

# **Health Practitioners Competence Assurance Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The principal purpose of the Health Practitioners Competence Assurance Act 2003 (the Act) is “to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions”.

Section 171 of the Act requires the Director-General of Health to review the operation of the Act after its first 3 years. The review, completed in 2009, found that the Act was generally operating as intended but recommended a number of legislative amendments (along with a number of operational changes) to clarify the Act’s interpretation and improve its operation. Consistent with section 171, the review focused on the operation of the Act rather than its policy settings.

This was followed in 2012 by a strategic review of the Act to examine whether the underlying policy settings remained appropriate. A number of recommendations arose from this second review, aimed at providing tangible evidence of responsible authorities’ performance, better visibility of decisions about practitioner practice, greater recognition of the importance of interdisciplinary collaboration and co-operation, and better workforce information.

This Bill implements recommendations arising from both the 2009 and 2012 reviews. It amends the Act to clarify its interpretation and improve its operation. In particular, the Bill—

- amends provisions in the Act to clarify that responsible authorities can receive and act on information from members of the public about the practice, conduct, or competence of health practitioners; and
- amends provisions in the Act to make information about orders made by an authority under sections 38, 39, 48, 50, and 51 more easily available; and

- amends provisions in the Act to improve the efficiency of processes, including allowing responsible authorities to delegate to a committee their power to appoint a professional conduct committee and giving responsible authorities discretion as to whether to refer notice of minor offences to a professional conduct committee; and
- amends provisions in the Act to improve the efficiency of processes for operating the Health Practitioners Disciplinary Tribunal (the **Tribunal**), including allowing the chairperson of the Tribunal to issue at any time before a charge is heard an order for the non-publication of names where all parties consent, enabling the Tribunal to set a minimum period within which a health practitioner whose registration has been cancelled cannot apply for reregistration, and enabling the Tribunal to notify any employer of orders made by the Tribunal; and
- amends provisions in the Act so that if a practitioner is involved in a criminal proceeding or an investigation, a responsible authority may order the suspension of the practitioner's practising certificate or registration only if the authority believes the practitioner's alleged conduct poses a risk of serious harm to the public; and
- amends provisions relating to quality assurance activities by reducing the administrative burden of reporting requirements for quality assurance activities; and
- amends provisions relating to scopes of practice and registration to clarify that provisions relating to unpaid fines, costs, or expenses include those imposed under former legislation and to allow a responsible authority to require a health practitioner to be examined by an appropriate health practitioner (other than a medical practitioner, which is already allowed) where the authority considers the health practitioner is unable to perform the functions required for his or her profession because of some mental or physical condition; and
- gives the Governor-General, on the recommendation of the Minister of Health, the power by Order in Council to amalgamate existing authorities when it is in the public interest; and
- requires an authority to promote and facilitate interdisciplinary collaboration and co-operation in the delivery of health services; and
- introduces regular performance reviews of authorities; and
- requires authorities to provide to the Director-General of Health information that will assist with workplace planning and development.

### **Departmental disclosure statement**

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2018&no=25>

### Regulatory impact assessment

The Ministry of Health produced a regulatory impact assessment on 17 November 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/2012-review-health-practitioners-competence-assurance-act-2003-regulatory-impact-statement>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* provides that the Bill amends the Health Practitioners Competence Assurance Act 2003.

## Part 1

### Amendments to principal Act

*Clause 4* inserts *new section 5A* to give effect to a new schedule of the Act for transitional, savings, and related provisions.

*Clause 5* amends section 17 to provide that if a person who applies to an authority to be registered as a health practitioner, or for a change in the authorisation of his or her existing scope of practice, has outstanding fines, costs, or expenses imposed by or under any former registration Act, the Registrar of the authority may decline to take any action in relation to that application until those fines, costs, or expenses are paid.

*Clause 6* amends section 36 to require an authority to inform a person from whom it has received a notice under section 34(1) or (2) whether it is going to review the competence of the health practitioner. A notice under section 34(1) or (2) may be received by the Registrar of an authority from a health practitioner, the Health and Disability Commissioner, or the Director of Proceedings who believes that a practitioner is posing a risk of harm to the public by practising below the required standard of competence.

*Clause 7* inserts *new section 38(3A)* to provide that if an order is made under section 38(1) following receipt of a notice given under section 34(1) or (2), the person who gave the notice must be informed of the order made. An order made under section 38(1) may require a health practitioner to undertake a competence programme, to sit

an examination or undertake an assessment, or be counselled or assisted, or the order may impose any conditions on a health practitioner's scope of practice.

*Clause 8* inserts *new section 39(3A)* to provide that a copy of an order made under section 39(2) in respect of a health practitioner must be given not only to the health practitioner concerned, but also to other persons, including any person from whom a notice under section 34(1) or (2) was received. An order under section 39(2) may suspend the practising certificate of a health practitioner, or alter a health practitioner's scope of practice.

*Clause 9* makes technical changes to section 48(1) and (3) and replaces section 48(6). *New section 48(6)* requires that a copy of an order made under section 48 in respect of a health practitioner be given not only to the health practitioner concerned, but also to the employer of the health practitioner and any person working in partnership or association with the health practitioner. A *new subsection (7)* is also inserted to require that a person from whom a notice under section 45 (notice of belief that a health practitioner is unable to perform functions because of some mental or physical condition) was received also be informed of the order made under section 48. An order under section 48 may suspend the practising certificate of a health practitioner, or alter a health practitioner's scope of practice.

*Clause 10* amends section 49 to provide that the examination or testing of a health practitioner under that section may be undertaken by any other health practitioner (who need not be a medical practitioner, as is currently required).

*Clause 11* amends section 50(1), which is consequential on the amendment to section 49 (see *clause 10*). *Clause 11* also replaces section 50(6)(a). *New section 50(6)(a)* requires that a copy of an order made under section 50 in respect of a health practitioner be given not only to the health practitioner concerned, but also to the employer of the health practitioner and any person working in partnership or association with the health practitioner. *New subsection (6A)* is inserted to require that a person from whom a notice under section 45 was received also be informed of the order made under subsection (3) or (4). An order under section 50 may suspend the practising certificate of a health practitioner, or alter a health practitioner's scope of practice.

*Clause 12* replaces section 51(6). *New section 51(6)* requires that a copy of an order made under section 51 be given not only to the health practitioner concerned, but also to other persons who have been informed of an order made under section 39, 48, or 50. An order under section 51 may revoke the suspension of a health practitioner's practising certificate or any alterations to a health practitioner's scope of practice.

*Clause 13* amends section 58(1) to extend the reporting period in respect of a quality assurance activity from every 6 months to every 12 months.

*Clause 14* makes the following 3 amendments to section 68:

- the heading is amended to reflect the amendment to subsection (3):
- subsection (2) is replaced by 2 new subsections, the effect of which is that a notice of conviction given under section 67(b) need not be referred to a professional conduct committee if the conviction is for an offence punishable by a

fine of less than \$1,000 and the conviction raises no concerns about the appropriateness of the conduct or the safety of the practice of the health practitioner:

- subsection (3) is amended to enable the information held by a responsible authority to also be referred to a professional conduct committee.

*Clause 15* amends section 69 so that if a practitioner is alleged to have engaged in conduct that is relevant to a criminal proceeding against the practitioner or an investigation about the practitioner, a responsible authority may order the suspension of the practitioner's practising certificate only if the authority believes that the practitioner's conduct poses a risk of serious harm to the public. This suspension threshold is higher than the present threshold (which is reached when the authority believes the conduct casts doubt on the appropriateness of the practitioner's conduct in his or her professional capacity), which continues to apply in relation to an order that 1 or more conditions be included in the practitioner's scope of practice. Notice that an order has been made under this section must be given as soon as practicable to the health practitioner concerned, any employer of the practitioner, and any person who works in partnership or association with the practitioner.

*Clause 16* inserts *new section 92A*, which enables the chairperson of the Tribunal, on the application of the parties, to prohibit the publication of the name of any person prior to any hearing of the Tribunal.

*Clause 17* amends section 93 so that at any time after a notice has been given to a health practitioner under section 92(1), the Tribunal may suspend the practitioner's registration if it believes that the practitioner's conduct poses a risk of serious harm to the public. The Tribunal may still impose conditions on a health practitioner's practice if it considers that it is necessary or desirable to do so to protect the health or safety of the public. A copy of an order made under this section must be given promptly to the health practitioner concerned, the responsible authority, any employer of the practitioner, and any other person specified by the Tribunal.

*Clause 18* amends section 94, which is consequential on the amendment to section 93 (*see clause 17*).

*Clause 19* amends the offence provision in section 95(7), which relates to the contravention of orders made by the Tribunal. This will no longer be a strict liability offence as a defence of reasonable excuse is now included.

*Clause 20* amends section 102 to enable the Tribunal to set a minimum period within which a health practitioner whose registration has been cancelled may not reapply for registration.

*Clause 21* amends section 103 to empower the Tribunal to direct that a health practitioner's employer be given a copy of any order made against the practitioner under section 101(1)(a) to (d).

*Clause 22* inserts *new section 103A*, which requires the responsible authorities to fund the Tribunal's general administration costs for each financial year. Each authority must pay a proportion of the costs determined by reference to the number of health practitioners registered with the authority at the beginning of the financial year.

*Clause 23* makes minor drafting changes to section 104.

*Clause 24* inserts *new section 104A*, which provides that costs, fees, and expenses payable by a responsible authority to the Tribunal are recoverable as a debt.

*Clause 25* gives a more specific heading to section 105.

*Clause 26* inserts *new sections 116A to 116D*. *New section 116A* empowers the Governor-General, by Order in Council, on the recommendation of the Minister of Health, to amalgamate 2 or more existing authorities. A recommendation may be made by the Minister only if—

- the authorities concerned have been consulted; and
- the Minister is satisfied that the amalgamation is in the public's interest.

*New section 116B* sets out the effect of an amalgamation.

*New section 116C* requires the successor of an authority whose appointment is terminated to submit to the Minister of Health a final report of its operations.

*New section 116D* provides that no member of an authority who loses office as a result of an Order in Council made under *new section 116A(1)* amalgamating 2 or more authorities is entitled to compensation.

*Clause 27* amends section 118 to provide that an authority has the following 2 functions:

- to receive information from any person about the practice, conduct, or competence of health practitioners and, if it is appropriate to do so, act on that information;
- to promote inter-disciplinary collaboration and co-operation in the delivery of health services.

*Clause 28* inserts a new cross-heading after section 122 and above *new section 122A*. *New section 122A* provides for authorities to be subject to regular performance reviews. The first performance review of an authority is to be conducted within 3 years of the commencement of *new section 122A*, and subsequent reviews are to be conducted at 5-yearly intervals. For each review, the Ministry of Health must, in consultation with the relevant authority, appoint a reviewer and set the terms of reference. A copy of the report prepared by a reviewer after conducting a review of an authority's performance must be given to the Minister and to the authority, and be published on the authority's Internet site.

*Clause 29* inserts a new cross-heading after section 134 and *new section 134A*. *New section 134A* requires authorities to provide to the Director-General of Health each year information relating to health practitioners who are registered with the authority and who hold current practising certificates. This information will typically include, for each health practitioner, the health practitioner's name, date of birth, employer's name, place or places of work, and the average number of hours worked each week by the health practitioner. This information is required by the Ministry of Health for workplace planning and development and may be used only for that purpose and, un-

less already publicly available, may not be published or disclosed in a manner that identifies the health practitioner.

*Clause 30* inserts *new sections 157A to 157I*. These new sections provide for the issue, publication, and review of naming policies.

*New section 157A* defines the term naming policy.

*New section 157B* requires every authority to issue, within 12 months, a naming policy that sets out when a health practitioner whose competence, ability, or conduct is reviewed or investigated by the authority may be named in a notice published under section 157(1). The policy must set out the guiding principles and the criteria that must be applied, and procedures that must be followed, in determining whether to publicly name a health practitioner.

*New section 157C* requires an authority to undertake consultation with its members, the Privacy Commissioner, the Health and Disability Commissioner, and the Director-General of Health before issuing a naming policy.

*New section 157D* requires an authority, immediately after issuing a naming policy, to make that policy available on the Internet.

*New section 157E* provides that a naming policy comes into force on the day after its issue.

*New section 157F* requires an authority to review its naming policy every 3 years.

*New section 157G* requires naming policies to be consistent with the law, including the Privacy Act 1993.

*New section 157H* provides that a naming policy is not a legislative instrument nor a disallowable instrument.

*New section 157I* provides for an authority that publishes a notice under section 157(1) naming a health practitioner in accordance with a naming policy to be protected by qualified privilege for the purposes of the Defamation Act 1992.

*Clause 31* amends the regulation-making power in section 170 to allow regulations to be made declaring the responsible authorities appointed by or under the Act, and specifying the health professions in respect of which each authority is appointed. This will ensure that responsible authorities are easily identifiable.

## Part 2

### Further amendments to principal Act

*Clause 32* inserts *new Schedule 1AA*, which contains transitional provisions.

*Clause 33* amends clause 6(5) of Schedule 1 to refer to the Evidence Act 2006.

*Clause 34* amends clause 17 of Schedule 3 to remove the prohibition on a responsible authority delegating to a committee appointed under clause 16 its power to appoint a professional conduct committee. The prohibition on a responsible authority delegating to the Registrar of the authority its power to appoint a professional conduct committee continues.





*Hon Dr David Clark*

# **Health Practitioners Competence Assurance Amendment Bill**

Government Bill

## **Contents**

		Page
1	Title	3
2	Commencement	3
3	Principal Act	3
<b>Part 1</b>		
<b>Amendments to principal Act</b>		
4	New section 5A inserted (Transitional, savings, and related provisions)	3
	5A Transitional, savings, and related provisions	3
5	Section 17 amended (Applications for registration of health practitioners and authorisations of scopes of practice)	4
6	Section 36 amended (When authority may review health practitioner's competence)	4
7	Section 38 amended (Orders concerning competence)	4
8	Section 39 amended (Interim suspension of practising certificate or inclusion of conditions in scope of practice pending review or assessment)	4
9	Section 48 amended (Interim suspension of practising certificate or inclusion of conditions in scope of practice in cases of suspected inability to perform required functions due to mental or physical condition)	5
10	Section 49 amended (Power to order medical examination)	5
11	Section 50 amended (Restrictions may be imposed in case of inability to perform required functions)	6
12	Section 51 amended (Revocation of suspension or conditions)	6

**Health Practitioners Competence Assurance  
Amendment Bill**

13	Section 58 amended (Reporting requirements)	7
14	Section 68 amended (Referral of complaints and notices of conviction to professional conduct committee)	7
15	Section 69 amended (Interim suspension of practising certificate pending prosecution or investigation)	7
16	New section 92A inserted (Chairperson may prohibit publication of names pending hearing of charge)	8
	92A Chairperson may prohibit publication of names pending hearing of charge	8
17	Section 93 amended (Interim suspension of registration or imposition of restrictions on practice)	9
18	Section 94 amended (Health practitioner may apply for revocation of order)	9
19	Section 95 amended (Hearings to be public unless Tribunal orders otherwise)	9
20	Section 102 amended (Orders limiting restoration of registration)	9
21	Section 103 amended (Orders of Tribunal)	10
22	New section 103A inserted (Resourcing Tribunal's administration costs)	10
	103A Resourcing Tribunal's administration costs	10
23	Section 104 amended (Resourcing of Tribunal and nomination of executive officers)	11
24	New section 104A inserted (Recovery of costs, fees, and expenses)	11
	104A Recovery of costs, fees, and expenses	11
25	Section 105 amended (Recovery of fines and costs)	11
26	New sections 116A to 116D and cross-heading inserted	11
	<i>Amalgamation of authorities</i>	
	116A Authorities may be amalgamated	12
	116B Effect of amalgamation	12
	116C Final report of authority	12
	116D Members not entitled to compensation for loss of office	13
27	Section 118 amended (Functions of authorities)	13
28	New section 122A and cross-heading inserted	13
	<i>Performance reviews of authorities</i>	
	122A Performance reviews	13
29	New section 134A and cross-heading inserted	14
	<i>Information about health practitioners</i>	
	134A Authority to provide to Director-General of Health information about health practitioners	14
30	New sections 157A to 157I inserted	15
	157A Meaning of naming policy	15
	157B Authorities to issue naming policies	15
	157C Consultation on naming policies	15

	157D Naming policies to be available on Internet	16
	157E When naming policies come into force	16
	157F Review of naming policies	16
	157G Naming policies to be consistent with law	16
	157H Status of naming policies	16
	157I Authority naming health practitioner in accordance with naming policy protected by qualified privilege	16
31	Section 170 amended (Regulations)	17

**Part 2**

**Further amendments to principal Act**

32	New Schedule 1AA inserted	17
33	Schedule 1 amended	17
34	Schedule 3 amended	17

**Schedule**

**New Schedule 1AA inserted**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Health Practitioners Competence Assurance Amendment Act **2018**.

**2 Commencement**

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This Act comes into force on the day after the date on which it receives the Royal assent.

**3 Principal Act**

This Act amends the Health Practitioners Competence Assurance Act 2003 (the **principal Act**).

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**Part 1**

**Amendments to principal Act**

**4 New section 5A inserted (Transitional, savings, and related provisions)**

After section 5, insert:

**5A Transitional, savings, and related provisions**

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The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

**5 Section 17 amended (Applications for registration of health practitioners and authorisations of scopes of practice)**

(1) After section 17(4), insert:

(4A) If any fine, costs, or expenses imposed on a former health practitioner by or under a former registration Act remain unpaid, the Registrar may decline to do any act, or to permit any act to be done, in relation to the registration of that health practitioner until the fine, costs, or expenses are paid.

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(2) In section 17(5), after “subsection (4)”, insert “or **(4A)**”.

(3) Replace section 17(6) with:

(6) Subsections (4) and **(4A)** override subsection (3).

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(7) In **subsection (4A)**,—

**former health practitioner** means an applicant who, at any time, has been—

(a) registered under a former registration Act; or

(b) deemed to be registered under a former registration Act

**former registration Act** has the meaning given to it by section 178(1).

15

**6 Section 36 amended (When authority may review health practitioner’s competence)**

After section 36(3), insert:

(3A) An authority that receives a notice under section 34(1) or (2) must inform the person from whom the notice was received as to whether it has decided to conduct a review of the competence of the health practitioner the subject of the notice.

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**7 Section 38 amended (Orders concerning competence)**

After section 38(3), insert:

(3A) If an order is made under subsection (1) following receipt of a notice given under section 34(1) or (2), the authority must, within 5 working days, inform the person from whom the notice was received that an order under subsection (1)(a), (b), (c), or (d), as the case may be, has been made.

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**8 Section 39 amended (Interim suspension of practising certificate or inclusion of conditions in scope of practice pending review or assessment)**

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After section 39(3), insert:

(3A) If the authority makes an order under subsection (2), the Registrar of the authority must ensure that—

(a) a copy of the order is given, within 5 working days after the making of the order, to—

35

(i) the health practitioner concerned; and

(ii) any employer of the practitioner; and

- (iii) any person who works in partnership or association with the practitioner; and
- (iv) if the review was or is to be conducted after receipt of a notice given under section 34(1) or (2), the person from whom that notice was received; and 5
- (b) all administrative steps are taken to give effect to the order.
- 9 Section 48 amended (Interim suspension of practising certificate or inclusion of conditions in scope of practice in cases of suspected inability to perform required functions due to mental or physical condition)**
- (1) In section 48(1), after “considers”, insert “(whether or not as a result of a notice given under section 45 or of a recommendation made under section 79)”. 10
- (2) In section 48(3), replace “subsection (1)” with “subsection (2)”.
- (3) Replace section 48(6) with:
- (6) If the authority makes an order under this section, the Registrar of the authority must ensure that— 15
- (a) a copy of the order is given, within 5 working days after the making of the order, to—
- (i) the health practitioner concerned; and
- (ii) any employer of the practitioner; and
- (iii) any person who works in partnership or association with the practitioner; and 20
- (b) all administrative steps are taken to give effect to the order.
- (7) If an order is made under this section following receipt of a notice given under section 45, the authority must, within 5 working days after the making of the order, inform the person from whom the notice was received that an order under subsection (2)(a) or (b), as the case may be, has been made. 25
- 10 Section 49 amended (Power to order medical examination)**
- (1) Replace the heading to section 49 with “**Power to order examination or testing**”.
- (2) In section 49, replace “a medical practitioner” with “an assessor” in each place. 30
- (3) In section 49, replace “the medical practitioner” with “the assessor” in each place.
- (4) Replace section 49(5) with:
- (5) An assessor who conducts an examination or a test under this section may consult any other practitioner who the assessor considers is able to assist in the completion of the examination or test. 35
- (5) After section 49(7), insert:

**Health Practitioners Competence Assurance  
Amendment Bill**

Part 1 cl 11

(8) In this section and section 50, **assessor** means a medical practitioner or any other health practitioner.

**11 Section 50 amended (Restrictions may be imposed in case of inability to perform required functions)**

(1) In section 50(1)(a), replace “medical practitioner” with “assessor” in each place. 5

(2) Replace section 50(6)(a) with:

(a) a copy of the order is given, within 5 working days after the making of the order, to—

- (i) the health practitioner concerned; and 10
- (ii) any employer of the practitioner; and
- (iii) any person who works in partnership or association with the practitioner; and

(3) After section 50(6), insert:

(6A) If an order is made under subsection (3) or (4) following receipt of a notice given under section 45, the authority must, within 5 working days after the making of the order, inform the person from whom the notice was received that an order under subsection (3) or (4), as the case may be, has been made. 15

**12 Section 51 amended (Revocation of suspension or conditions)**

(1) In section 51(1), replace “section 39 or section 50” with “section 39, 48, or 50”. 20

(2) In section 51(2), replace “section 39 or section 50” with “section 39, 48, or 50”.

(3) In section 51(3), replace “section 39 or section 50” with “section 39, 48, or 50”. 25

(4) Replace section 51(6)(a) with:

(a) a copy of the order is given, within 5 working days after the making of the order, to—

- (i) the health practitioner concerned; and
- (ii) any employer of the practitioner; and 30
- (iii) any person who works in partnership or association with the practitioner; and
- (iv) any person who,—

(A) under **section 39(3A)(a)(iv)**, has received a copy of an order made under section 39 to which the revocation relates; or 35

(B) under **section 48(7) or 50(6A)**, has received a copy of an order made under section 48 or 50 to which the revocation relates; and

- 13 Section 58 amended (Reporting requirements)**  
In section 58(1), replace “6 months” with “1 year”. 5
- 14 Section 68 amended (Referral of complaints and notices of conviction to professional conduct committee)**
- (1) Replace the heading to section 68 with “**Referral of complaints, notices of conviction, and information to professional conduct committee**”.
- (2) Replace section 68(2) with: 10
- (2) If a responsible authority receives a notice of conviction given under section 67(a), the authority must, as soon as is reasonably practicable, refer the notice to a professional conduct committee.
- (2A) If a responsible authority receives a notice of conviction given under section 67(b), the authority must, as soon as is reasonably practicable, refer the notice to a professional conduct committee if— 15
- (a) the conviction is for an offence punishable by imprisonment or a fine of or exceeding \$1,000; or
- (b) the authority otherwise considers that the conviction raises concerns about the appropriateness of the conduct or about the safety of the practice of the health practitioner. 20
- (3) In section 68(3), after “refer”, insert “the information and”.
- 15 Section 69 amended (Interim suspension of practising certificate pending prosecution or investigation)**
- (1) Replace section 69(1) and (2) with: 25
- (1) This section applies if a health practitioner is alleged to have engaged in conduct that is relevant to—
- (a) a criminal proceeding that is pending against the practitioner; or
- (b) an investigation about the practitioner that is pending under the Health and Disability Commissioner Act 1994 or under this Act. 30
- (2) The responsible authority may order that—
- (a) the practising certificate of the health practitioner be suspended if, in the opinion of the authority held on reasonable grounds, the conduct in which the practitioner is alleged to have engaged poses a risk of serious harm to the public; or 35
- (b) 1 or more conditions be included in the health practitioner’s scope of practice if, in the opinion of the authority held on reasonable grounds, the conduct in which the practitioner is alleged to have engaged casts

- doubt on the appropriateness of the practitioner's conduct in his or her professional capacity.
- (2) Replace section 69(4)(a) with:
- (a) the authority is satisfied that—
- (i) the practitioner's conduct does not pose a risk of serious harm to the public, in the case of an order made under **subsection (2)(a)**; or
- (ii) the appropriateness of the practitioner's conduct in his or her professional capacity is no longer in doubt, in the case of an order made under **subsection (2)(b)**; or
- (3) Replace section 69(5) with:
- (5) An order made under **subsection (2)** or a revocation of an order under subsection (4) takes effect immediately and the Registrar of the authority must ensure that—
- (a) the following persons are notified as soon as practicable that the order or revocation has been made:
- (i) the health practitioner concerned; and
- (ii) any employer of the practitioner; and
- (iii) any person who works in partnership or association with the practitioner; and
- (b) all administrative steps are taken to give effect to the order or revocation.
- 16 New section 92A inserted (Chairperson may prohibit publication of names pending hearing of charge)**
- After section 92, insert:
- 92A Chairperson may prohibit publication of names pending hearing of charge**
- (1) At any time after a notice has been given to a health practitioner under section 92(1), the parties to the proceedings may jointly apply to the chairperson of the Tribunal for an order prohibiting the publication of the name, or any particulars of the affairs, of—
- (a) the health practitioner; or
- (b) any other person; or
- (c) the health practitioner and any other person.
- (2) If, after having regard to the interests of any person (including, without limitation, the privacy of any complainant) and to the public interest, the chairperson of the Tribunal is satisfied that it is desirable to do so, the chairperson may make the order sought.
- (3) An order continues in force until whichever of the following occurs first:
- (a) the expiry of any period specified in the order:



- (b) the order is revoked by the chairperson of the Tribunal:  
(c) the charge against the health practitioner is heard by the Tribunal.
- (4) A person who contravenes an order without reasonable excuse commits an offence and is liable on conviction to a fine not exceeding \$10,000.
- 17 Section 93 amended (Interim suspension of registration or imposition of restrictions on practice) 5**
- (1) Replace section 93(1) with:
- (1) **Subsections (1A) and (1B)** apply at any time after a notice has been given to a health practitioner under section 92(1).
- (1A) If, in the opinion of the Tribunal held on reasonable grounds, the conduct in which the health practitioner is alleged to have engaged poses a risk of serious harm to the public, the Tribunal may order that, until the charge to which the notice relates has been disposed of, the registration of the practitioner be suspended. 10
- (1B) If the Tribunal is satisfied that it is necessary or desirable to do so, having regard to the need to protect the health or safety of members of the public, the Tribunal may order that, until the charge to which the notice relates has been disposed of, the health practitioner may practise as a health practitioner only in accordance with conditions stated in the order. 15
- (2) Replace section 93(5) with: 20
- (5) The appropriate executive officer of the Tribunal must ensure that a copy of the order is promptly given to—
- (a) the health practitioner concerned; and  
(b) the responsible authority; and  
(c) any employer of the practitioner. 25
- (5A) If so directed, the responsible authority must ensure that a copy of the order is promptly given to any other persons specified by the Tribunal.
- 18 Section 94 amended (Health practitioner may apply for revocation of order)**
- (1) In section 94(1), replace “section 93(1)” with “**section 93(1A) or (1B)**”. 30
- (2) In section 94(3)(b)(ii), replace “section 93(1)(b)” with “**section 93(1B)**”.
- (3) In section 94(4), replace “section 93(1)” with “**section 93(1A) or (1B)**”.
- 19 Section 95 amended (Hearings to be public unless Tribunal orders otherwise)**
- In section 95(7), after “who”, insert “, without reasonable excuse,”. 35
- 20 Section 102 amended (Orders limiting restoration of registration)**
- (1) Replace section 102(1) with:

**Health Practitioners Competence Assurance  
Amendment Bill**

Part 1 cl 21

- (1) When making an order that the registration of a health practitioner be cancelled, the Tribunal may do either or both of the following:
- (a) fix a date before which the person may not apply for registration again:
  - (b) impose 1 or more conditions that the person must satisfy before the person may apply for registration again. 5
- (2) In section 102(2), after “conditions”, insert “imposed under **subsection (1)(b)**”.
- (3) In section 102(3), replace “under” with “of the kind specified in”.
- (4) After section 102(3), insert:
- (3A) If the Tribunal fixes a date before which the person may not apply for registration again, no application for registration may be made by the person before that date. 10
- 21 Section 103 amended (Orders of Tribunal)**
- After section 103(2), insert:
- (2A) If the Tribunal makes any 1 or more of the orders authorised by section 101(1)(a) to (d) against a health practitioner who is an employee, the appropriate executive officer must, if so directed by the Tribunal, ensure that a copy of each order is given to the health practitioner’s employer. 15
- 22 New section 103A inserted (Resourcing Tribunal’s administration costs)**
- Before section 104, insert: 20
- 103A Resourcing Tribunal’s administration costs**
- (1) The responsible authorities must pay the Tribunal’s general administration costs.
- (2) Each responsible authority must pay to the Tribunal at the beginning of each financial year a proportion of the Tribunal’s estimated general administration costs for that financial year, with the proportion being determined— 25
- (a) by the Tribunal; and
  - (b) by reference to the number of health practitioners registered with the authority at the beginning of the financial year.
- (3) If the Tribunal’s estimated general administration costs for any financial year exceed the Tribunal’s actual general administration costs for that year, the Tribunal must— 30
- (a) refund to the authorities, on a proportional basis, the amount of the excess; and
  - (b) determine the proportion payable to each authority by reference to the amount paid by the authority toward the estimated costs. 35

- (4) If the Tribunal’s estimated general administration costs for any financial year are less than the Tribunal’s actual general administration costs for that year, the Tribunal may at any time (whether or not the year has ended)—
- (a) require the authorities to pay, on a proportional basis, the shortfall in costs; and 5
  - (b) determine the proportion payable by each authority by reference to the amount paid by the authority toward the estimated costs.
- (5) The Tribunal must provide to each responsible authority at the end of each financial year a statement showing a full breakdown of its general administration costs for that financial year. 10
- (6) In this section, **general administration costs** means all expenses payable by or on behalf of the Tribunal in connection with the administration of the Tribunal that are not payable in respect of any proceeding under section 104(1)(a) or (b) (including, without limitation, insurance costs and member training costs).
- 23 Section 104 amended (Resourcing of Tribunal and nomination of executive officers)** 15
- (1) Replace the heading to section 104 with “**Resourcing costs of proceedings and nomination of executive officers**”.
  - (2) In section 104(1)(c), after “Tribunal”, insert “for the purpose of the proceeding”. 20
- 24 New section 104A inserted (Recovery of costs, fees, and expenses)**
- After section 104, insert:
- 104A Recovery of costs, fees, and expenses**
- The following are recoverable in any court of competent jurisdiction by the Tribunal from an authority as a debt due to the Tribunal: 25
- (a) all costs payable by an authority under **section 103A**; and
  - (b) all fees and expenses payable by an authority under section 104(1)(a) and (b).
- 25 Section 105 amended (Recovery of fines and costs)**
- Replace the heading to section 105 with “**Recovery of costs and expenses of Health and Disability Commissioner or Director of Proceedings**”. 30
- 26 New sections 116A to 116D and cross-heading inserted**
- After section 116, insert:

*Amalgamation of authorities***116A Authorities may be amalgamated**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
- (a) amalgamate an existing authority with 1 or more other existing authorities; and 5
  - (b) either—
    - (i) continue the existing authorities as one of the existing authorities; or
    - (ii) continue the existing authorities as a new authority; and 10
  - (c) provide for any arrangement to complete the amalgamation and provide for the subsequent management and operation of the amalgamated authority; and
  - (d) amend any enactment (for example, this Act) to reflect and give effect to the amalgamation effected by the order. 15
- (2) The Minister may recommend that an Order in Council be made only if—
- (a) the Minister has consulted the authorities concerned; and
  - (b) the Minister is satisfied that it is in the public interest that the order be made.
- (3) An Order in Council is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 20

**116B Effect of amalgamation**

On the date on which existing authorities amalgamate,—

- (a) the amalgamated authority succeeds to all the property, rights, powers, and privileges of each of the amalgamating authorities; and 25
- (b) the amalgamated authority succeeds to all the liabilities and obligations of each of the amalgamating authorities; and
- (c) proceedings pending by, or against, an amalgamating authority may be continued by, or against, the amalgamated authority; and 30
- (d) a conviction, ruling, order, or judgment in favour of, or against, an amalgamating authority may be enforced by, or against, the amalgamated authority.

**116C Final report of authority**

- (1) As soon as practicable after an authority (A) has been amalgamated under **section 116A**, the amalgamated authority must prepare and forward to the Minister a final report on A's operations. 35

- (2) The final report must be for the period (the **report period**)—
- (a) commencing at the start of the financial year in which A was amalgamated; and
  - (b) ending with the close of the day immediately preceding the date on which A was amalgamated. 5
- (3) The final report must include audited financial statements for the report period.
- (4) The Minister must present a copy of the final report to the House of Representatives within 16 sitting days after receiving it.
- (5) In this section, **financial year** has the same meaning as in section 134.

**116D Members not entitled to compensation for loss of office** 10

No member of an authority is entitled to any compensation for loss of office resulting from an Order in Council made under **section 116A**.

**27 Section 118 amended (Functions of authorities)**

- (1) Replace section 118(f) with:
- (f) to receive information from any person about the practice, conduct, or competence of health practitioners and, if it is appropriate to do so, act on that information: 15
- (2) After section 118(j), insert:
- (ja) to promote and facilitate inter-disciplinary collaboration and co-operation in the delivery of health services: 20

**28 New section 122A and cross-heading inserted**

After section 122, insert:

*Performance reviews of authorities*

**122A Performance reviews**

- (1) From time to time, there must be conducted in respect of each authority a review of how effectively and efficiently the authority is performing its functions (a **performance review**). 25
- (2) The first performance review must be conducted within 3 years after the commencement of this section.
- (3) Subsequent performance reviews must be conducted at intervals that are no more than 5 years apart. 30
- (4) For each performance review to be conducted in respect of an authority, the Ministry of Health must, in consultation with the authority,—
- (a) appoint an independent person to conduct the review (a **reviewer**); and
  - (b) set the terms of reference for the review. 35
- (5) A reviewer must, as soon as practicable after conducting a review,—

<ul style="list-style-type: none"> <li>(a) prepare a written report on the conclusions reached and of any recommendations; and</li> <li>(b) give a copy of the report to— <ul style="list-style-type: none"> <li>(i) the Minister; and</li> <li>(ii) the authority.</li> </ul> </li> </ul>	5
(6) On receipt of a report under <b>subsection (5)(b)(ii)</b> , an authority must, as soon as practicable, publish the report on its Internet site.	
(7) The costs of conducting a performance review in respect of an authority must be met by the authority.	
<b>29 New section 134A and cross-heading inserted</b>	10
After section 134, insert:	
<i>Information about health practitioners</i>	
<b>134A Authority to provide to Director-General of Health information about health practitioners</b>	
(1) Each authority must provide to the Director-General of Health (the <b>Director-General</b> ) information held by the authority that—	15
(a) relates to health practitioners who are registered with the authority and who hold current practising certificates; and	
(b) is of a kind specified for the purpose of this section by the Director-General after consultation with the authority (including, without limitation, a health practitioner’s name, date of birth, employer, place or places of work, and the average weekly number of hours worked by the health practitioner at each place of work).	20
(2) The Director-General may use the information only for the purpose of supporting the Ministry of Health’s responsibilities for workplace planning and development.	25
(3) The information must be provided—	
(a) annually, on a date set by the Director-General after consultation with the authority; and	
(b) in a form or manner set by the Director-General.	30
(4) Information that is provided to the Director-General under this section and that is not publicly available must not be published or disclosed by the Director-General in a manner that—	
(a) identifies any health practitioner to whom the information relates; or	
(b) could reasonably be expected to identify any health practitioner to whom the information relates.	35

- (5) This section overrides provisions in contracts, deeds, documents, and other enactments that are inconsistent with this section.

**30 New sections 157A to 157I inserted**

After section 157, insert:

**157A Meaning of naming policy**

5

In **sections 157B to 157I**, **naming policy** means a policy issued by an authority relating to the naming of a health practitioner in a notice published by the authority under section 157(1).

**157B Authorities to issue naming policies**

- (1) Each authority must issue a naming policy not later than 12 months after this section comes into force. 10

- (2) The purpose of the naming policy is to—

(a) enhance public confidence in the health professions for which the authority is responsible and their disciplinary procedures by providing transparency about their decision-making processes; and 15

(b) ensure that health practitioners whose conduct has not met expected standards may be named where it is in the public interest to do so; and

(c) improve the safety and quality of health care.

- (3) A naming policy must set out—

(a) the class or classes of health practitioners in respect of whom the naming policy applies; and 20

(b) the circumstances in which a health practitioner may be named; and

(c) the general principles that will guide the authority's naming decisions; and

(d) the criteria that the authority must apply when making a naming decision; and 25

(e) the requirement to have regard to the consequences for the health practitioner of being named, including the likely harm to the health practitioner's reputation; and

(f) the procedures that the authority must follow when making a naming decision; and 30

(g) the information the authority may disclose when naming a health practitioner; and

(h) the means by which a health practitioner may be named.

**157C Consultation on naming policies**

35

Before issuing its naming policy, an authority must consult, and take into account any comments received from, the following persons:

(a) the health practitioners registered with the authority; and (b) the Privacy Commissioner; and (c) the Director-General of Health; and (d) the Health and Disability Commissioner.	5
<b>157D Naming policies to be available on Internet</b>	5
Immediately after issuing a naming policy, an authority must make its naming policy available on an Internet site maintained by or on behalf of the authority.	
<b>157E When naming policies come into force</b>	
A naming policy comes into force on the day after the date on which it is issued.	10
<b>157F Review of naming policies</b>	
(1) An authority must review its naming policy within 3 years after the policy comes into force, and then at intervals of not more than 3 years.	
(2) <b>Sections 157B to 157E</b> apply with all necessary modifications to the review of a naming policy.	15
<b>157G Naming policies to be consistent with law</b>	
A naming policy must be consistent with—	
(a) this Act; and	
(b) the information privacy principles in section 6 of the Privacy Act 1993; and	20
(c) the general law (including natural justice rights).	
<b>157H Status of naming policies</b>	
A naming policy is—	
(a) not—	
(i) a legislative instrument for the purposes of the Legislation Act 2012; or	25
(ii) a disallowable instrument for the purposes of the Legislation Act 2012; and	
(b) not required to be presented to the House of Representatives under section 41 of the Legislation Act 2012.	30
<b>157I Authority naming health practitioner in accordance with naming policy protected by qualified privilege</b>	
For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any notice published by an authority under section 157(1) that names a health practitioner in accordance with a naming policy issued by the authority	35



must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

**31 Section 170 amended (Regulations)**

After section 170(c), insert:

- (ca) declaring the responsible authorities appointed by or under this Act and specifying the health professions in respect of which each of those authorities is appointed: 5

**Part 2**

**Further amendments to principal Act**

**32 New Schedule 1AA inserted 10**

Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first Schedule to appear after the last section of the principal Act.

**33 Schedule 1 amended**

In Schedule 1, clause 6(5), replace “Evidence Act 1908” with “Evidence Act 2006”. 15

**34 Schedule 3 amended**

In Schedule 3, replace clause 17(1) with:

- (1) An authority may from time to time, by written notice, delegate any of its functions, duties, or powers to a committee appointed under clause 16 or to its Registrar. 20
- (1A) However, an authority may not delegate—
- (a) any power under section 69 to a committee appointed under clause 16:
- (b) any power under section 69 or 71 to its Registrar.

**Schedule**  
**New Schedule 1AA inserted**

s 32

**Schedule 1AA**  
**Transitional, savings, and related provisions**

5

s 5A

**Part 1**  
**Provisions relating to Health Practitioners Competence Assurance  
Amendment Act 2017**

- 1 Interpretation** 10
- In this Part,—
- amendment Act** means the Health Practitioners Competence Assurance Amendment Act **2017**
- commencement date** means the date on which the amendment Act comes into force. 15
- 2 Interim suspension of practising certificate pending prosecution or investigation**
- Section 69(1), (2), and (4)(a), as in force immediately before the commencement date, continues to apply as if the amendment Act had not been enacted in any case where an allegation referred to in that section relates to conduct engaged in by a health practitioner— 20
- (a) before the commencement date; or
- (b) before the commencement date and continued after the commencement date.
- 3 Interim suspension of registration or imposition of restrictions on practice** 25
- Section 93(1), as in force immediately before the commencement date, continues to apply as if the amendment Act had not been enacted in any case where the alleged conduct that is the subject of the charge against a health practitioner occurred—
- (a) before the commencement date; or 30
- (b) before the commencement date and continued after the commencement date.