their certification, and is to the same effect as the present clause. In addition, however, it requires the Director-General to try to contact providers audited by an agency whose recognition has been cancelled, and tell them of the cancellation, and the effect of *clause 5K(2)*.

Clause 10 is omitted, because the matter to which it relates (appeals against the cancellation of an auditing agency’s designation) is now to be dealt with in *clause 19*.

Clauses 11 to 12B are omitted because they are now unnecessary (either because the matters they deal with are now dealt with elsewhere or because they are not applicable to the new arrangements the Bill provides for).

New clauses 13 to 13C, and the amendments to *clauses 14, 16, and 17(1)* have 3 effects—

- they enable authorised persons to enter (as well as places where health care services are or may be being provided) places where there are documents, equipment, or devices relating to, or used in relation to, the provision of health care services in any other place:
- *clause 13A* enables authorised persons to enter and monitor places where people are continuing to provide services even though their provision is unlawful (because the provider is not certified or is subject to a cessation order, or the place is subject to a closing order):
- *clause 13C* empowers authorised persons exercising powers under *clause 13B* to require the person in charge of the place concerned, or any person who works there, to answer reasonable questions (but the person

is not required to answer a question if the answer might tend to incriminate him or her).

The amendment to *clause 16* requires authorised persons to have a warrant, or the occupier's consent, before exercising their powers of entry in respect of a dwellinghouse.

The omission of *clauses 17A(1)(c) and 18(1)(d)* has the effect that it will no longer be possible to issue a cessation or closing order simply because a service provider is mentally disordered (which would probably be contrary to the Human Rights Act 1993). It will, however, be possible to issue such an order if a mentally disordered provider is providing services without complying with the relevant standards, or in an unsafe or insanitary manner.

The other amendments to *clauses 17 and 18* are minor drafting amendments.

New clause 18A gives an express power to revoke cessation and closing orders.

New clause 19 brings all rights of appeal under the Bill into a single clause.

New clause 19A gives a District Court hearing an appeal against the cancellation of a person's certification, or against a cessation or closing order, power to suspend the operation of the cancellation or order until the appeal is dealt with.

New clause 19B empowers the making of regulations for the purposes of the Bill, in particular, regulations prescribing minimum staffing levels for the provision of hospital care or rest home care, and regulations prescribing fees.

The amendment to *clause 20* creates 3 new offences—

- obstructing, hindering, or resisting an authorised person exercising powers under *sections 13A to 13C*;
- failing to answer a question (other than a question whose answer might tend to incriminate) asked by an authorised person under *section 13C*;
- giving a false or misleading answer to a question asked by an authorised person under *section 13C*.

The amendments to *clause 20A* are drafting amendments only.

New clause 21 is to the same effect as existing *clause 21*, except for new dates arising from the commencement provisions in *new clause 1A*.

The amendment to *clause 22* adds additional consequential amendments.

The amendments to *clause 23* repeal certain spent transitional provisions of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and omit the subclause dissolving the Anaesthetic Mortality Assessment Committee (which has been dissolved by the New Zealand Public Health and Disability Act 2000).

New clause 25 relates to certain statutory references to psychiatric hospitals. A number of enactments contain references to psychiatric hospitals without a precise indication of what the term means. So long as the Hospitals Act 1957 continues to provide for hospitals to be registered as psychiatric hospitals, these references are probably reasonably clear. But when hospital licensing is replaced by a system of certifying services (and given that what were once

called psychiatric services are now customarily called mental health services), they may become a little obscure.

Accordingly, the clause provides that all these non-specific references are to be read as references to a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

The amendments to *Schedule 1* are minor drafting amendments.

The amendments to *Schedule 2*—

- adjust certain consequential amendments contained in that schedule so as to take account of the passage of the Medicines Amendment Act 1999 and the Health Occupational Registration Acts Amendment Act 1999; and
- consequentially repeal certain enactments; and
- update a reference to a licensed hospital in the Employment Relations Act 2000; and
- make a number of miscellaneous drafting changes.

The amendment to *Schedule 3* is a minor drafting change.

The amendment to *Schedule 4* repeals an amendment made to the Hospitals Act 1957 by the New Zealand Public Health and Disability Act 2000.
