



ANALYSIS

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1994, No. 88

An Act to promote and protect the rights of health consumers and disability services consumers, and, in particular,—

- (a) To secure the fair, simple, speedy, and efficient resolution of complaints relating to infringements of those rights; and
- (b) To provide for the appointment of a Health and Disability Commissioner to investigate complaints against persons or bodies who provide health care or disability services; and to define the Commissioner's functions and powers; and
- (c) To provide for the establishment of a Health and Disability Services Consumer Advocacy Service; and
- (d) To provide for the promulgation of a Code of Health and Disability Services Consumers' Rights; and
- (e) To provide for matters incidental thereto

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

1. Short Title and commencement—(1) This Act may be cited as the Health and Disability Commissioner Act 1994.

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

(3) Part IV and sections 76 (1), 76 (2), 81 (1), and 81 (3) of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Action”, in relation to a health care provider or a disability services provider, includes failure to act; and also includes any policy or practice:

“Advocacy services” means the provision of health and disability services consumer advocates; and also includes the provision of such administrative services as may be necessary to enable those advocates to exercise and perform their functions and powers:

“Advocacy services agreement” means an agreement under which the Crown agrees to provide money to a person in return for the person providing, or arranging for the provision of, advocacy services:

“Advocate” means a health and disability services consumer advocate provided pursuant to an advocacy services agreement:

“Code of Health and Disability Services Consumers’ Rights” or “Code” means the Code of Health and Disability Services Consumers’ Rights for the time being prescribed by regulations made under section 74 (1) of this Act:

“Commissioner” means the Health and Disability Commissioner appointed under section 8 of this Act:

“Complaints Review Tribunal” or “Tribunal” means the Complaints Review Tribunal continued by section 93 of the Human Rights Act 1993:

“Deputy Commissioner” means the Deputy Health and Disability Commissioner appointed under section 9 of this Act:

“Director of Advocacy” means the person for the time being designated under section 24 (1) of this Act as the Director of Health and Disability Services Consumer Advocacy:

“Director of Proceedings” means the person for the time being designated under section 15 (1) of this Act as the Director of Proceedings:

“Disability services” includes goods, services, and facilities—

(a) Provided to people with disabilities for their care or support or to promote their independence; or

(b) Provided for purposes related or incidental to the care or support of people with disabilities or to the promotion of the independence of such people:

“Disability services consumer” means any person with a disability that—

(a) Reduces that person’s ability to function independently; and

(b) Means that the person is likely to need support for an indefinite period:

“Disability services provider” means any person who provides, or holds himself or herself or itself out as providing, disability services:

“Disciplinary proceedings” means proceedings of a disciplinary nature taken under any health registration enactment:

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

“Health” means human health:

“Health care institution” means—

(a) A licensed hospital within the meaning of the Hospitals Act 1957:

(b) A hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992:

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

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

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

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

“Health care procedure” means any health treatment, health examination, health teaching, or health research administered to or carried out on or in respect of any person by any health care provider;

and includes any provision of health services to any person by any health care provider:

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

“Health consumer” includes any person on or in respect of whom any health care procedure is carried out:

“Health professional body” means any authority or body that is empowered, under or by virtue of any enactment or law, or the rules of any body or association, to exercise disciplinary powers in respect of any registered health professional:

“Health registration enactment” means any of the enactments specified in the First Schedule to this Act:

“Health services”—

(a) Means—

(i) Services to promote health:

(ii) Services to protect health:

(iii) Services to prevent disease or ill-health:

(iv) Treatment services:

(v) Nursing services:

(vi) Rehabilitative services:

(vii) Diagnostic services; and

(b) Includes—

(i) Psychotherapy and counselling services:

(ii) Contraception services and advice:

(iii) Fertility services:

(iv) Sterilisation services:

“Human Rights Commission” means the Human Rights Commission continued by section 4 of the Human Rights Act 1993:

“Informed consent”, in relation to a health consumer on or in respect of whom there is carried out any health care procedure, means consent to that procedure where that consent—

(a) Is freely given, by the health consumer or, where applicable, by any person who is entitled to consent on that health consumer’s behalf; and

(b) Is obtained in accordance with such requirements as are prescribed by the Code:

“Minister” means the Minister of Health:

“Ministry” means the Ministry of Health, being the department of the Public Service referred to by that name:

“Purchaser” has the same meaning as in section 20 of the Health and Disability Services Act 1993:

“Registered health professional” has the meaning given to it by section 4 of this Act:

“Services” means health services and disability services or both:

“Sitting day” means a sitting day of the House of Representatives.

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

- (a) A licensee of a licensed hospital within the meaning of the Hospitals Act 1957:
- (b) A controlling authority of a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992:
- (c) A licensee of an aged persons’ home licensed under regulations for the time being in force pursuant to section 120A of the Health Act 1956:
- (d) A controlling authority of a home registered under the Disabled Persons Community Welfare Act 1975:
- (e) The Children’s Health Camps Board:
- (f) A Camp Committee under the Children’s Health Camps Act 1972:
- (g) A manager of a certified institution within the meaning of the Alcoholism and Drug Addiction Act 1966:
- (h) Any registered health professional:
- (i) Any person who provides ambulance services to the public:
- (j) Any person employed by the School Dental Service to carry on the practice of dentistry:
- (k) Any other person who provides, or holds himself or herself or itself out as providing, health services to the public or to any section of the public, whether or not any charge is made for those services.

4. Definition of “registered health professional”—(1) In this Act, unless the context otherwise requires, the term “registered health professional” means—

- (a) A medical practitioner, which for the purposes of this Act means any person for the time being registered as a medical practitioner under the Medical Practitioners Act 1968, including a person conditionally registered, and a holder of a certificate of probationary registration, and a holder of a certificate of

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

- (b) A dentist, which for the purposes of this Act means any person for the time being registered as a dentist under the Dental Act 1988, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:
- (c) A clinical dental technician, which for the purposes of this Act means any person for the time being registered as a clinical dental technician under the Dental Act 1988, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:
- (d) A dental technician, which for the purposes of this Act means any person for the time being registered as a dental technician under the Dental Act 1988, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:
- (e) A pharmacist, which for the purposes of this Act means any person for the time being registered as a pharmacist under the Pharmacy Act 1970, including a person conditionally registered under that Act:
- (f) A nurse, which for the purposes of this Act means any person for the time being registered or enrolled as a nurse (whether as a comprehensive nurse, or a general nurse, or otherwise), or as a midwife, under the Nurses Act 1977, including a holder of a provisional certificate of registration or enrolment, and a holder of a certificate of temporary registration or a certificate of temporary enrolment, under that Act:
- (g) A psychologist, which for the purposes of this Act means any person for the time being registered as a psychologist under the Psychologists Act 1981, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:
- (h) A chiropractor, which for the purposes of this Act means any person for the time being registered as a chiropractor under the Chiropractors Act 1982, including a holder of a certificate of temporary registration under that Act:

- (i) An optician, which for the purposes of this Act means any person for the time being registered as a dispensing optician or an optometrist under the Optometrists and Dispensing Opticians Act 1976, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:
 - (j) A dietitian, which for the purposes of this Act means any person for the time being registered as a dietitian under the Dietitians Act 1950, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:
 - (k) An occupational therapist, which for the purposes of this Act means any person for the time being registered as an occupational therapist under the Occupational Therapy Act 1949, including a holder of a provisional certificate of registration under that Act:
 - (l) A physiotherapist, which for the purposes of this Act means any person for the time being registered as a physiotherapist under the Physiotherapy Act 1949, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:
 - (m) A person for the time being registered as a medical laboratory technologist or a medical radiation technologist or a podiatrist under the Medical Auxiliaries Act 1966, including a holder of a provisional certificate of registration, and a holder of temporary registration, under that Act.
- (2) For the purposes of this Act (other than sections 38 and 44), any person who is receiving training or gaining experience under the supervision of a registered health professional shall be deemed to be a registered health professional.

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

6. Purpose—The purpose of this Act is to promote and protect the rights of health consumers and disability services consumers, and, to that end, to facilitate the fair, simple, speedy, and efficient resolution of complaints relating to infringements of those rights.

7. Objectives of the Crown—In exercising or performing any power or function under this Act, every person shall take

into account the Crown's objectives for the time being notified under section 8 of the Health and Disability Services Act 1993, so far as those objectives are applicable in the circumstances of the particular case.

PART I

HEALTH AND DISABILITY COMMISSIONER

8. Health and Disability Commissioner—(1) There shall be a Commissioner called the Health and Disability Commissioner.

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

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

(4) The Commissioner shall be a Crown entity for the purposes of the Public Finance Act 1989.

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

(2) The Deputy Commissioner shall be appointed in the same manner as the Commissioner, and sections 10 to 13 of this Act shall apply to the Deputy Commissioner in the same manner as they apply to the Commissioner.

(3) On the occurrence from any cause of a vacancy in the office of the Commissioner (whether by reason of death, resignation, or otherwise), and in the case of the absence from duty of the Commissioner (from whatever cause arising), and so long as any such vacancy or absence continues, the Deputy Commissioner shall have and may exercise all the powers, duties, and functions of the Commissioner under this Act or any other enactment, and shall be entitled to all the protections, privileges, and immunities of the Commissioner.

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

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

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

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

Cf. 1975, No. 9, s. 4

12. Term of office—(1) Except as otherwise provided in section 13 of this Act, the Commissioner shall hold office for such term not exceeding 5 years as the Governor-General on the recommendation of the Minister shall specify in the instrument appointing the Commissioner.

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

(3) Where the term for which a person who has been appointed as Commissioner expires, that person, unless sooner vacating or removed from office under section 13 of this Act, shall continue to hold office, by virtue of the appointment for the term that has expired, until—

- (a) That person is reappointed; or
- (b) A successor to the person is appointed; or
- (c) The person is notified in writing by the Minister that the person is not to be reappointed and is not to hold office until a successor is appointed.

13. Vacation of office—(1) The Commissioner may at any time be removed from office by the Governor-General on the

recommendation of the Minister for inability to perform the duties of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

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

14. Functions of Commissioner—(1) The functions of the Commissioner are as follows:

- (a) As a first priority, to prepare a draft Code of Health and Disability Services Consumers' Rights in accordance with section 19 of this Act:
- (b) In accordance with section 21 of this Act, to review the Code and make to the Minister any recommendations for changes to the Code:
- (c) To promote, by education and publicity, respect for and observance of the rights of health consumers and disability services consumers, and, in particular, to promote awareness, among health consumers, disability services consumers, health care providers, disability services providers, and purchasers, of the rights of health consumers and disability services consumers and of the means by which those rights may be enforced:
- (d) To make public statements and publish reports in relation to any matter affecting the rights of health consumers or disability services consumers or both, including statements and reports that promote an understanding of, and compliance with, the Code or the provisions of this Act:
- (e) To investigate, on complaint or on the Commissioner's own initiative, any action that is or appears to the Commissioner to be in breach of the Code:
- (f) To refer complaints, or investigations on the Commissioner's own initiative, to the Director of Proceedings for the purpose of deciding whether or not any further action should be taken in respect of any such breach or alleged breach:
- (g) Subject to section 15 (2) of this Act, to make recommendations to any appropriate person or authority in relation to the means by which complaints involving alleged breaches of the Code might be resolved and further breaches avoided:
- (h) To prepare guidelines for the operation of advocacy services in accordance with section 28 of this Act:

- (i) To make suggestions to any person in relation to any matter that concerns the need for, or the desirability of, action by that person in the interests of the rights of health consumers or disability services consumers or both:
 - (j) On the Commissioner's own initiative or at the request of the Minister, to advise the Minister on any matter relating to—
 - (i) The rights of health consumers or disability services consumers or both; or
 - (ii) The administration of this Act:
 - (k) To report to the Minister from time to time on the need for, or desirability of, legislative, administrative, or other action to give protection or better protection to the rights of health consumers or disability services consumers or both:
 - (l) To receive and invite representations from members of the public and from any other body, organisation, or agency on matters relating to the rights of health consumers or disability services consumers or both:
 - (m) To gather such information as in the Commissioner's opinion will assist the Commissioner in carrying out the Commissioner's functions under this Act:
 - (n) To do anything incidental or conducive to the performance of any of the preceding functions:
 - (o) To perform such functions as the Commissioner is for the time being authorised to perform by the Minister, by written notice to the Commissioner after consultation with the Commissioner:
 - (p) To exercise and perform such other functions, powers, and duties as are conferred or imposed on the Commissioner by or under this Act or any other enactment.
- (2) In performing his or her functions, the Commissioner shall—
- (a) Establish and maintain effective links with—
 - (i) Representatives of health consumers, disability services consumers, health care providers, and disability services providers:
 - (ii) Other bodies and organisations (including community groups) concerned with health matters or matters relating to disabilities:
 - (b) Consult and co-operate with other agencies concerned with personal rights, including the Ombudsmen, the Human Rights Commission, the Race Relations

Conciliator, the Commissioner for Children, the Privacy Commissioner, and the Director of Mental Health.

(3) Where a notice is given to the Commissioner under subsection (1) (o) of this section, the Minister shall, as soon as practicable after the giving of the notice, publish in the *Gazette* and lay before the House of Representatives a copy of the notice.

15. Director of Proceedings—(1) For the purposes of this Act, the Commissioner shall from time to time designate as the Director of Proceedings one of the persons appointed under clause 2 of the Second Schedule to this Act.

(2) In exercising or performing the powers, duties, and functions of the Director of Proceedings under this Act, the person for the time being designated under subsection (1) of this section shall not be responsible to the Commissioner but shall act independently.

(3) Nothing in subsection (2) of this section limits the responsibility of the Director of Proceedings to the Commissioner for the efficient, effective, and economical management of the activities of the Director of Proceedings.

(4) No person shall hold, at the same time, a designation under subsection (1) of this section and a designation under section 24 (1) of this Act.

16. Annual report—(1) Without limiting the right of the Commissioner to report at any other time, but subject to section 67 of this Act, the Commissioner shall in each year furnish to the Minister a report with respect to the operation of this Act during the year to which the report relates.

(2) The Minister shall lay a copy of the report before the House of Representatives in accordance with section 44A of the Public Finance Act 1989.

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

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

(a) Review the operation of this Act since—

- (i) The date of the commencement of this Part of this Act (in the case of the first review carried out under this paragraph); or
 - (ii) The date of the last review carried out under this paragraph (in the case of every subsequent review); and
 - (b) Consider whether any amendments to this Act are necessary or desirable; and
 - (c) Report the Commissioner's findings to the Minister.
- (2) As soon as practicable after receiving a report from the Commissioner under subsection (1)(c) of this section, the Minister shall lay a copy of that report before the House of Representatives.

PART II

CODE OF HEALTH AND DISABILITY SERVICES CONSUMERS' RIGHTS

19. Commissioner to prepare draft Code—(1) As soon as practicable after the commencement of this section, the Commissioner shall, subject to sections 22 and 23 of this Act, prepare a draft Code of Health and Disability Services Consumers' Rights, and shall forward that draft to the Minister.

(2) Within 12 sitting days after a draft is received by the Minister in accordance with this section, the Minister shall lay a copy of the draft before the House of Representatives.

(3) Where, at the expiry of the period of 3 months beginning on the commencement of this Part of this Act, the Commissioner has not forwarded a draft Code to the Minister in accordance with subsection (1) of this section, the Commissioner shall, as soon as practicable after the expiry of that period, and then at intervals of not more than 3 months until a draft Code has been so forwarded, report to the Minister on the progress made in the preparation of the draft Code.

20. Content of Code—(1) A Code of Health and Disability Services Consumers' Rights prescribed by regulations made under section 74 (1) of this Act shall contain provisions relating to the following matters:

- (a) The principle that, except where any enactment or any provision of the Code otherwise provides, no health care procedure shall be carried out without informed consent:
- (b) The duties and obligations of health care providers as they relate to the principle set out in paragraph (a) of this subsection:

- (c) The rights of health consumers and disability services consumers, and the duties and obligations of health care providers and disability services providers, as they relate to—
 - (i) Matters of privacy (other than matters that may be the subject of a complaint under Part VII or Part VIII of the Privacy Act 1993 or matters to which Part X of that Act relates);
 - (ii) Health teaching and health research;
 - (iii) The provision of services that take into account the needs, values, and beliefs of different cultural, religious, social, and ethnic groups;
 - (d) The duties of health care providers and disability services providers as they relate to the measures (including the provision of interpreters) necessary to enable health consumers and disability services consumers to communicate effectively with health care providers and disability services providers;
 - (e) The establishment and maintenance, by health care providers and disability services providers, of procedures for dealing with complaints against them by health consumers or disability services consumers, or both, and access by health consumers and disability services consumers to such procedures;
 - (f) The duties of health care providers and disability services providers to provide services of an appropriate standard;
 - (g) The duties of health care providers and disability services providers to provide services in a manner that respects the dignity and independence of the individual.
- (2) Without limiting the generality of subsection (1) of this section, a Code of Health and Disability Services Consumers' Rights prescribed by regulations made under section 74 (1) of this Act may provide for—
- (a) Any matter relating to the rights of disability services consumers that the Commissioner considers is of particular importance to such consumers;
 - (b) Any matter incidental or ancillary to the rights of health consumers or disability services consumers, or both.

21. Review of Code—(1) The Commissioner shall from time to time, as often as is necessary to ensure that a complete review of the Code is carried out at intervals of not more than 3 years, review the Code and make recommendations to the

Minister on what changes (if any) the Commissioner considers should be made to the Code.

(2) The Commissioner—

(a) Shall whenever the Minister so requests; and

(b) May at any time, on the Commissioner's own initiative,— review the Code, or any part of the Code, and make recommendations to the Minister on what changes (if any) the Commissioner considers should be made to the Code.

(3) Section 22 of this Act shall apply, with all necessary modifications, in relation to any recommendations made by the Commissioner under this section as if those recommendations were a draft Code to which section 19 (1) of this Act applies.

(4) Within 12 sitting days after receiving any recommendations from the Commissioner in accordance with subsection (1) or, as the case may be, subsection (2) of this section, the Minister shall lay a copy of those recommendations before the House of Representatives.

22. Notification of intention to forward draft Code to Minister—(1) The Commissioner shall not forward a draft Code of Health and Disability Services Consumers' Rights to the Minister in accordance with section 19 (1) of this Act unless—

(a) The Commissioner has given public notice of the Commissioner's intention to forward a draft Code to the Minister, which notice shall contain a statement that—

(i) The details of the proposed draft Code, including a copy of the proposed draft Code, may be obtained from the Commissioner; and

(ii) Submissions on the proposed draft Code may be made in writing to the Commissioner within such period as is specified in the notice; and

(b) Without limiting section 23 of this Act, the Commissioner has done everything reasonably possible on his or her part to advise all persons whom the Commissioner considers may have an interest in the proposed draft Code, or representatives of those persons, of the terms of the proposed draft Code, has given such persons or their representatives a reasonable opportunity to consider the proposed draft Code and to make submissions on it to the Commissioner, and has considered any such submissions.

(2) Nothing in subsection (1) of this section prevents the Commissioner from adopting any additional means of

publicising the proposal to forward a draft Code to the Minister, or of consulting with interested parties in relation to such a draft Code.

(3) Failure to comply with all or any of the requirements of subsection (1) of this section shall in no way affect the validity of any Code of Health and Disability Services Consumers' Rights prescribed by regulations made under section 74 (1) of this Act.

23. Consultation on preparation and review of Code—Without limiting section 14 (2) of this Act, the Commissioner shall, in carrying out the requirements of sections 19 and 21 of this Act, consult with, and invite submissions from, such persons, bodies, organisations, and agencies, including—

- (a) Representatives of health consumers, disability services consumers, health care providers, and disability services providers; and
- (b) The Ombudsmen, the Human Rights Commission, the Race Relations Conciliator, the Privacy Commissioner, the Commissioner for Children, and the Director of Mental Health,—

as the Commissioner considers necessary to ensure that a wide range of views is available to the Commissioner to assist in the preparation and review of the Code of Health and Disability Services Consumers' Rights.

PART III

HEALTH AND DISABILITY SERVICES CONSUMER ADVOCACY SERVICE

24. Director of Health and Disability Services Consumer Advocacy—(1) For the purposes of this Act, the Commissioner shall from time to time designate as the Director of Health and Disability Services Consumer Advocacy one of the persons appointed under clause 2 of the Second Schedule to this Act.

(2) In exercising or performing the powers, duties, and functions of the Director of Advocacy under this Act, the person for the time being designated under subsection (1) of this section shall not be responsible to the Commissioner but shall act independently.

(3) Nothing in subsection (2) of this section limits the responsibility of the Director of Advocacy to the Commissioner for the efficient, effective, and economical management of the activities of the Director of Advocacy.

25. Functions of Director of Advocacy—The functions of the Director of Advocacy are as follows:

- (a) To administer advocacy services agreements;
- (b) To promote, by education and publicity, advocacy services;
- (c) To oversee the training of advocates;
- (d) To monitor the operation of advocacy services, and to report to the Minister from time to time on the results of that monitoring.

26. Advocacy services to operate independently—Subject to this Act, advocacy services shall operate independently of the Commissioner, the Ministry, purchasers, health care providers, and disability services providers.

27. Purchase of consumer advocacy services—

(1) Subject to this Act, the Director of Advocacy shall from time to time, in the name and on behalf of the Crown,—

(a) Negotiate and enter into advocacy services agreements containing such terms and conditions as may be agreed; and

(b) Monitor the performance of each advocacy services agreement.

(2) Every advocacy services agreement shall impose on the person that agrees to provide, or arrange for the provision of, advocacy services pursuant to the agreement the duty to ensure that any guidelines for the time being in force pursuant to section 28 of this Act are followed in the provision of those services.

(3) Nothing in this section limits—

(a) Any other enactment; or

(b) Any powers that the Minister or the Crown has under any enactment or rule of law.

Cf. 1993, No. 22, s. 21

28. Guidelines for operation of advocacy services—

(1) The Commissioner may from time to time, and shall if directed to do so by the Minister, issue guidelines relating to the operation of advocacy services.

(2) Without limiting subsection (1) of this section, any guidelines issued pursuant to subsection (1) of this section shall include provisions relating to the procedures to be followed by advocates in carrying out their functions, including any special procedures to be followed when advocates are dealing with any particular persons or classes of persons.

(3) The Commissioner may from time to time, and shall if directed to do so by the Minister, issue an amendment or revocation of any guidelines issued pursuant to this section.

(4) No guidelines issued pursuant to this section, and no amendment or revocation of any such guidelines, shall have any force or effect unless those guidelines or, as the case requires, that amendment or revocation has been approved by the Minister.

(5) Where the Minister approves any guidelines issued pursuant to this section or any amendment or revocation of any such guidelines, the Minister shall—

(a) Publish a notice of the approval in the *Gazette*; and

(b) Show the date of the approval on the guidelines or amendment or revocation, and promulgate the approval in such manner as the Minister thinks fit.

(6) The Commissioner shall ensure that copies of all guidelines, and all amendments to any such guidelines, that are for the time being in force pursuant to this section are available—

(a) For inspection by members of the public free of charge; and

(b) For purchase by members of the public at a reasonable price.

(7) The notice of approval published in the *Gazette* pursuant to subsection (5) (a) of this section shall show, in relation to the guidelines or the amendment to which it relates, a place at which copies of the guidelines or, as the case requires, the amendment are available for inspection free of charge and for purchase.

Cf. 1992, No. 122, ss. 36, 38, 39

29. Consultation on preparation of guidelines—Without limiting section 14 (2) of this Act, the Commissioner shall, before issuing any guidelines or amendments to guidelines pursuant to subsection (1) or subsection (3) of section 28 of this Act, consult with, and invite representations from, such persons, bodies, organisations, and agencies, including representatives of health consumers, disability services consumers, health care providers, and disability services providers, as the Commissioner considers necessary to ensure that a wide range of views is available to the Commissioner to assist in the preparation of those guidelines or amendments.

30. Functions of advocates—An advocate shall have the following functions:

- (a) To act as an advocate for health consumers and disability services consumers:
- (b) To use his or her best endeavours to ensure that—
 - (i) Health consumers on or in respect of whom any health care procedure is carried out, or is proposed to be carried out, by a health care provider; and
 - (ii) Disability services consumers to whom disability services are provided, or are proposed to be provided, by a disability services provider—are made aware of the provisions of the Code:
- (c) Having regard to the needs, values, and beliefs of different cultural, religious, social, and ethnic groups, to provide information and assistance to health consumers, disability services consumers, and members of the public for the purposes of—
 - (i) Promoting awareness of the rights of health consumers and of disability services consumers:
 - (ii) Promoting awareness of the procedures available for the resolution of complaints involving a possible breach of the Code:
- (d) To provide to health consumers or, where applicable, persons entitled to consent on a health consumer's behalf such assistance as may be necessary to ensure—
 - (i) That the health consumer's or, as the case may be, that person's consent to the carrying out of health care procedures is obtained; and
 - (ii) That that consent is informed consent:
- (e) To promote, by education and publicity, an understanding of, and compliance with, the principle that, except where any enactment or any provision of the Code otherwise provides, no health care procedure shall be carried out without informed consent:
- (f) In respect of health care providers and disability services providers in the area that the advocate serves,—
 - (i) To provide information on the rights of health consumers and disability services consumers:
 - (ii) To promote awareness of advocacy services:
 - (iii) To provide advice on the establishment and maintenance of procedures for providing proper information to health consumers in relation to health care procedures and for the obtaining of consent to such health care procedures:

- (iv) To provide advice on the establishment and maintenance of procedures to ensure the protection of the rights of health consumers and of disability services consumers, including monitoring procedures and complaints procedures:
- (g) To receive complaints alleging that any action of any health care provider or disability services provider is or appears to be in breach of the Code:
- (h) In respect of a complaint of the kind referred to in paragraph (g) of this section, to represent or assist the person alleged to be aggrieved for the purposes of endeavouring to resolve the complaint by agreement between the parties concerned:
- (i) To provide assistance to persons who wish—
- (i) To pursue a complaint of the kind referred to in paragraph (g) of this section through any formal or informal procedures (including proceedings before a health professional body) that exist for resolving that complaint:
- (ii) To make a representation to the Commissioner or any other body or person in respect of any matter that is or appears to be in breach of the Code:
- (j) To report regularly to the Director of Advocacy on the operation of advocacy services in the area served by the advocate:
- (k) To report to the Commissioner from time to time on any matter relating to the rights of health consumers or disability services consumers or both (whether in relation to a particular health consumer or disability services consumer, or a group of health consumers or disability services consumers, or in relation to health consumers or disability services consumers generally) that, in the advocate's opinion, should be drawn to the attention of the Commissioner:
- (l) To exercise and perform such other functions, powers, and duties as are conferred or imposed on advocates by or under this Act or any other enactment.

PART IV

INVESTIGATION OF COMPLAINTS

Complaints

81. Complaints—Any person may make a complaint to an advocate or to the Commissioner alleging that any action of

any health care provider or disability services provider is or appears to be in breach of the Code.

32. Mode of complaint—A complaint to an advocate or to the Commissioner may be made either orally or in writing.

33. Complaint under health registration enactment—Where,—

(a) In accordance with any provision of a health registration enactment, a complaint made under that enactment is notified to the Commissioner; and

(b) The Commissioner decides to investigate that complaint under this Part of this Act,—

the complaint shall be deemed for the purposes of this Act to be a complaint made under this Part of this Act.

34. Advocate to refer unresolved complaint to Commissioner—Where—

(a) A complaint is made under this Part of this Act to an advocate; and

(b) The advocate is unable to resolve the complaint,—
the advocate shall—

(c) Refer the complaint to the Commissioner, and in that case the complaint shall be deemed to be a complaint made to the Commissioner; and

(d) Inform the parties concerned of that referral and the reasons for it.

Investigations by Commissioner

35. Investigation of breaches of Code—(1) It shall be a function of the Commissioner to investigate any action of any health care provider or any disability services provider where that action is or appears to the Commissioner to be in breach of the Code.

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

Cf. 1993, No. 28, s. 69

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

(a) Investigate the complaint himself or herself:

(b) Refer the complaint to an advocate in accordance with section 42 of this Act for the purpose of resolving the

complaint by agreement between the parties concerned:

(c) Decide, in accordance with section 37 of this Act, to take no action on the complaint.

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

Cf. 1993, No. 28, s. 70

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

- (a) The length of time that has elapsed between the date when the subject-matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or
- (b) The subject-matter of the complaint is trivial; or
- (c) The complaint is frivolous or vexatious or is not made in good faith; or
- (d) The person alleged to be aggrieved does not desire that action be taken or, as the case may be, continued; or
- (e) There is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, which it would be reasonable for the person alleged to be aggrieved to exercise.

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

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

Cf. 1993, No. 28, s. 71

38. Commissioner may notify health professional bodies of complaint or investigation—(1) In any case where—

- (a) The Commissioner receives a complaint under this Part of this Act, and that complaint is made against or directly involves a registered health professional; or
- (b) The Commissioner, on his or her own initiative, proposes to investigate any matter under this Part of this Act, and that matter directly involves a registered health professional,—

the Commissioner may notify the appropriate health professional body of the complaint or, as the case requires, the matter, and may at any time consult with that body as to the most appropriate means of dealing with the complaint or matter.

(2) For the purposes of this section, the appropriate health professional body is,—

- (a) In the case of a medical practitioner, such body or person as the Medical Council of New Zealand from time to time determines and notifies to the Commissioner:
- (b) In the case of a dentist, the Dental Council of New Zealand:
- (c) In the case of a clinical dental technician, or a dental technician, the Dental Technicians Board:
- (d) In the case of a pharmacist, the Council of the Pharmaceutical Society of New Zealand:
- (e) In the case of a nurse, the Nursing Council of New Zealand:
- (f) In the case of a psychologist, the Psychologists Board:
- (g) In the case of a chiropractor, the Chiropractic Board:
- (h) In the case of an optician, the Opticians Board:
- (i) In the case of a dietitian, the Dietitians Board:
- (j) In the case of an occupational therapist, the Occupational Therapy Board:
- (k) In the case of a physiotherapist, the Physiotherapy Board:
- (l) In the case of a person to whom section 4 (1) (m) of this Act applies, the Board that, under the Medical Auxiliaries Act 1966, has jurisdiction in respect of the particular occupation in which the person is engaged.

39. Suspension of disciplinary action—(1) Where, in accordance with section 38 of this Act, a complaint or matter is notified by the Commissioner to a health professional body, no action shall be taken under any health registration enactment

concerning the complaint or matter to which the notification relates until—

- (a) The Commissioner notifies the appropriate health professional body—
 - (i) That the complaint or matter is not to be investigated, or investigated further, under this Act; or
 - (ii) That the complaint or matter has been resolved; or
 - (iii) That the complaint or matter has been investigated under this Act and the complaint or matter is not to be referred to the Director of Proceedings in accordance with section 45 (f) of this Act; or
- (b) The Director of Proceedings notifies the appropriate health professional body that the Director of Proceedings has decided, pursuant to section 49 of this Act, not to institute disciplinary proceedings under that health registration enactment in relation to the complaint or matter.

(2) For the purposes of this section, the appropriate health professional body shall be determined in accordance with section 38 (2) of this Act.

(3) Nothing in this section prevents the taking of any action under—

- (a) Any health registration enactment to prevent or restrict the performance, by any person, of his or her professional duties on the grounds of mental or physical disability;
- (b) Section 7 (2) of the Physiotherapy Amendment Act 1953 (which provides for the immediate suspension of a licence to use ultrasonic therapy apparatus).

40. Referral of complaint to Ombudsman or Privacy Commissioner or Human Rights Commission—

(1) Where, on receiving a complaint under this Part of this Act, the Commissioner considers that the complaint relates, in whole or in part,—

- (a) To a matter that is more properly within the jurisdiction of an Ombudsman under the Ombudsmen Act 1975 or the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987; or

- (b) To a matter that is more properly within the jurisdiction of the Privacy Commissioner under the Privacy Act 1993; or
- (c) To a matter that is more properly within the jurisdiction of the Human Rights Commission under the Human Rights Act 1993,—

the Commissioner shall forthwith consult with the Chief Ombudsman or, as the case requires, the Privacy Commissioner or the Chief Human Rights Commissioner in order to determine the appropriate means of dealing with the complaint.

(2) As soon as practicable after consulting with any person under subsection (1) of this section, the Commissioner shall determine whether or not the complaint should be dealt with, in whole or in part, under this Act.

(3) If the Commissioner determines that the complaint should be dealt with, in whole or in part, under the Ombudsmen Act 1975 or the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987, the Commissioner shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the Chief Ombudsman to be dealt with accordingly, and shall notify the complainant of the action that has been taken.

(4) If the Commissioner determines that the complaint should be dealt with, in whole or in part, under the Privacy Act 1993, the Commissioner shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the Privacy Commissioner to be dealt with accordingly, and shall notify the complainant of the action that has been taken.

(5) If the Commissioner determines that the complaint should be dealt with, in whole or in part, under the Human Rights Act 1993, the Commissioner shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the Human Rights Commission to be dealt with accordingly, and shall notify the complainant of the action that has been taken.

Cf. 1993, No. 28, s. 72

Proceedings of Commissioner

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

- (a) Shall inform the complainant (if any), the health care provider or, as the case requires, the disability

services provider to whom or to which the investigation relates, and any person alleged to be aggrieved (if not the complainant), of the Commissioner's intention to make the investigation; and

(b) Shall inform the health care provider or, as the case requires, the disability services provider to whom or to which the investigation relates of—

(i) The details of the complaint (if any) or, as the case may be, the subject-matter of the investigation; and

(ii) The right of that person to submit to the Commissioner, within a reasonable time, a written response in relation to the complaint or, as the case may be, the subject-matter of the investigation.

Cf. 1993, No. 28, s. 73

42. Commissioner may refer matter to advocate—

(1) The Commissioner may, at any stage of the investigation of any matter under this Part of this Act, refer the matter to an advocate for the purpose of resolving the matter by agreement between the parties concerned.

(2) Where any matter is referred to an advocate pursuant to subsection (1) of this section, the advocate shall—

(a) Use his or her best endeavours to resolve the complaint by agreement between the parties concerned; and

(b) Report the results of those endeavours to the Commissioner.

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

(a) The terms of any agreement reached between the parties concerned; and

(b) Where agreement is not reached on all matters, those matters on which agreement is reached and those matters on which no agreement is reached; and

(c) Such other matters as the advocate thinks fit.

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

43. Parties to be informed of result of investigation—

Where any investigation is made following a complaint, the Commissioner shall conduct the investigation with due expedition and shall inform the parties concerned, as soon as reasonably practicable after the conclusion of the investigation

and in such manner as the Commissioner thinks proper, of the result of the investigation and of what further action (if any) the Commissioner proposes to take in respect of that complaint.

Cf. 1993, No. 28, s. 75

44. Notification to health professional body—(1) This section applies to—

- (a) Any investigation under this Part of this Act made following a complaint, where the complaint is made against, or directly involves, a registered health professional:
 - (b) Any investigation under this Part of this Act made on the Commissioner's own initiative, where the subject-matter of the investigation directly involves a registered health professional.
- (2) Where, after making an investigation to which this section applies,—
- (a) The Commissioner proposes to take further action in respect of the matter that was the subject-matter of the investigation, the Commissioner shall, as soon as practicable, inform the appropriate health professional body of the result of the investigation and of what further action the Commissioner proposes to take in respect of the matter:
 - (b) The Commissioner proposes to take no further action in respect of the matter that was the subject-matter of the investigation, the Commissioner may inform the appropriate health professional body of the result of the investigation and of the fact that the Commissioner proposes to take no further action in respect of the matter.
- (3) For the purposes of this section, the appropriate health professional body shall be determined in accordance with section 38 (2) of this Act.

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

- (a) Report the Commissioner's opinion, with reasons, to the health care provider or, as the case requires, the disability services provider whose action was the subject-matter of the investigation, and may make such recommendations as the Commissioner thinks

fit, including a recommendation that disciplinary proceedings be taken against any officer or employee or member of the health care provider or, as the case requires, of the disability services provider:

- (b) Report the Commissioner's opinion, with reasons, together with such recommendations (if any) as the Commissioner thinks fit, to all or any of the following:
 - (i) Any purchaser:
 - (ii) Any health professional body:
 - (iii) Any other person that the Commissioner considers appropriate:
- (c) Make such report to the Minister as the Commissioner thinks fit:
- (d) Make a complaint to any health professional body in respect of any person:
- (e) Where any person wishes to make such a complaint, assist that person to do so:
- (f) Refer the matter to the Director of Proceedings for the purpose of deciding whether any one or more of the following actions should be taken:
 - (i) Any of the actions contemplated by section 47 of this Act:
 - (ii) The institution of proceedings under section 50 of this Act:
 - (iii) The institution of disciplinary proceedings.

Cf. 1993, No. 28, s. 77

46. Implementation of recommendations of Commissioner—(1) Where, in accordance with section 45 (a) or (b) of this Act, the Commissioner makes any recommendation to any person, the Commissioner may request that person to notify the Commissioner, within a specified time, of the steps (if any) that the person proposes to take to give effect to that recommendation.

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

- (a) Shall, after considering the comments (if any) of the person concerned, inform the complainant (if any) of the Commissioner's recommendations and may make such comments on the matter as the Commissioner thinks fit; and

- (b) May, where the Commissioner considers it appropriate, transmit to the Minister such report on the matter as the Commissioner thinks fit.

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

47. Director of Proceedings' right to participate in disciplinary and other proceedings—(1) The Director of Proceedings may—

- (a) Provide assistance (whether financial or otherwise) to any complainant in any proceedings before any health professional body:
- (b) Provide representation (either in person or by counsel)—
- (i) For any complainant in any proceedings before a health professional body, in any case where the complainant, or any person acting on the complainant's behalf, is permitted, by or under the rules of procedure governing those proceedings, to appear and be heard in those proceedings:
- (ii) For any party in any proceedings in any Court in relation to any proceedings that are or have been before a health professional body:
- (iii) For any party in any proceedings before any Court, tribunal, authority, Royal Commission, commission of inquiry, board of inquiry, Court of Inquiry, or committee of inquiry, in any case where those proceedings in any way relate to or arise from any matter that was or is the subject-matter of any investigation by the Commissioner under this Part of this Act:
- (c) Appear and be heard, either in person or by counsel, in any proceedings of a kind described in subparagraph (ii) or subparagraph (iii) of paragraph (b) of this subsection, whether or not the Director of Proceedings is a party to those proceedings:
- (d) In the Director of Proceedings' own right, take such proceedings as the Director of Proceedings thinks fit before any Court or other tribunal in respect of any matter that in any way relates to or arises from any matter that was or is the subject-matter of any investigation by the Commissioner under this Part of this Act.

(2) Where, pursuant to subsection (1) (c) of this section, the Director of Proceedings appears in any proceedings, the Director of Proceedings shall, unless those proceedings are by way of appeal, have the right—

(a) To call evidence on any matter (including evidence in rebuttal) that should be taken into account in the proceedings:

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

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

(a) As to the payment by any party to the proceedings of the costs incurred by the Director of Proceedings in so doing; or

(b) As to the payment by the Director of Proceedings of any costs incurred by any party to the proceedings by reason of the appearance of the Director of Proceedings.

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

(5) Costs ordered to be paid by the Director of Proceedings shall be paid by the Commissioner.

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

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

Cf. 1993, No. 28, s. 80

49. Functions of Director of Proceedings—(1) The functions of the Director of Proceedings under this Part of this Act are—

- (a) To decide, on referral from the Commissioner pursuant to section 45 (f) of this Act,—
- (i) Whether to institute proceedings under section 50 of this Act, or disciplinary proceedings, or both, against a person against whom a complaint has been made under this Part of this Act or in respect of whom an investigation has been conducted under this Part of this Act; and
 - (ii) Whether to take any of the actions contemplated by section 47 of this Act; and
- (b) If the Director of Proceedings decides that such proceedings should be instituted or, as the case may be, that any such action should be taken, to institute the proceedings or, as the case may be, to take the action.
- (2) The Director of Proceedings shall not—
- (a) Institute proceedings under section 50 of this Act or disciplinary proceedings, or both, against a person referred to in subsection (1) (a) (i) of this section; or
 - (b) Take any of the actions contemplated by section 47 of this Act in respect of any such person—
- unless the Director of Proceedings has given that person an opportunity to be heard.
- (3) In determining—
- (a) Whether or not to institute such proceedings or to take any such action; and
 - (b) The type of proceedings to be instituted or the type of action to be taken; and
 - (c) The order in which such proceedings are instituted or such action taken,—
- the Director of Proceedings—
- (d) Shall have regard to the wishes of the complainant (if any) and the aggrieved person (if not the complainant) in relation to that matter; and
 - (e) Shall have regard to the need to ensure that appropriate disciplinary proceedings are instituted in any case where the public interest (whether for reasons of public health or public safety or for any other reason) so requires.

Proceedings Before Complaints Review Tribunal

50. Proceedings before Complaints Review Tribunal—

- (1) This section applies to any health care provider or disability services provider in respect of whom or of which and

investigation has been conducted under this Part of this Act in relation to any action alleged to be in breach of the Code.

(2) Subject to sections 49 (2) and 53 of this Act, civil proceedings before the Complaints Review Tribunal shall lie at the suit of the Director of Proceedings against any person to whom this section applies for a breach, by that person, of the Code.

(3) The Director of Proceedings may, under subsection (2) of this section, bring proceedings on behalf of a class of persons, and may seek on behalf of persons who belong to the class any of the remedies described in section 54 of this Act, where the Director of Proceedings considers that a person to whom this section applies is carrying on a practice which affects that class and which is in breach of the Code.

(4) Where proceedings are commenced by the Director of Proceedings under subsection (2) of this section, neither the complainant (if any) nor the aggrieved person (if not the complainant) shall be an original party to, or, unless the Tribunal otherwise orders, join or be joined in, any such proceedings.

Cf. 1993, No. 82, s. 83 (1)-(3)

51. Aggrieved person may bring proceedings before Tribunal—Notwithstanding section 50 (2) of this Act but subject to section 53 of this Act, the aggrieved person (whether personally or by any person authorised to act on his or her behalf) may bring proceedings before the Tribunal against a person to whom section 50 of this Act applies if he or she wishes to do so, and—

- (a) The Director of Proceedings is of the opinion that the complaint does not have substance or that the matter ought not to be proceeded with; or
- (b) In a case where the Director of Proceedings would be entitled to bring proceedings, the Director of Proceedings—
 - (i) Agrees to the aggrieved person bringing proceedings; or
 - (ii) Declines to take proceedings.

Cf. 1993, No. 82, s. 83 (4)

52. Remedies that may be sought—(1) Subject to subsection (2) of this section, in any proceedings before the Tribunal brought by the Director of Proceedings or the aggrieved person, the plaintiff may seek such of the remedies described in section 54 of this Act as he or she thinks fit.

(2) Where any person has suffered personal injury (within the meaning of the Accident Rehabilitation and Compensation Insurance Act 1992) covered by that Act, no damages (other than punitive damages in accordance with section 57 (1) (d) of this Act) arising directly or indirectly out of that personal injury—

- (a) May be sought by or on behalf of that person in any proceedings under section 50 or section 51 of this Act:
- (b) May be awarded to or for the benefit of that person in any such proceedings.

Cf. 1993, No. 82, s. 86 (1)

53. Limitation on right to bring proceedings—Nothing in section 50 or section 51 of this Act authorises or permits the Director of Proceedings or any aggrieved person to bring proceedings before the Tribunal in respect of any action that is alleged to be in breach of the Code in any case where the matter has been resolved under this Act by agreement between the parties concerned, unless a term of that agreement has not been complied with.

54. Powers of Complaints Review Tribunal—(1) If, in any proceedings under section 50 or section 51 of this Act, the Tribunal is satisfied on the balance of probabilities that any action of the defendant is in breach of the Code, it may grant one or more of the following remedies:

- (a) A declaration that the action of the defendant is in breach of the Code:
- (b) An order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order:
- (c) Damages in accordance with section 57 of this Act:
- (d) An order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the aggrieved person as a result of the breach:
- (e) Such other relief as the Tribunal thinks fit.

(2) In any proceedings under section 50 or section 51 of this Act, the Tribunal may award such costs against the defendant as it thinks fit, whether or not it makes any other order, or may award costs against the plaintiff, or may decline to award costs against either party.

(3) Where the Director of Proceedings is the plaintiff, any costs awarded against him or her shall be paid by the Commissioner, and the Commissioner shall not be entitled to be indemnified by the complainant or, as the case may be, the aggrieved person.

(4) It shall not be a defence to proceedings under section 50 or section 51 of this Act that the breach was unintentional or without negligence on the part of the defendant or any officer or employee or member of the defendant, but the Tribunal shall take the conduct of the defendant or, as the case may require, of any officer or employee or member of the defendant into account in deciding what, if any, remedy to grant.

(5) In any proceedings under section 50 or section 51 of this Act in respect of any action of a registered health professional, the Tribunal shall, where that action has been the subject of disciplinary proceedings, have regard to the findings of the body before which those disciplinary proceedings were heard and to any penalty imposed on that registered health professional in those proceedings.

Cf. 1993, No. 82, ss. 86 (2), (3), 87

55. Right of Director of Proceedings to appear in proceedings—(1) The Director of Proceedings may appear and be heard, in person or by counsel,—

- (a) In any proceedings under this Act before the Complaints Review Tribunal; and
- (b) In any proceedings in—
 - (i) A District Court; or
 - (ii) The High Court; or
 - (iii) The Court of Appeal,—

in relation to any proceedings that are or have been before the Tribunal under this Act,—
whether or not the Director of Proceedings is or was a party to the proceedings before the Tribunal.

(2) Where, pursuant to subsection (1) of this section, the Director of Proceedings appears in any proceedings of a kind described in that subsection, he or she shall, unless those proceedings are by way of appeal, have the right—

- (a) To call evidence on any matter (including evidence in rebuttal) that should be taken into account in the proceedings:
- (b) To examine, cross-examine, and re-examine witnesses,—but shall have no greater rights than parties to the proceedings in respect of the calling of evidence or evidence in rebuttal, or

in respect of the examination, cross-examination, and re-examination of witnesses.

(3) Where, pursuant to subsection (1) of this section, the Director of Proceedings, not being a party to any proceedings before the Tribunal, appears in those proceedings or in any proceedings in any Court in relation to those proceedings, the Tribunal or the Court, as the case may be, may make such order as it thinks fit—

(a) As to the payment by any party to the proceedings before the Tribunal or the Court of the costs incurred by the Director of Proceedings in so doing; or

(b) As to the payment by the Director of Proceedings of any costs incurred by any of the parties to the proceedings before the Tribunal or the Court by reason of the appearance of the Director of Proceedings.

(4) Costs ordered to be paid by the Director of Proceedings shall be paid by the Commissioner.

(5) Nothing in this section limits or affects—

(a) Section 54 (2) of this Act; or

(b) Any power of a Court to award costs in any proceedings to which the Director of Proceedings is a party.

Cf. 1993, No. 82, s. 84

56. Proof of exceptions—Where by any provision of the Code conduct is excepted from conduct that is in breach of the Code, the onus of proving the exception in any proceedings under this Part of this Act lies upon the defendant.

Cf. 1993, No. 82, s. 85

57. Damages—(1) Subject to section 52 (2) of this Act, in any proceedings under section 50 or section 51 of this Act, the Tribunal may award damages against the defendant for a breach of any of the provisions of the Code in respect of any one or more of the following:

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

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

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

(d) Any action of the defendant that was in flagrant disregard of the rights of the aggrieved person.

(2) Subject to subsections (3) to (5) of this section, the Commissioner shall pay damages recovered by the Director of Proceedings under this section to the aggrieved person on whose behalf the proceedings were brought.

(3) If the aggrieved person is an unmarried minor, the Commissioner may, in his or her discretion, pay the damages to the Public Trustee or to any person or trustee corporation acting as the manager of any property of that person.

(4) If the aggrieved person is a mentally disordered person within the meaning of section 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 whose property is not being managed under the Protection of Personal and Property Rights Act 1988, the Commissioner may, in his or her discretion, pay the damages to the Public Trustee.

(5) If the aggrieved person is a person whose property is being managed under the Protection of Personal and Property Rights Act 1988, the Commissioner shall ascertain whether the terms of the property order cover management of money received as damages and,—

(a) If damages fall within the terms of the property order, the Commissioner shall pay the damages to the person or trustee corporation acting as the property manager; or

(b) If damages do not fall within the terms of the property order, the Commissioner may, in his or her discretion, pay the damages to the Public Trustee.

(6) Where money is paid to the Public Trustee under subsection (3) or subsection (4) or subsection (5) of this section,—

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

(b) Subsections (4) and (6) to (9) of section 66 of the Public Trust Office Act 1957 shall, with any necessary modifications, apply in the case of a person referred to in subsection (4) or subsection (5) of this section.

Cf. 1993, No. 82, s. 88

58. Certain provisions of Human Rights Act 1993 to apply—Sections 89 to 92 and Part IV of the Human Rights Act 1993 shall apply, with such modifications as are necessary, in

respect of proceedings under section 50 or section 51 of this Act as if they were proceedings under section 83 of that Act.

Cf. 1993, No. 28, s. 89; 1993, No. 82, s. 145

PART V

MISCELLANEOUS PROVISIONS

Miscellaneous Provisions

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

(2) Subject to section 67 of this Act,—

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

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

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

(3) Subject to sections 41 (b) and 67 of this Act, no person shall be entitled as of right to be heard by the Commissioner.

(4) Without limiting any other provision of this Act, the Commissioner may, at any time, if the Commissioner considers that it is necessary or desirable in the public interest (whether for reasons of public health or public safety or for any other reason) that any matter be brought to the attention of any person or authority, refer the matter to the appropriate person or authority.

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

Cf. 1993, No. 28, s. 90

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

Cf. 1975, No. 9, s. 16

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

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

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

(4) There may be paid, out of the funds of the Commissioner,—

(a) To each party or to the representatives of each party, to the number determined by the Commissioner as being necessary to enable that party to be adequately represented, attending any conference called under this section; and

(b) To any person (other than the Commissioner) attending any conference pursuant to subsection (3) of this section,—

fees, allowances, and expenses as if the parties or their representatives and those persons were witnesses in a Court, and, for that purpose,—

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

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

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

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

62. Evidence—(1) The Commissioner may from time to time, by notice in writing, require any person who in the Commissioner's opinion is able to give information relating to any matter under investigation by the Commissioner to furnish such information, and to produce such documents or things in

the possession or under the control of that person, as in the opinion of the Commissioner are relevant to the subject-matter of the investigation.

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

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

Cf. 1993, No. 28, s. 91

63. Protection and privileges of witnesses, etc.—

(1) Except as provided in section 64 (2) of this Act, every person shall have the same privileges in relation to the giving of information to, the answering of questions put by, and the production of documents and things to the Commissioner or any employee of the Commissioner, as witnesses have in any Court.

(2) No person shall be required to supply any information to or to answer any question put by the Commissioner or any employee of the Commissioner in relation to any matter, or to produce to the Commissioner or any employee of the Commissioner any document or thing relating to any matter, in any case where compliance with that requirement would be in breach of an obligation of secrecy or non-disclosure imposed on that person by the provisions of any Act or regulations, other than the Official Information Act 1982 or the State Sector Act 1988.

(3) No person shall be liable to prosecution for an offence against any enactment, other than section 73 of this Act, by reason of that person's compliance with any requirement of the Commissioner or any employee of the Commissioner under section 62 of this Act.

(4) Where the attendance of any person is required by the Commissioner under section 62 of this Act, the person shall be entitled to the same fees, allowances, and expenses as if the person were a witness in a Court and, for the purpose,—

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

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

part, or to increase, any amounts payable under the regulations.

Cf. 1993, No. 82, s. 128

64. Disclosure of certain matters not to be required—

(1) Where—

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

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

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

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

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

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

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

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

Cf. 1993, No. 82, s. 129

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

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

(a) No proceedings, civil or criminal, shall lie against any person to whom this section applies for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her duties

under this Act, unless it is shown that he or she acted in bad faith:

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

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

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

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

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

(5) For the purposes of clause 3 of Part II of the First Schedule to the Defamation Act 1992, any report made under this Act by the Commissioner shall be deemed to be an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Cf. 1993, No. 82, s. 130

66. Corrupt use of official information—Every person to whom section 65 of this Act applies shall be deemed for the purposes of sections 105 and 105A of the Crimes Act 1961 to be an official.

67. Adverse comment—The Commissioner shall not, in any report or recommendation made or published under any of sections 14, 16, 45, and 46 (2) (b) of this Act, make any comment that is adverse to any person unless—

(a) That person has been given a reasonable opportunity—

(i) To be heard; and

(ii) To make a written statement in answer to the adverse comment; and

(b) Where that person so requires, there is included in or appended to the report or recommendation either—

(i) The written statement referred to in paragraph

(a) (ii) of this section; or

(ii) A fair and accurate summary of that statement,—
whichever the Commissioner considers is more appropriate in the circumstances.

Cf. 1993, No. 82, s. 138

Delegations

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

(2) No delegation under subsection (1) of this section shall include—

- (a) The power to delegate under that subsection; or
- (b) The functions of the Commissioner under Part II of this Act; or
- (c) The power to designate any person under section 15 (1) or section 24 (1) of this Act, or to revoke any such designation; or
- (d) The power to make any recommendation or report under this Act.

(3) No function or power of the Commissioner under Part IV or section 61 of this Act shall be delegated under subsection (1) of this section to the Director of Proceedings.

(4) The Director of Proceedings may from time to time, with the prior approval of the Commissioner in each case, delegate to any person holding office under the Commissioner all or any of the functions and powers of the Director of Proceedings under this Act or any other Act.

(5) The Director of Advocacy may from time to time, with the prior approval of the Commissioner in each case, delegate to any person holding office under the Commissioner all or any of the functions and powers of the Director of Advocacy under this Act or any other Act.

(6) No delegation under subsection (4) of this section shall be to the Director of Advocacy.

(7) No delegation under subsection (5) of this section shall be to the Director of Proceedings.

Cf. 1993, No. 28, s. 121 (1), (3)

69. Further provisions relating to delegations—

(1) Every delegation under section 68 of this Act shall be in writing.

(2) The power to delegate under section 68 of this Act does not limit any power of delegation conferred on the Commissioner or the Director of Proceedings or the Director of Advocacy by any other Act.

(3) Subject to any general or special directions given or conditions imposed by the person by whom the delegation is made, the person to whom any functions or powers are delegated under section 68 of this Act may exercise any functions or powers so delegated to that person in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation.

(4) Every person purporting to act pursuant to any delegation under section 68 of this Act shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under section 68 of this Act may be made—

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

(b) Subject to such restrictions and conditions as the person by whom the delegation is made thinks fit:

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

(6) No delegation under section 68 of this Act shall affect or prevent the exercise of any function or power by the Commissioner or, as the case requires, the Director of Proceedings or the Director of Advocacy, nor shall any such delegation affect the responsibility of the Commissioner for the actions of any person acting under the delegation.

Cf. 1993, No. 28, s. 121 (2), (4)–(8)

70. Delegate to produce evidence of authority—Any person purporting to exercise any power of the Commissioner or, as the case requires, the Director of Proceedings or the Director of Advocacy by virtue of a delegation under section 68 of this Act shall, when required to do so, produce evidence of that person's authority to exercise the power.

Cf. 1993, No. 28, s. 122

71. Revocation of delegations—(1) Every delegation under section 68 of this Act shall be revocable in writing at will.

(2) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the person by whom the delegation was made may have ceased to hold office,

and shall continue to have effect as if made by the successor in office of the person by whom the delegation was made.

Cf. 1993, No. 28, s. 123

Vicarious Liability

72. Liability of employer and principal—(1) In this section, the term “employing authority” means a health care provider or a disability services provider.

(2) Subject to subsection (5) of this section, anything done or omitted by a person as the employee of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person, whether or not it was done or omitted with that employing authority’s knowledge or approval.

(3) Anything done or omitted by a person as the agent of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person, unless it is done or omitted without that employing authority’s express or implied authority, precedent or subsequent.

(4) Anything done or omitted by a person as a member of an employing authority shall, for the purposes of this Act, be treated as done or omitted by that employing authority as well as by the first-mentioned person, unless it is done or omitted without that employing authority’s express or implied authority, precedent or subsequent.

(5) In any proceedings under this Act against any employing authority in respect of anything alleged to have been done or omitted by an employee of that employing authority, it shall be a defence for that employing authority to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing or omitting to do that thing, or from doing or omitting to do as an employee of the employing authority things of that description.

Cf. 1993, No. 82, s. 68

Offences

73. Offences—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$3,000 who,—

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

- (b) Without reasonable excuse, refuses or fails to comply with any lawful requirement of the Commissioner or any other person under this Act:
- (c) Makes any statement or gives any information to the Commissioner or any other person exercising powers under this Act, knowing that the statement or information is false or misleading:
- (d) Represents directly or indirectly that he or she holds any authority under this Act when he or she does not hold that authority.

Cf. 1975, No. 9, s. 30

Regulations

74. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations prescribing a Code of Health and Disability Services Consumers' Rights.

(2) In addition to the power conferred by subsection (1) of this section, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the procedure for the service of notices and other documents under this Act:
- (b) Providing for such matters as are contemplated by or necessary for giving effect to this Act and for its due administration.

75. Where regulations made against or without advice of Commissioner—(1) This section applies where any regulations are made under section 74 (1) of this Act—

- (a) As a result of any draft Code, or any draft amendments to a Code, forwarded to the Minister by the Commissioner, where the regulations differ in any material respect (other than in matters of drafting style) from the draft so forwarded; or
- (b) Other than in accordance with, or in the absence of, a recommendation of the Commissioner.

(2) Where this section applies, the Minister shall, within 12 sitting days of the making of the regulations, lay before the House of Representatives a statement setting out the following matters:

- (a) Where paragraph (a) of subsection (1) of this section applies,—
 - (i) The respects in which the regulations differ in a material respect (other than in matters of drafting

style) from the draft forwarded by the Commissioner;
and

(ii) The reasons for the differences:

- (b) Where paragraph (b) of that subsection applies, the reasons why the regulations were made other than in accordance with, or in the absence of, a recommendation of the Commissioner.

Amendments to Other Enactments

76. Amendments to Ombudsmen Act 1975—(1) The Ombudsmen Act 1975 is hereby amended by inserting, after section 17A (as inserted by section 2 of the Ombudsmen Amendment Act 1993), the following section:

“17B. Referral of complaint to Health and Disability Commissioner—(1) Where, on receiving a complaint under this Act, an Ombudsman considers that the complaint relates, in whole or in part, to a matter that is more properly within the jurisdiction of the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994, the Ombudsman shall forthwith consult with the Health and Disability Commissioner in order to determine the appropriate means of dealing with the complaint.

“(2) As soon as practicable after consulting with the Health and Disability Commissioner under subsection (1) of this section, the Ombudsman shall determine whether the complaint should be dealt with, in whole or in part, under this Act.

“(3) If the Ombudsman determines that the complaint should be dealt with, in whole or in part, under the Health and Disability Commissioner Act 1994, the Ombudsman shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the Health and Disability Commissioner to be dealt with accordingly, and shall notify the complainant of the action that has been taken.”

(2) The Ombudsmen Act 1975 is hereby amended by inserting, after section 21A (as inserted by section 3 of the Ombudsmen Amendment Act 1993), the following section:

“21B. Consultation with Health and Disability Commissioner—Notwithstanding anything in section 21 of this Act, an Ombudsman may from time to time undertake consultation with the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 in relation to any matter relating to the functions of the Ombudsman, including (without limitation) consultation—

“(a) For the purposes of making a determination under section 17B of this Act:

“(b) In relation to any matter arising out of or in the course of an investigation under this Act or any other enactment:

“(c) In relation to any matter that is within the jurisdiction of the Health and Disability Commissioner, whether or not the matter arises out of a particular complaint made under this Act,—

and, for the purposes of any such consultation, an Ombudsman may disclose to the Health and Disability Commissioner such information as the Ombudsman considers necessary for that purpose.”

(3) The Ombudsmen Act 1975 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

“The Health and Disability Commissioner.”

77. Amendments to Higher Salaries Commission Act 1977—(1) The Fourth Schedule to the Higher Salaries Commission Act 1977 (as substituted by section 14 of the Higher Salaries Commission Amendment Act 1988) is hereby amended—

(a) By inserting, after the item relating to the Principal Tenancy Adjudicator and the Deputy Principal Tenancy Adjudicator, the item “The Health and Disability Commissioner.”:

(b) By omitting the item relating to the Privacy Commissioner (as substituted by section 129 (1) of the Privacy Act 1993), and substituting the item “The Privacy Commissioner and the Deputy Privacy Commissioner.”

(2) The Privacy Act 1993 is hereby consequentially amended by repealing so much of the Sixth Schedule as relates to the Higher Salaries Commission Act 1977.

78. Amendment to Public Finance Act 1989—The Public Finance Act 1989 is hereby amended by inserting in the Fourth, Fifth, and Seventh Schedules (as added by section 41 of the Public Finance Amendment Act 1992), in each case in its appropriate alphabetical order, the following item:

“Health and Disability Commissioner.”

79. Amendment to Accident Rehabilitation and Compensation Insurance Act 1992—Section 14 of the

Accident Rehabilitation and Compensation Insurance Act 1992 is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Nothing in this section shall apply to any proceedings under section 50 or section 51 of the Health and Disability Commissioner Act 1994 or under section 83 or section 90 or section 122 or section 123 or section 124 of the Human Rights Act 1993.”

80. Amendments to Health Reforms (Transitional Provisions) Act 1993—(1) Section 26 of the Health Reforms (Transitional Provisions) Act 1993 is hereby amended by inserting, after subsection (2), the following subsections:

“(2A) Section 2 of the Health and Disability Commissioner Act 1994 is hereby consequentially amended by repealing paragraph (e) of the definition of the term ‘health care institution’, and substituting the following paragraph:

‘(e) Any home or premises in which 5 or more disabled persons who are under the age of 17 years are receiving care.’

“(2B) Section 3 of the Health and Disability Commissioner Act 1994 is hereby consequentially amended by repealing paragraph (d), and substituting the following paragraph:

‘(d) A controlling authority of any home or premises in which 5 or more disabled persons who are under the age of 17 years are receiving care.’”

(2) Section 26 (3) of the Health Reforms (Transitional Provisions) Act 1993 is hereby amended by omitting the expression “Subsection (2)”, and substituting the expression “Subsections (2), (2A), and (2B)”.

81. Amendments to Privacy Act 1993—(1) The Privacy Act 1993 is hereby amended by inserting, after section 72, the following section:

“72A. **Referral of complaint to Health and Disability Commissioner**—(1) Where, on receiving a complaint under this Part of this Act, the Commissioner considers that the complaint relates, in whole or in part, to a matter that is more properly within the jurisdiction of the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994, the Commissioner shall forthwith consult with the Health and Disability Commissioner in order to determine the appropriate means of dealing with the complaint.

“(2) As soon as practicable after consulting with the Health and Disability Commissioner under subsection (1) of this

section, the Commissioner shall determine whether or not the complaint should be dealt with, in whole or in part, under this Act.

“(3) If the Commissioner determines that the complaint should be dealt with, in whole or in part, under the Health and Disability Commissioner Act 1994, the Commissioner shall forthwith refer the complaint or, as the case requires, the appropriate part of the complaint to the Health and Disability Commissioner to be dealt with accordingly, and shall notify the complainant of the action that has been taken.”

(2) Section 117 of the Privacy Act 1993 is hereby amended by omitting the expression “Part VIII of” where it first appears.

(3) The Privacy Act 1993 is hereby amended by inserting, after section 117, the following section:

“117A. **Consultation with Health and Disability Commissioner**—Notwithstanding anything in section 116 of this Act, the Commissioner may from time to time undertake consultation with the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 in relation to any matter relating to the functions of the Commissioner under this Act, including (without limitation) consultation—

“(a) For the purposes of making a determination under section 72A of this Act:

“(b) In relation to any matter arising out of or in the course of an investigation under Part VIII of this Act:

“(c) In relation to any matter that is within the jurisdiction of the Health and Disability Commissioner, whether or not the matter arises out of a particular complaint made under Part VIII of this Act,—

and, for the purposes of any such consultation, the Commissioner may disclose to the Health and Disability Commissioner such information as the Commissioner considers necessary for that purpose.”

(4) The First Schedule to the Privacy Act 1993 is hereby amended by inserting, after clause 10, the following clause:

“10A. **Audit Office to be auditor of Commissioner’s accounts**—The annual financial statements of the Commissioner shall be audited by the Audit Office, which, for that purpose, shall have and may exercise all such powers as it has under the Public Finance Act 1977 in respect of public money and stores.”

82. Amendment to Human Rights Act 1993—Section 144 of the Human Rights Act 1993 is hereby amended by adding the following subsection:

“(2) For the avoidance of doubt, it is hereby declared that the power conferred by subsection (1) of this section to make regulations in respect of proceedings before the Tribunal includes power to make regulations in respect of proceedings in connection with the exercise or performance of any function, power, or duty conferred or imposed on the Tribunal by or under any other enactment.”

SCHEDULES

Section 2

FIRST SCHEDULE

HEALTH REGISTRATION ENACTMENTS

Chiropractors Act 1982
 Dental Act 1988
 Dietitians Act 1950
 Medical Auxiliaries Act 1966
 Medical Practitioners Act 1968
 Nurses Act 1977
 Occupational Therapy Act 1949
 Optometrists and Dispensing Opticians Act 1976
 Pharmacy Act 1970
 Physiotherapy Act 1949
 Psychologists Act 1981

Section 17

SECOND SCHEDULE

PROVISIONS APPLYING IN RESPECT OF COMMISSIONER

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

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

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

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

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

(4) Subject to subclause (5) of this clause, employees appointed under this clause shall be employed on such terms and conditions of employment as the Commissioner from time to time determines.

(5) The Commissioner shall,—

(a) Before entering into a collective employment contract in relation to all or any of the Commissioner's employees appointed under this clause, consult with the State Services Commissioner with respect to the terms and conditions of employment to be included in the collective employment contract; and

(b) From time to time consult with the State Services Commissioner in relation to the terms and conditions of employment applying to

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

those employees appointed under this clause who are not covered by a collective employment contract.

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

- (a) A salary at such rate as the Higher Salaries Commission from time to time determines; and
- (b) Such allowances as are from time to time determined by the Higher Salaries Commission.

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

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

(4) There shall also be paid to the Commissioner, in respect of time spent in travelling in the exercise of the Commissioner's functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Commissioner were a member of a statutory Board and the travelling were in the service of the statutory Board.

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

4. Superannuation or retiring allowances—(1) For the purpose of providing superannuation or retiring allowances for the Commissioner and for any of the employees of the Commissioner, the Commissioner may, out of the funds of the Commissioner, make payments to or subsidise any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

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

(3) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) of this clause entitles any such person to become a

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

contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

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

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

6. Services for Commissioner—(1) The Crown, acting through any department, may from time to time, at the request of the Commissioner, execute any work or enter into any arrangements for the execution or provision by the department for the Commissioner of any work or service, or for the supply to the Commissioner of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed.

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

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

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

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

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

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

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

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

10. Commissioner not to borrow without consent of Minister of Finance—Notwithstanding anything in section 8(3) of this Act, the Commissioner shall not borrow or contract to borrow any money, or renew any loan made to the Commissioner, without the prior written consent of the Minister of Finance.

11. Audit Office to be auditor of Commissioner's accounts—The annual financial statements of the Commissioner shall be audited by the Audit Office, which, for that purpose, shall have and may exercise all such powers as it has under the Public Finance Act 1977 in respect of public money and stores.

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

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

This Act is administered in the Ministry of Health.
