



Australian Capital Territory

Health Professionals Act 2004

A2004-38

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Australian Capital Territory

Health Professionals Act 2004

A2004-38

An Act to protect the public from risk of harm by ensuring that the people who provide health services regulated by this Act are competent to provide health services, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2002 044B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Introductory

1 Name of Act

This Act is the *Health Professionals Act 2004*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) If this Act has not commenced 1 year after the Act's notification day, this Act automatically commences on the day after the end of the year.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*health professional*—see section 14.' means that the term 'health professional' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 What does this Act do?

6 Outlines

The provisions in this part are intended only as a guide to readers about the general scheme and effect of the Act.

7 Regulation of health professionals

- (1) This Act regulates health professionals in health professions that the Executive considers should be regulated (see part 4).
- (2) Health profession boards are established for regulated health professions (see part 5 and the regulations).
- (3) Under part 5, part 6 and the regulations, the health profession board for a profession is responsible for, among other things—
 - (a) registering health professionals in the profession; and
 - (b) setting the required standard of practice for the profession; and

Note Some requirements of the required standard of practice are prescribed under the regulations.

 - (c) helping health professionals to continue to meet the required standard of practice; and
 - (d) taking action in relation to reports and complaints about health professionals in the profession.
- (4) The health professions tribunal hears appeals from decisions of the health profession boards and may suspend or cancel a health professional's registration (see part 7).
- (5) The regulation of health professions is supported by offences in relation to unregistered people providing health services in regulated professions (see part 8).

8 How does a health professional's behaviour come to a health profession board's attention?

A registered health professional's behaviour comes to a health profession board's attention if—

- (a) a report is made under this Act (see part 9); or
- (b) a complaint is made under the *Community and Health Services Complaints Act 1993*; or
- (c) the health professional's professional practice is reviewed under this Act (see division 6.2) and the relevant health profession board decides to treat the results of the review as a report (see section 39 (3)).

9 Reports

- (1) Anyone may report a health professional under this Act if the health professional is contravening, or has contravened, the required standard of practice or does not satisfy the suitability to practise requirements (see section 78).
- (2) A report is considered by the health profession board and by the commissioner together (see part 10).
- (3) A report may be referred to a personal assessment panel (see part 11) if the report suggests that a health professional's mental or physical health may be affecting the health professional's ability to meet the required standard of practice or to satisfy the suitability to practise requirements.
- (4) A report about a health professional may be referred to a professional standards panel (see part 12) if the report suggests that the health professional is contravening, or has contravened, the required standard of practice or does not satisfy the suitability to practise requirements and—
 - (a) the contravention or lack of suitability does not relate to the health professional's mental or physical health; or

- (b) the report has not been successfully dealt with by a personal assessment panel.

10 Personal assessment panel

- (1) A personal assessment panel provides a way for a health professional whose mental or physical health may be affecting the health professional's ability to meet the required standard of practice to get help in dealing with the health problem proactively while ensuring that the public is protected.
- (2) Because a personal assessment panel is intended to work cooperatively with the health professional it assesses, a health professional may choose not to take part in an assessment by the panel or may refuse to agree with a recommendation of the panel.
- (3) A personal assessment panel established by a health profession board may recommend to the board that a condition be placed on a health professional's registration only with the agreement of the health professional (see section 101).
- (4) If the health professional does not agree with a recommendation of the personal assessment panel, the lack of agreement must be noted in the referral of the recommendation to the health profession board for possible further action (see section 99).

11 Professional standards panel

- (1) A professional standards panel decides, after inquiry, whether a registered health professional is contravening, or has contravened, the required standard of practice or does not satisfy the suitability to practise requirements (see part 12).
- (2) The professional standards panel may require the registered health professional to take certain action, accept a voluntary undertaking from the health professional or refer the report or complaint that led to the inquiry to the health professions tribunal.

12 Interaction with Community and Health Services Complaints Act

- (1) The commissioner must consult with the health profession board for a health profession in relation to a complaint or report relating to a health professional in the profession received by the commissioner.
- (2) In considering a report (which may be a final review report under section 39) or a complaint under the *Community and Health Services Complaints Act 1993* (the **CHSC Act**) relating to a registered health professional, the health profession board and the commissioner must try to jointly make decisions about how to deal with the health professional.
- (3) If the health profession board and commissioner cannot make a decision jointly, the most serious action chosen by the board or commissioner prevails (see section 86 (2)).
- (4) The health profession board and commissioner may act under this Act or the CHSC Act.

Note The commissioner must assess and may investigate a report or conduct an inquiry into a report under the CHSC Act.

- (5) This Act and the CHSC Act set out a flexible system for dealing with reports and complaints.

Part 3 Main object and important concepts

13 Main object

- (1) The main object of this Act is to protect the public from risk of harm by ensuring that the people who provide health services are competent to provide health services and to help health professionals in professions regulated by this Act to achieve and maintain the required standard of practice.
- (2) Without limiting subsection (1), this Act achieves its object by doing the following:
 - (a) regulating health professions if appropriate;
 - (b) providing for clear criteria for regulating health professions;
 - (c) providing for a system of registration of health professionals that includes the issue of practising certificates for continuing registration;
 - (d) providing for a system that continuously reviews the standard of practice of health professionals;
 - (e) setting up health profession boards to regulate health professions;
 - (f) providing a system for the public to report concerns about the standard of practice of particular health professionals;
 - (g) providing a system for dealing with reports about health professionals' contravention of the required standard of practice or failure to satisfy the suitability to practise requirements;

- (h) providing a system for dealing with health professionals who are found to be contravening, or to have contravened, the required standard of practice or who do not satisfy the suitability to practise requirements;
- (i) establishing and providing a framework of operation for a health professions tribunal.

14 Who is a *health professional*?

A *health professional* is someone who provides a health service while working in a health profession.

Examples of health professionals

dentists, doctors, nurses, psychologists

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

15 What is a *health service*?

- (1) For this Act, a *health service* is a service provided to someone (the *service user*) for any of the following purposes:
 - (a) assessing, recording, maintaining or improving the physical, mental or emotional health, comfort or wellbeing of the service user;
 - (b) diagnosing or treating an illness, disability, disorder or condition of the service user.
- (2) Also, a health service includes a service provided by a health professional in the professional's capacity as a health professional.

16 What is a *regulated health service*?

In this Act:

regulated health service means a health service ordinarily provided by a health professional in a regulated health profession.

17 When is someone a *registered* health professional?

In this Act:

registered, in relation to a health professional, means registered under this Act.

18 What is the *required standard of practice*?

- (1) The *required standard of practice*, for a health professional, is the exercise of professional judgment, knowledge, skill and conduct at a level that maintains public protection and safety.

Example

A doctor who falsifies research data would not be exercising professional conduct at a level that maintains public protection and safety.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The regulations may prescribe, but do not limit, what behaviour does and does not meet the required standard of practice.

Example

A registered health professional does something that the regulations do not deal with but that clearly demonstrates a lack of professional judgment. The health professional contravenes the required standard of practice.

- (3) However, if the regulations prescribe something that is inconsistent with the code under the *Community and Health Services Complaints Act 1993*, the regulations are ineffective to the extent of the inconsistency.

19 What is the *relevant health profession board*?

(1) In this Act:

relevant health profession board, for a health professional, means—

- (a) the health profession board with whom the health professional is registered; or
- (b) if the health professional is no longer registered—the health profession board with whom the health professional was last registered; or
- (c) in relation to something the health professional did—the health profession board with whom the health professional was registered when the health professional did the thing.

(2) However, if a health professional is registered, or has been registered, with more than 1 health profession board, the *relevant health profession board* for the health professional is—

- (a) in relation to something the health professional is doing or did when practising a health profession—the board that regulates the profession the health professional is or was practising when doing the thing; or
- (b) in relation to something the health professional is doing or did other than when practising a health profession—
 - (i) if the health professional is only registered with 1 board—the board; or
 - (ii) if the health professional is registered with 2 or more boards—each board with whom the health professional is registered.

Part 4 Regulation of health professions

20 Decision to regulate health profession

- (1) The Executive may decide, in writing, that a health profession should be regulated.
- (2) The Executive may decide that the health profession should be regulated on the Executive's own initiative or if asked by an entity that the Executive is satisfied represents the interests of the health profession.
- (3) However, before deciding that the health profession should be regulated, the Executive must decide whether regulation of the profession is necessary or desirable (see section 21).
- (4) A decision under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

21 Deciding whether regulation necessary or desirable

- (1) To decide whether regulation of a health profession is necessary or desirable, the Executive must consider the following:
 - (a) the likelihood of harm, and the likely extent of harm, to the health and safety of the public if a health service ordinarily provided by the profession is not provided properly;
 - (b) whether there is likely to be an increase in the quality of the services provided, to the benefit of the public, if the profession is regulated;
 - (c) whether the profession would operate appropriately if it were not regulated;
 - (d) whether the profession can be regulated.

- (2) The Executive may consider any other matter the Executive considers relevant.
- (3) For subsection (1) (d), a health profession can be regulated if—
 - (a) the profession has a distinct area of practice; and
 - (b) there is an objective basis for assessing the competence of members of the profession; and
 - (c) significant training and education is needed to become a competent member of the profession.

22 How may the regulations regulate health professions?

- (1) If the Executive decides under section 20 that a health profession should be regulated, the regulations must make provision for—
 - (a) the general area of operation of the profession; and
 - (b) the suitability to practise requirements for the profession (see section 23).
- (2) However, the Executive may make regulations under subsection (1) in relation to a health profession only after it has consulted with an entity that is generally accepted to represent the health profession.
- (3) The regulations may also make provision for anything that is necessary or convenient to be prescribed for regulating the profession.
- (4) Subject to any disallowance or amendment under the Legislation Act, chapter 7, the regulations mentioned in subsection (1) commence—
 - (a) if a motion to disallow the regulations is moved in the Legislative Assembly and the motion is negatived—the day after the day the motion is negatived; or
 - (b) the day after the 6th sitting day after the day the regulations are presented to the Legislative Assembly under that chapter; or

- (c) if the regulations provide for a later date or time of commencement—on that date or at that time.

23 Suitability to practise requirements

The *suitability to practise requirements* for each regulated health profession must state the requirements to be satisfied for a person to be unconditionally registered to practise in the health profession, including, for example—

- (a) qualification requirements; and
- (b) requirements about mental and physical health; and
- (c) requirements for admission to a specialty area (if any) within the profession; and
- (d) requirements in relation to the maintenance and demonstration of continuing competency, recency of practice and professional development.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 5 **Health profession boards**

Division 5.1 **Establishment and functions of boards**

24 **Establishment of health profession boards**

- (1) In regulating a health profession for this Act, the regulations must establish a health profession board in relation to the profession.
- (2) The regulations—
 - (a) must state the size of the health profession board and its make-up, including—
 - (i) the number of community representatives it has as members; and
 - (ii) whether, and how many, members are appointed or elected; and
 - (b) if any members are elected—must prescribe how elections take place; and
 - (c) must prescribe at least 1 community representative as a member for a health profession board; and
 - (d) may require a community representative for the health profession board to be a member of a different profession.
- (3) Also, the regulations may make provision in relation to the following:
 - (a) the jurisdiction of the Supreme Court in relation to elections under this Act, including the giving of jurisdiction to the court;
 - (b) the exercise of the jurisdiction of the Supreme Court mentioned in paragraph (a);

- (c) when a decision of the Supreme Court about an election is final and conclusive, not subject to appeal and must not be called into question;
- (d) how the validity of an election may be challenged.

25 Number of health profession boards

- (1) The regulations may not establish more than 1 health profession board for a health profession.
- (2) However, the regulations may establish a single health profession board for 2 or more health professions.
- (3) If a health profession board regulates 2 or more health professions, the regulations must require at least 1 member of each health profession to be a board member.

26 What do health profession boards do?

- (1) The health profession board for a health profession assists the Minister with the administration of this Act in relation to the profession and is responsible to the Minister for that administration.
- (2) Also, the health profession board for a health profession exercises the functions given to it under this Act in relation to the health profession, including the following:
 - (a) administering a scheme of registration for, and of continuous review of the standard of practice of, health professionals in the profession;
Note **Register** includes enrol (see dict).
 - (b) setting fees for administration by the board;
 - (c) giving advice to the Minister, profession and public about matters relevant to the profession;
 - (d) setting standards of practice for the profession;

- (e) taking part in any entity responsible for the development of policies for the promotion and maintenance of standards of practice within the profession or within regulated health professions generally;
 - (f) approving educational and training courses related to professional qualifications;
 - (g) promoting and monitoring continuing competence of registered professionals in the profession and their professional development;
 - (h) dealing with registered professionals who contravene the required standard of practice or who do not satisfy the suitability to practise requirements;
 - (i) providing information to allow the laying of charges against people who commit offences against this Act;
 - (j) assisting in the development of the required standard of practice;
 - (k) promoting the required standard of practice;
 - (l) developing and promoting best practice standards to which registered health professionals should aspire;
 - (m) developing supportive relationships with individuals or entities that have a shared interest in public protection and health professional regulation;
 - (n) providing information to confirm whether or not someone is a registered health professional.
- (3) If a health profession board wants a health professional's registration cancelled or suspended, the board must apply to the health professions tribunal.

27 Obligation to exercise functions diligently

A health profession board must exercise its functions diligently.

28 Reporting on exercise of functions

- (1) The Minister may, in writing, ask for a written report from a health profession board about the exercise of its functions.
- (2) The request may be for a general report or a report in relation to stated criteria or a stated matter.
- (3) The health profession board must provide a report under subsection (2) within the time the Minister reasonably requires.

29 Failure by health profession board to exercise functions diligently

- (1) If the Minister is not satisfied that a health profession board is exercising its functions diligently, the Minister may, in writing—
 - (a) tell the board that the Minister is not satisfied that the board is exercising its functions diligently; and
 - (b) give the board reasons why the Minister is not satisfied; and
 - (c) give the board at least 14 days after the day the notice is given to the board to make representations to the Minister about the matter.

Note The functions of a health profession board are set out in s 26.

- (2) If, after considering any representations made by the health profession board within the time set out in the notice, the Minister is not satisfied that the board is exercising its functions diligently, the Minister may, in writing, tell the board what it must do for the Minister to be satisfied.
- (3) The regulations may prescribe matters that the Minister must or may take into consideration in deciding for this section or section 30 whether a health profession board is exercising its functions diligently.

30 Discharging health profession board

- (1) This section applies if—
 - (a) the Minister has written to a health profession board under section 29 (2); and
 - (b) the Minister is satisfied that a reasonable time has passed since the Minister wrote to the board.
- (2) If the Minister is still not satisfied that the health profession board is exercising its functions diligently, the Minister may, in writing—
 - (a) tell the board that the Minister is not satisfied that the board is exercising its functions diligently; and
 - (b) give the board reasons why the Minister is still not satisfied; and
 - (c) give the board at least 14 days after the day the notice is given to the board to make representations to the Minister about why the board should not be discharged.
- (3) If, after considering any representations made by the health profession board within the time stated in the notice, the Minister is satisfied that the board should be discharged, the Minister may ask the Legislative Assembly to approve the discharge of the board.
- (4) The approval of the Legislative Assembly may be expressed by resolution.
- (5) If the Legislative Assembly approves the discharge of the health profession board, the Minister may discharge the board by written notice.

31 Effect of discharge—interim board

- (1) This section applies if the Minister discharges a health profession board.
- (2) The Minister may appoint health professionals to the health profession board.
- (3) However, the Minister must not appoint a health professional under subsection (2) unless satisfied that the person has the experience or expertise as a health professional to exercise the functions of a board member.
- (4) An appointment under subsection (2) is for 6 months and may not be extended.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (5) An appointment under subsection (2) ends if a health professional is appointed or elected to the health profession board under another section of this Act.

Division 5.2 Status and powers of health profession board

32 Legal status of health profession board

A health profession board—

- (a) is a corporation with perpetual succession; and
- (b) may have a common seal; and
- (c) may sue and be sued, and hold property, in its corporate name.

33 Banking and investment of money of board

- (1) A health profession board must—
 - (a) maintain at least 1 account; and
 - (b) pay all amounts it receives into an account; and
 - (c) pay all amounts it spends out of an account.
- (2) The health profession board may invest its money as it considers appropriate.
- (3) In this section:

account means an account with an authorised deposit-taking institution.

Note *Authorised deposit-taking institution* is defined in the Legislation Act, dict, pt 1).

34 Prohibition on business

A member of a health profession board must not authorise the board to carry on business except in the exercise of its functions.

Maximum penalty: 50 penalty units.

35 Borrowing powers

- (1) A health profession board may, if authorised by an unopposed resolution, do either or both of the following:
 - (a) borrow amounts needed for the exercise of its functions;
 - (b) secure the repayment of an amount borrowed by it and the payment of interest on an amount borrowed by it.
- (2) For this section, a resolution of the health profession board is an *unopposed resolution* if—
 - (a) no votes are cast against the resolution; and

(b) at least 1 vote is cast in favour of the resolution.

Note An abstention of a member does not (in itself) prevent an unopposed resolution from being passed, if at least 1 vote is cast in favour of the resolution.

36 Community representative list

- (1) The health profession board for a health profession must keep a list of people suitable to represent community interests in relation to the health profession.
- (2) The health profession board may include a person in the list only if—
 - (a) satisfied that the person has interests, skills or qualifications that will help the board in carrying out the main object of the Act; and
 - (b) the person is not a health professional practising in a profession regulated by the board.

Note for par (a) The main object of the Act is set out in s 13.

- (3) A list kept under subsection (1) is the community representative list only if the Minister endorses the list in writing.
- (4) The community representative list is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Part 6 **Regulation of health professionals**

Division 6.1 **Registration of health professionals**

37 **Who may be registered as a health professional?**

- (1) On application, the health profession board for a health profession must register an individual or corporation as a health professional in the profession if satisfied that—
 - (a) the person satisfies the suitability to practise requirements for the profession; and
 - (b) for an applicant who is an individual—the person has a knowledge of written and spoken English that is adequate to allow the person to practise the profession; and
 - (c) for an applicant that is a corporation—each individual who will be providing the health services in the profession on behalf of the corporation has a knowledge of written and spoken English that is adequate to allow the individual to practise the profession on behalf of the corporation; and
 - (d) the person is covered by the insurance (if any) required under the regulations.

Note 1 **Register**, a person, includes enrol the person or renew the person's registration (see dict).

Note 2 The suitability to practise requirements are prescribed under the regulations, and include general competence.

- (2) However, a corporation may apply under subsection (1) in relation to a health profession only if the regulations allow a corporation to be registered in the health profession.

- (3) Also, the health profession board may refuse to register the person as a health professional if the person's registration has been suspended or cancelled in a local jurisdiction, whether before or after the person applies for registration in the ACT.
- (4) A person may be registered under subsection (1) conditionally or unconditionally.
- (5) The regulations may prescribe—
 - (a) what an application for registration may require and how it must be made; and
 - (b) when someone who is not required to be registered under subsection (1) may be registered conditionally; and
 - (c) when a health profession board may apply for the cancellation of registration; and
 - (d) when a health professional's registration may be renewed, including when it may be renewed retrospectively.
- (6) The Executive may make regulations under subsection (2) in relation to a health profession only after it has consulted with an entity that is generally accepted to represent the health profession.
- (7) Subject to any disallowance or amendment under the Legislation Act, chapter 7, the regulations mentioned in subsection (2) commence—
 - (a) if a motion to disallow the regulations is moved in the Legislative Assembly and the motion is negatived—the day after the day the motion is negatived; or
 - (b) the day after the 6th sitting day after the day the regulations are presented to the Legislative Assembly under that chapter; or
 - (c) if the regulations provide for a later date or time of commencement—on that date or at that time.

Division 6.2 Performance reviews

38 Review of health professional's professional practice

- (1) A health profession board may review a relevant health professional's professional practice under this division—
 - (a) with the health professional's agreement; or
 - (b) if the health professional has been required to take part in the review by the health professions tribunal or a professional standards panel.
- (2) The person (the *reviewer*) reviewing the professional practice of a health professional on behalf of the health profession board may—
 - (a) ask the health professional questions; and
 - (b) ask the health professional to take a test; and
 - (c) review the health professional's patient records.

Examples of tests

- 1 asking a nurse to demonstrate knowledge and experience of current practice relating to the administration of a drug that the nurse would be likely to administer in practice
- 2 asking a dental prosthetist to explain a procedure likely to be performed by the prosthetist

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

39 Initial and final review reports

- (1) The person (the *reviewer*) reviewing the professional practice of a health professional on behalf of the relevant health profession board must—
 - (a) prepare a written report (the *initial review report*) of the results of the review; and

- (b) give a copy of the initial review report to the health professional; and
 - (c) tell the health professional, in writing, that the health professional may make representations about the initial review report within 30 days after the day the health professional receives the report.
- (2) After considering any representation made by the health professional within the 30 days, the reviewer must prepare a further report (the *final review report*) and give a copy to—
- (a) the health professional; and
 - (b) the relevant health profession board.
- (3) The health profession board may, but need not, treat the final review report as a report made under section 78 (Who may report?) made by the reviewer.

Part 7 **Health professions tribunal**

Division 7.1 **Health professions tribunal**

40 **Establishment and functions of health professions tribunal**

- (1) The Australian Capital Territory Health Professions Tribunal is established.
- (2) The health professions tribunal has the following functions:
 - (a) to decide applications made to the tribunal about whether a registered health professional has met the required standard of practice or satisfies the suitability to practise requirements;
 - (b) to make emergency orders if required;
 - (c) to hear applications for review of decisions of health profession boards and professional standards panels.
- (3) The health professions tribunal also has any other function given to it under this Act or any other Territory law.

41 **Appointment of tribunal president**

- (1) The Executive must appoint a person to be the president of the health professions tribunal.

Note 1 For the making of appointments generally, see Legislation Act, pt 19.3.

Note 2 A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

- (2) However, the Executive may appoint a person under subsection (1) only if the person is a magistrate.

- (3) An appointment must be for a term of not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (4) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

42 How is a health professions tribunal panel made up?

- (1) A health professions tribunal panel is formed by the health professions tribunal president and 3 members nominated under section 43.
- (2) If a health professions tribunal panel is formed for an application relating to a health professional in a health profession, the panel is the health professions tribunal for the application and for any other application relating to a health professional in that profession that the panel considers.

43 Nomination of panel members

- (1) This section applies to an application to the health professions tribunal relating to a health professional.
- (2) The health professions tribunal president must ask the relevant health profession board to nominate the following to be part of the tribunal panel to deal with the application:
- (a) 2 health professionals, at least 1 of whom must be in the same profession as the health professional to whom the application relates;
 - (b) a community representative.
- (3) It does not matter whether the 2 health professional mentioned in subsection (2) (a) are from the ACT or elsewhere.

- (4) The health profession board must choose the community representative under subsection (2) (b) from the community representative list kept by the board.

Note 1 The exercise of a function by the tribunal is not affected only because of a vacancy in the tribunal's membership (see Legislation Act, s 199 (4)).

Note 2 See s 36 in relation to the community representative list.

- (5) The health professions tribunal president need not act under this section in relation to an application if a suitable tribunal panel already exists and is available to decide the application.

44 When may president alone constitute health professions tribunal?

- (1) The health professions tribunal, formed by the president alone, may exercise the tribunal's functions in relation to the following:
- (a) an application from a health profession board for an interim or emergency order about someone's registration;
 - (b) an application from a health profession board for directions about how to proceed in relation to a report or complaint about a health professional;
 - (c) an application in relation to which each matter to be resolved is admitted or not contested or in relation to which the parties have agreed to the decision or order to be made;
 - (d) an application in relation to which the parties, including the relevant health profession board, agree to the president exercising the powers of the tribunal alone;
 - (e) an application that a hearing, or part of a hearing, be closed;
 - (f) conducting a preliminary hearing under section 58.
- (2) All other applications must be decided by a health professions tribunal panel.

45 Registrar

- (1) The registrar of the Magistrates Court is the registrar of the health professions tribunal.
- (2) The registrar must exercise the functions of registrar of the health professions tribunal in consultation with, and under the direction of, the health professions tribunal president.

Division 7.2 Applications to health professions tribunal

46 Application to health professions tribunal for review

- (1) This section applies to—
 - (a) the following decisions of a health profession board:
 - (i) to register, or not register, a person;
 - (ii) to register a person conditionally;
 - (iii) to register a person for less than 1 year;
 - (iv) to impose conditions, or refuse to impose conditions, on a person's registration; and
 - (b) a decision of a professional standards panel under section 122 (Action of professional standards panel after inquiry); and
 - (c) any other decision prescribed under the regulations.
- (2) An application for the review of a decision about a person may be made to the health professions tribunal by the person.
- (3) An application for the review of a decision may be made by someone else only with the leave of the health professions tribunal.

47 How to make an application

- (1) An application to the health professions tribunal is made by filing a written application with the tribunal.

Note If a form is approved under s 69 for an application, the form must be used.

- (2) If the application is for the review of a decision mentioned in section 46, the application must be made within 28 days after the day the applicant receives notice of the decision for which the review is sought.
- (3) However, the health professions tribunal may, before or after the end of the 28 days, extend the time within which an application may be made.

48 Parties to proceeding

The following are the parties to the proceeding on an application relating to a decision about a person:

- (a) the person;
- (b) the health profession board that made the decision or that established the professional standards panel that made the decision;
- (c) anyone else with the leave of the health professions tribunal.

49 Referral to panel by tribunal

- (1) The health professions tribunal may refer an application, or part of an application, to a health profession board for consideration by a personal assessment panel or professional standards panel.
- (2) If the health profession board to which the application, or part of the application, is referred gives a report (the *referral report*) to the health professions tribunal, the tribunal must consider the referral report.

- (3) The health professions tribunal may adopt the referral report or a decision made in the report as its own decision in relation to the application, or part of the application.

Division 7.3 Tribunal proceedings

50 Time and place of proceedings

The health professions tribunal is to sit at the times and places the president decides.

51 Notice of hearing

- (1) The health professions tribunal president must give written notice of the time and place for the hearing of an application to the parties to the proceeding on the application.
- (2) The notice must be given at least 1 month before the day of the hearing.

52 Hearings usually in public

- (1) The hearing of an application by the health professions tribunal, including any inquiry into the application, must be in public.
- (2) However, this section does not apply to a hearing, or part of a hearing, if the health professions tribunal makes an order under section 53 in relation to the hearing, or part of the hearing.

53 Closed hearings in special circumstances

- (1) If, in relation to the hearing of an application, the health professions tribunal is satisfied that it is desirable in the public interest or in the interests of justice to do so, the tribunal may, by order—
 - (a) direct that the hearing, or part of the hearing, is to take place in private and give directions about the people who may be present; and

- (b) give directions prohibiting or restricting the publication of evidence given at the hearing, whether in public or in private, or of matters contained in documents filed with the tribunal or received in evidence by the tribunal for the hearing; and
 - (c) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceeding of evidence given at the hearing, or of a matter contained in a document lodged with the tribunal or received in evidence by the tribunal for the inquiry.
- (2) A person must not contravene an order under subsection (1) (b) or (c).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

54 Evidence

The health professions tribunal is not bound by the rules of evidence and may inform itself in any way it considers appropriate, subject to section 56 (Natural justice).

Note Judicial bodies, unless exempted, are required to comply with the rules of evidence (whether under common law or statute) that govern what evidence may be put before them and how. The health professions tribunal is not required to comply with those rules.

55 Procedures

- (1) If no procedure is set out under this Act for anything required or allowed to be done by the health professions tribunal under this Act or another Territory law, the tribunal may decide on its own procedures.
- (2) The procedures of the health professions tribunal must be simple and quick, subject to section 56.

56 Natural justice

The health professions tribunal must observe natural justice.

Note *Natural justice* has an established legal meaning.

57 Representation before tribunal

A party to a proceeding before the health professions tribunal may, at the hearing of the proceeding, appear personally or by an agent and be represented by a lawyer.

58 Preliminary hearing

- (1) The health professions tribunal, formed by the president alone, may conduct a preliminary hearing of an application to the tribunal to decide interlocutory and other preliminary matters.
- (2) In a preliminary hearing, the health professions tribunal may do 1 or more of the following:
 - (a) make orders for the conduct of the hearing of the application;
 - (b) require parties to make discovery or permit inspection of evidentiary material;
 - (c) require parties to file pleadings;
 - (d) strike out the application because it is frivolous or vexatious.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (3) If, during a preliminary hearing on an application relating to a health professional, the tribunal president is satisfied that the application should be referred to a personal assessment panel or professional standards panel, the tribunal may refer the application to the relevant health profession board for referral to the panel.
- (4) The referral must contain directions about what the tribunal wishes to be considered or done in relation to the application.

59 Powers in relation to witnesses etc

- (1) The health professions tribunal president, or a person authorised in writing by the president, may, by written notice given to a person, require the person to appear before the tribunal at a stated time and place to give evidence or produce stated documents.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) A person who is given a notice under subsection (1) must—
- (a) attend as required by the notice; and
 - (b) continue to attend as required by the health professions tribunal president until excused from further attendance.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) At a hearing, the health professions tribunal may take evidence on oath or affirmation and, for that purpose, the president may—
- (a) require a witness at the hearing either to take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to a witness at the hearing.
- (4) At a hearing, the health professions tribunal president may require a witness—
- (a) to answer a question put to the witness; or
 - (b) to produce a document or anything else relevant to the hearing.
- (5) A witness at a hearing must not, without reasonable excuse, fail—
- (a) to take an oath or make an affirmation when required to do so by the health professions tribunal president under subsection (3) (a); or

- (b) to give evidence when required to do so by the president under subsection (4).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

60 Adjourment

The health professions tribunal may adjourn a proceeding for any reason the tribunal considers appropriate.

61 Interim and emergency orders

- (1) The health professions tribunal may make any order mentioned in section 64 (other than section 64 (1) (a)) in a proceeding as an interim order—
- (a) before adjourning the proceeding; or
 - (b) if the proceeding is an application for an interim or emergency order.
- (2) However, the health professions tribunal may only make an interim or emergency order under subsection (1) (b) if satisfied that it is necessary to make an interim order to protect the public or the wellbeing of the health professional.
- (3) An interim order under subsection (1) (a) has effect until an order made at the end of a proceeding comes into force unless the health professions tribunal otherwise orders.
- (4) An interim or emergency order under subsection (1) (b) has effect for the period stated in the order.
- (5) An order mentioned in subsection (4) may be in force for not longer than 3 months, but may be renewed once.

62 Decision without inquiry

- (1) This section applies to an application to the health professions tribunal if—

- (a) the application is about whether a health professional—
 - (i) is contravening, or has contravened, the required standard of practice; or
 - (ii) does not satisfy the suitability to practise requirements; or
 - (iii) has the insurance (if any) required under the regulations; and
 - (b) the health professional admits each matter raised; and
 - (c) the tribunal considers it may be appropriate to not conduct an inquiry before making a decision on the matter.
- (2) The health professions tribunal may give each party to the proceeding on the application written notice to the effect that—
- (a) the tribunal proposes to make a decision on the application without conducting an inquiry; and
 - (b) if the party wishes to make representations in relation to the proposal—the party must make the representations within 21 days after the day the notice is given.
- (3) The health professions tribunal may decide not to conduct an inquiry in relation to the application only if the tribunal—
- (a) has given notice under subsection (2); and
 - (b) has taken into consideration any representation made by a party to the proceeding on the application within the 21 days; and
 - (c) is satisfied that it is in the public interest to not conduct an inquiry; and
 - (d) is satisfied that it has sufficient information to make an informed decision on the application.

63 Decisions of tribunal

- (1) This section applies if the health professions tribunal is formed by a health professions tribunal panel.
- (2) A decision in which a majority of the health professions tribunal panel members agree is the decision of the tribunal.
- (3) If a majority of the members of the health professions tribunal panel cannot agree, the decision of the health professions tribunal president is the decision of the tribunal.

64 Orders tribunal may make

- (1) The health professions tribunal may, by order, do 1 or more of the following in relation to a person to whom an application relates:
 - (a) counsel, caution or reprimand the person;
 - (b) require the person to undergo stated medical, psychiatric or psychological assessment, counselling or both;
 - (c) impose on the person's registration any condition that the tribunal considers appropriate to protect the public;
 - (d) require the person to take part in a review of the person's professional practice;
 - (e) require the person to complete a stated educational or other stated professional development course;
 - (f) require the person to report on the person's practice at stated times, in the way stated and to a named person;
 - (g) require the person to seek and take advice from a stated entity about the management of the person's practice;
 - (h) require the supervision, monitoring or reporting about the effect of something the person is required to do by the tribunal;
 - (i) accept a voluntary undertaking from the person;

- (j) require the relevant health profession board to suspend the person's registration for a stated period.
- (k) cancel the person's registration;
- (l) if the person is not registered—declare that, if the person had been registered, the tribunal would have found that the person had contravened the required standard of practice or did not satisfy the suitability to practise requirements.

Note If an unregistered person is found to have contravened a required standard of practice, or to not satisfy the suitability to practise requirements, this may be taken into consideration if the person applies for registration (see the regulations).

- (2) Also, the health professions tribunal may make any other order it considers appropriate.
- (3) As soon as practicable after making an order under this section in a proceeding, the health professions tribunal must give written notice of the order to the parties to the proceeding.
- (4) The health professions tribunal may also give written notice of the order to anyone else with a legitimate interest in the proceeding, for example, an entity responsible for registration of health professionals in a local jurisdiction.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

65 Notice of decision

- (1) A notice under section 64 (3) (the *decision notice*) must include the reasons for the health tribunal's decision.
- (2) However, the decision notice need not include information about a person if the health professions tribunal is satisfied that the inclusion of the information—
 - (a) is not in the interests of the person; and

- (b) is not necessary or desirable in the public interest.
- (3) If the decision notice does not include information because of subsection (2), the notice must include a statement to that effect.

66 Referral of questions of law to Supreme Court

- (1) The health professions tribunal may refer a question of law relating to a proceeding on an application to the Supreme Court for direction on its own initiative or on application by a party to the proceeding.
- (2) If a question of law in a proceeding is referred to the Supreme Court under this section, the health professions tribunal must not, in the proceeding—
 - (a) make a decision that presupposes the question's answer before the question has been decided by the court; or
 - (b) proceed in a way, or make a decision, that is inconsistent with the decision of the court on the question.

67 Appeals to Supreme Court

A party to a hearing of the health professions tribunal may appeal to the Supreme Court against the decision.

68 Disrupting etc health professions tribunal

- (1) A person must not—
 - (a) threaten, disturb or insult the health professions tribunal; or
 - (b) interrupt, interfere with or obstruct the proceedings of the tribunal; or
 - (c) commit any other act that is a wilful contempt of the tribunal.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) only applies to acts in the face, or within the hearing, of the health professions tribunal.

69 Approved forms

- (1) The health professions tribunal president may, in writing, approve forms for this part.
- (2) If the health professions tribunal president approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Part 8 Offences

70 Meaning of *registered* for pt 8

For this part, a person is not *registered*, if the person's registration is suspended.

71 Offence to pretend registration

- (1) A person commits an offence if—
- (a) the person intentionally pretends to be registered in a regulated health profession; and
 - (b) the person is not registered in the profession.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note *Registered* as a health professional includes enrolled as a health professional (see s 17 and dict, def *register*).

- (2) Strict liability applies to subsection (1) (b).

72 Provision of regulated health services by unregistered people

- (1) A person commits an offence if—
- (a) the person intentionally provides a regulated health service; and
 - (b) the person is not registered in a health profession.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Example of someone providing a regulated health service to someone in the ACT when not registered

A person (the *Dr W*) provides a medical service by a video link from an island in the south Pacific to Mary Smith in the ACT. Dr W advises Mary that she needs to have her tonsils removed. Dr W is not a registered health professional. Dr W contravenes this subsection.

Note 1 **Regulated health service** is defined (see s 16).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) This section does not apply to—
- (a) a health service provided in an emergency; or
 - (b) the removal or retrieval, for transplantation, of organs by someone who is a health professional registered under a corresponding law of a local jurisdiction; or
 - (c) a health service provided to someone being transported into or out of the ACT by someone who is a health professional registered under a corresponding law of a local jurisdiction; or
 - (d) the provision, by mail order, or over the internet or by other electronic means, of manufactured aids to rehabilitation, surgical prosthetics and orthotics or pharmaceuticals; or
 - (e) a health service ordinarily provided in the ordinary course of business by people other than registered health professionals.

Example for par (d)

dental restorative or corrective devices

- (3) Strict liability applies to subsection (1) (b).

73 Conditions on practice

- (1) A registered health professional commits an offence if the health professional—
 - (a) knowingly provides a regulated health service; and
 - (b) fails to comply with a requirement of a condition on the professional's registration while providing the service.

Maximum penalty: 50 penalty units.

- (2) In this section, a condition on the health professional's registration includes a condition on the professional's registration under a corresponding law of a local jurisdiction.

74 Change of registered details

- (1) A registered health professional commits an offence if—
 - (a) the health professional's name or address changes; and
 - (b) the health professional fails to promptly (but in any case not later than 1 month after the day the change happens) tell the relevant health profession board, in writing, about the change.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

75 No insurance

- (1) This section applies if—
 - (a) a registered health professional is required under the regulations to have insurance; and
 - (b) while registered, the health professional ceases to have the insurance.

- (2) The health professional commits an offence if, as soon as practicable (but in any case within 1 month) after ceasing to have the insurance, the health professional fails to tell the relevant health profession board, in writing, about the insurance ceasing.

Maximum penalty: 5 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

Part 9 Reporting

Division 9.1 Object of part 9

76 Object of pt 9

- (1) The object of this part is to—
 - (a) protect the public; and
 - (b) assist in the arranging of rehabilitation and retraining for health professionals who are not meeting the required standard of practice.
- (2) This part achieves its object by encouraging, and in some circumstances requiring, the reporting of—
 - (a) behaviour by registered health professionals that contravenes, or may contravene, the required standard of practice; and
 - (b) registered health professionals who do not, or may not, satisfy the suitability to practise requirements.

Division 9.2 Reporting

77 Meaning of *registered health professional* for div 9.2

For this division, a health professional is a *registered health professional* in relation to an act or omission of the health professional if he or she was registered at the time of the act or omission.

78 Who may report?

- (1) Anyone who believes on reasonable grounds that a registered health professional is contravening, or has contravened, the required standard of practice, or does not satisfy the suitability to practise requirements, may report the health professional.

Examples of the people who may make a report

- 1 a member of the public
- 2 a member of a health profession
- 3 the Minister
- 4 a coroner
- 5 a registrar of a court
- 6 a police officer
- 7 a member of the office of the director of public prosecutions

Note 1 Complaints may also be made by a more restricted group of people under the *Community and Health Services Complaints Act 1993*.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A health professional may make a report under subsection (1) despite any other Territory law.
- (3) If a health professional makes a report under subsection (1)—
- (a) making the report is not—
 - (i) a breach of confidence; or
 - (ii) a breach of professional etiquette; or
 - (iii) a breach of professional ethics; or
 - (iv) a breach of a rule of professional conduct; and
 - (b) no civil or criminal liability is incurred only because of the making of the report.

- (4) Subsection (3) (b) does not apply to a report that the health professional knows is false or misleading.

79 Who may report be given to?

- (1) A report may be given to—
- (a) the relevant health profession board; or
 - (b) the commissioner.
- (2) The health profession board must give a copy of a report given to it to the commissioner.

80 False or misleading report

A person must not make a false or misleading report.

Maximum penalty: 30 penalty units.

81 How must report be made?

- (1) A report must—
- (a) be in writing; and
 - (b) be signed by the person making the report; and
 - (c) include the person's name and address.
- (2) However, a health profession board or the commissioner may accept a report that does not comply with subsection (1).
- (3) If a health profession board or the commissioner accepts an oral report, the board or commissioner must require the person making the report to put the report in writing and sign it, unless satisfied that there is a good reason for not doing so.
- (4) If the person fails to comply with the requirement under subsection (3), the health profession board or commissioner need not take any further action on the report.

- (5) The Minister may make guidelines for the exercise of a discretion by a health profession board under subsection (2).
- (6) Guidelines are a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

82 Help in making report

The commissioner or executive officer of a health profession board may, but is not required to, help someone make a report.

83 Further information about report etc

- (1) A health profession board may require a person making a report—
 - (a) to provide further information about the report; or
 - (b) to verify all or part of the report by statutory declaration.
- (2) When making a requirement under this section, the health profession board must set a reasonable period of time within which the requirement is to be satisfied, and may extend that period, whether before or after its expiry.
- (3) If the person fails to verify all or part of the report by statutory declaration—
 - (a) the failure does not affect the making of the report; but
 - (b) the health profession board need not take any further action on the report.

84 Notice to health professional reported

- (1) This section applies if a report is made under this Act to a health profession board or the commissioner about a registered health professional.

Note The requirements for a report are set out in s 81.

- (2) The health profession board or commissioner must, in writing, tell the registered health professional—
- (a) that a report has been made about the health professional; and
 - (b) that the report is to be considered by the board and commissioner; and
 - (c) what the report is about in general terms; and
 - (d) unless section 128 (Nondisclosure of reports) prevents the disclosure—the name of the person making the report; and
 - (e) that the health professional may make written representations in relation to the report within a stated period after receiving notice of the report.

Note 1 Section 128 prevents the disclosure of a report if there is reason to believe the disclosure would put someone's health or safety at risk, cause someone to receive a lowered standard of health service or prejudice the management of the report or an investigation.

Note 2 The relevant health profession board and the commissioner may, in consultation during an assessment of the report under the *Community and Health Services Complaints Act 1993*, agree that it is appropriate for the commissioner to tell the health professional rather than the health profession board.

- (3) The period under subsection (2) (e) must not be less than 1 month.

Part 10 Joint consideration with commissioner

85 What does pt 10 apply to?

This part applies to the following matters in relation to a registered health professional:

- (a) a report or complaint that the relevant health profession board considers indicates that the health professional may be contravening, or may have contravened, the required standard of practice or does not satisfy the suitability to practise requirements;
- (b) a report or complaint mentioned in section 100 (3) (Board consideration of referral by personal assessment panel);
- (c) an application for review of a condition on registration mentioned in section 105 (3) (b) (Action by board on recommendations by personal assessment panel);
- (d) a report or complaint referred back to the health profession board under section 112 (Inappropriate referral to professional standards panel).

86 Consultation with commissioner etc

- (1) The health profession board must—
 - (a) consult with the commissioner when it is considering what to do in relation to a matter that this part applies to; and
 - (b) endeavour to make any decision allowed or required to be made in relation to the matter jointly with the commissioner.
- (2) If the health profession board and the commissioner cannot agree about what to do in relation to the matter, the most serious action proposed by either must be taken.

- (3) The action that may be taken in relation to a matter, from most serious to least serious, follows:
- (a) apply to the tribunal for an emergency order in relation to the health professional to whom the matter relates;
 - (b) referral of the matter to the health professions tribunal;
 - (c) referral of the matter for investigation under the *Community and Health Services Complaints Act 1993*;
 - (d) referral of the health professional to whom the matter relates to a professional standards panel;
 - (e) referral of the health professional to whom the matter relates to a personal assessment panel;
 - (f) if the matter is a complaint—conciliation of the matter under the *Community and Health Services Complaints Act 1993*;
 - (g) refusal to investigate the matter further.
- (4) Also, the health profession board must take action under section 87 (Indication that offence committed) if, after consultation with the commissioner, either the board, commissioner or both consider that the section applies to the matter.
- (5) The health profession board may take action under this section even if it has already taken action in relation to the matter.

Example

If the health profession board decides that a report or complaint about a health professional does not suggest that the health professional may be contravening, or may have contravened, the required standard of practice, the board may refer the report or complaint to a personal assessment panel. If the personal assessment panel recommends that the report or complaint be referred to a professional standards panel because, on further examination, the report or complaint raises the possibility that the health professional may be contravening, or may have contravened, the required standard of practice, the board would then consult with the commissioner under this section, even though the board has already taken action in relation to the matter.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

87 Indication that offence committed

- (1) This section applies if a matter to which this part applies that relates to a health professional indicates that the health professional may have committed, or be committing, an offence against a Territory law.
- (2) The health profession board may give the chief police officer a copy of the matter, with any other information the board has in relation to the matter.
- (3) Giving the chief police officer a copy of the matter does not prevent the health profession board and commissioner from taking further action under section 86 in relation to the matter.

Part 11 Personal assessment panels

Division 11.1 Establishment and purpose

88 Establishment of personal assessment panel

- (1) A health profession board may establish 1 or more personal assessment panels.
- (2) The health profession board may refer a report or complaint about a registered health professional to a personal assessment panel if—
 - (a) the report or complaint suggests that the state of the health professional's mental or physical health, or both, may be affecting the professional's ability to meet the required standard of practice; and
 - (b) the board is satisfied that there are grounds for believing that, if the health professional's mental or physical health, or both, is affecting the professional's ability to meet the required standard of practice or the suitability to practise requirements, the professional may be rehabilitated.
- (3) The health profession board must refer a report or complaint about a health professional to a personal assessment panel if required to do so under the *Community and Health Services Complaints Act 1993*.

89 Referral of application by health professions tribunal

- (1) The health profession board must refer an application, or part of an application, to a personal assessment panel if required to do so by the health professions tribunal under section 49 (Referral to panel by tribunal) or section 58 (3) (Preliminary hearing).
- (2) The personal assessment panel must inquire into the application, or part of the application, as if it were a report.

- (3) After inquiring into the application, or part of the application, the personal assessment panel must give a report (the *referral report*) to the health professions tribunal about the application, or part of the application.
- (4) The referral report may include—
 - (a) any recommendation about the application, or part of the application, that the personal assessment panel could make to the health profession board under section 97 (Action of personal assessment panel after inquiry) in relation to a report or complaint; or
 - (b) a recommendation that the health professional be counselled.
- (5) However, if the personal assessment panel can make no appropriate recommendation, the referral report must state that the panel cannot make an appropriate recommendation.

90 What does a personal assessment panel do?

- (1) A personal assessment panel—
 - (a) assesses whether the mental or physical health, or both, of a registered health professional are affecting the professional's ability to meet the required standard of practice or satisfy the suitability to practise requirements; and
 - (b) if the panel is satisfied that the health professional's mental or physical health, or both, are affecting the professional's ability to meet the required standard of practice or satisfy the suitability to practise requirements—decides whether and how the professional may be rehabilitated.
- (2) A personal assessment panel also considers applications under section 103 to review the imposition of a condition on registration when referred to the panel.

- (3) The personal assessment panel may only assess a health professional if a complaint or report about the health professional is referred to the panel.

91 Who must be on a personal assessment panel?

- (1) A personal assessment panel established by a health profession board consists of 3 members appointed by the board.
- (2) At least 1 member of the personal assessment panel must be a registered health professional, or a health professional registered under a corresponding law of a local jurisdiction, but need not be registered by the health profession board that established the panel.
- (3) At least 1 member of the personal assessment panel must not be a registered health professional or a health professional registered under a corresponding law of a local jurisdiction.
- (4) It does not matter whether the people making up the personal assessment panel are from the ACT or elsewhere.
- (5) The health profession board must appoint 1 member of the personal assessment panel as the chairperson.
- (6) The personal assessment panel may consider 1 or more reports or complaints referred to it.

Division 11.2 Assessments by personal assessment panels

92 Natural justice

A personal assessment panel must observe natural justice.

93 Assessment by personal assessment panel

- (1) In assessing a health professional, a personal assessment panel may consider the information available to it, including the following:
 - (a) the report or complaint about the health professional;

- (b) any information provided by the commissioner or person who made the report or complaint;
 - (c) any other relevant information collected by the panel.
- (2) In assessing a health professional, the personal assessment panel must consider any information provided by the health professional.

94 Powers of personal assessment panel on inquiry

- (1) This section applies if a report or complaint about a health professional, or an application by the health professional for a condition review, is referred to a personal assessment panel.
- (2) The personal assessment panel must—
- (a) endeavour to talk to the health professional about the report, complaint or application; and
 - (b) give the health professional an opportunity to respond to information given to the panel.
- (3) The personal assessment panel may make the inquiries, and obtain the information the panel needs, from anywhere the panel considers appropriate.

Note The personal assessment panel must consider any information provided, by the health professional to whom the matter relates (see s 93 (2)).

- (4) The personal assessment panel may ask the health professional to undergo a medical, psychiatric or psychological examination or test for the assessment and, if the health professional undergoes the examination or test, must consider the results.
- (5) If the health professional undergoes a medical, psychiatric or psychological examination or test when asked to do so by the personal assessment panel, the health profession board must pay any fee for the examination or test, but is not liable to pay any fee for further consultation or services the health professional is referred onto.

95 Legal representation before personal assessment panel

A person may be represented by a lawyer at an inquiry by a personal assessment panel.

96 How does personal assessment panel reach a decision?

- (1) A decision of a personal assessment panel is a decision of the majority of panel members.
- (2) If, for any reason, a personal assessment panel cannot reach a majority decision, the decision of the chairperson is the decision of the panel.

97 Action of personal assessment panel after inquiry

- (1) After inquiring about a health professional under section 94, the personal assessment panel may, with the health professional's agreement, do 1 or more of the following:
 - (a) counsel the health professional;
 - (b) recommend that the health professional attend counselling or a rehabilitative program;
 - (c) recommend to the health profession board that established the panel that the board take no further action in relation to the health professional;
 - (d) recommend to the board that the board accept a stated voluntary undertaking from the health professional;
 - (e) recommend that a stated condition be placed on the health professional's registration.
- (2) A recommendation under subsection (1) (b) may name the counsellor or program or may indicate the kind of counsellor or program to be attended.

- (3) A recommendation under subsection (1) (e) may include a recommendation that the health professional's registration, or a condition placed on the registration, be reconsidered by a personal assessment panel at or within a stated time.
- (4) The personal assessment panel need not take action under this section if no appropriate action is available.

98 Inappropriate referral to personal assessment panel

- (1) This section applies to a report or complaint, or an application for a condition review, if the personal assessment panel believes on reasonable grounds that the report, complaint or application (the *matter*) has been inappropriately referred to the panel.
- (2) The personal assessment panel must refer the matter back to the health profession board that established the panel.
- (3) If the personal assessment panel refers the matter back under subsection (2), the panel must state the reason for the referral.

99 Referral to board

After deciding what to do (including a decision to do nothing) in relation to a report or complaint, or an application for a condition review, the personal assessment panel must refer the matter to the health profession board that established the panel, and include in the referral—

- (a) the information obtained by the panel; and
- (b) a description of the assessment of the health professional; and
- (c) what the panel decided to do and why; and
- (d) whether the health professional agreed to the action proposed to be taken by the panel.

Division 11.3 Action by board after inquiry by personal assessment panel

100 Board consideration of referral by personal assessment panel

- (1) This section applies to the referral of a report or complaint, or an application for a condition review, to a health profession board under division 11.2 (Assessments by personal assessment panels).
- (2) The health profession board must consider the referral, including any recommendations made, and decide what to do in relation to the matter referred (the *matter*).
- (3) If the health profession board considers that the matter indicates that the health professional may be contravening, or may have contravened, the required standard of practice, the board—
 - (a) must take action in relation to the matter under part 10 (Joint consideration with commissioner); and
 - (b) may apply to the tribunal for an emergency order if satisfied that the safety of the public or the wellbeing of the health professional may be adversely affected if an emergency order is not made.
- (4) The health profession board may, unless subsection (3) applies, do 1 or more of the following in relation to the matter:
 - (a) if section 101 applies—take action under that section;
 - (b) refer the matter to a professional standards panel;
 - (c) refer the matter to the commissioner for investigation;
 - (d) ask the health professions tribunal to suspend or cancel the health professional's registration; or
 - (e) ask the health professions tribunal to take any other appropriate action in relation to the health professional or matter;

- (f) take no further action in relation to the health professional or matter.

101 Acceptance of condition

- (1) This section applies if—
 - (a) a personal assessment panel established by a health profession board has recommended that a health professional's registration have a condition placed on it; and
 - (b) the health professional agrees to the condition.
- (2) If the health profession board considers the condition appropriate, the board may place the agreed condition on the health professional's registration.

102 Decision on referred health professional

- (1) This section applies after a health profession board makes a decision about the action to take in relation to a report or complaint, or application for a condition review, relating to a health professional referred to a health profession board under division 11.2 (Assessments by personal assessment panels).
- (2) The health profession board—
 - (a) must give the health professional written notice of the decision, including the reasons for the decision; and
 - (b) may give written notice of the decision to the commissioner.

103 Applications for condition review

- (1) This section applies if a condition has been placed on a health professional's registration because of a report or complaint, whether or not the condition was placed with the health professional's agreement.
- (2) The health professional may apply, in writing, to the health profession board to have the condition removed or changed.

104 Review of application

- (1) If an application is made under section 103 by a health professional to a health profession board, the board must refer the application to a personal assessment panel.
- (2) If the imposition of the condition was recommended by a personal assessment panel, the health profession board must endeavour to ensure that the application is considered by that personal assessment panel.
- (3) The personal assessment panel must do 1 of the following after considering the application:
 - (a) recommend to the health profession board that the application be granted;
 - (b) recommend to the board that stated parts of the application be granted and the rest rejected;
 - (c) recommend to the board that the application be rejected.
- (4) If the personal assessment panel recommends to the health profession board that all or part of the application be rejected, the panel may also recommend that other action be taken in relation to the health professional and, if the panel does make such a recommendation, must explain why the action recommended is appropriate.
- (5) A recommendation must be given to the health profession board in writing.

105 Action by board on recommendations by personal assessment panel

- (1) This section applies if a personal assessment panel makes a recommendation under section 104 (3) (a), (b) or (c) to a health profession board in relation to an application.

- (2) If the health profession board accepts the recommendation, the recommendation is the decision on the application and the board must tell the health professional in writing about the decision and give reasons for the decision.
- (3) If the health profession board rejects the recommendation, the board must—
 - (a) make a decision on the application and tell the health professional in writing about the decision, giving reasons; or
 - (b) if the board considers that the application relates to whether the health professional is contravening, has contravened or is likely to contravene the required standard of practice—consider the application under part 10 (Joint consideration with commissioner).
- (4) If the health profession board makes a decision without consulting the commissioner, the board may tell the commissioner about the decision.

Part 12 Professional standards panels

Division 12.1 Establishment of professional standards panel

106 Establishment of professional standards panel

A health profession board may establish 1 or more professional standards panels.

107 What does a professional standards panel do?

- (1) A professional standards panel decides whether a registered health professional is contravening, or has contravened, the required standard of practice or does not satisfy the suitability to practise requirements.
- (2) In making a decision under this section, the professional standards panel may consider the information available to it, including the following:
 - (a) the report or complaint;
 - (b) any information provided by the commissioner or person who made the report or complaint;
 - (c) any other relevant information given to the panel.
- (3) In making a decision under this section, the professional standards panel must consider any information provided by the health professional.
- (4) The professional standards panel may only make a decision under this section in relation to a health professional if a report or complaint relating to the health professional is referred to the panel.

108 Who must be on a professional standards panel?

- (1) A professional standards panel established by a health profession board consists of 3 members appointed by the board.
- (2) At least 1 member of the professional standards panel must be a registered health professional or a health professional registered under a corresponding law of a local jurisdiction in the same profession as the health professional to be considered by the panel.
- (3) At least 1 member of the professional standards panel must not be a registered health professional or a health professional registered under a corresponding law of a local jurisdiction.
- (4) The health profession board must appoint 1 member of the professional standards panel as the chairperson.
- (5) It does not matter whether the people making up the professional standards panel are from the ACT or elsewhere.
- (6) The professional standards panel may consider 1 or more matters referred to it.

109 Referral of application by health professions tribunal

- (1) The health profession board must refer an application, or part of an application, to a professional standards panel if required to do so by the health professions tribunal under section 49 (Referral to panel by tribunal) or section 58 (3) (Preliminary hearing).
- (2) The professional standards panel must conduct an inquiry into the application, or part of the application, as if it were a report, but may not take interim action under section 118 (Interim actions) in relation to it.
- (3) After inquiring into the application, or part of the application, the professional standards panel must give a report (the *referral report*) to the health professions tribunal about the application, or part of the application.

- (4) The referral report about an application relating to a health professional may recommend that the health professions tribunal take any action in relation to the application, or part of the application, that the panel could take under section 122 (2) (Action of professional standards panel after inquiry) in relation to a report.
- (5) However, if the professional standards panel cannot make an appropriate recommendation, the referral report must state that the panel cannot make an appropriate recommendation.

Division 12.2 Inquiries by professional standards panels

110 When may professional standards panel choose not to inquire?

- (1) This section applies if—
 - (a) a report or complaint about a health professional is referred to a professional standards panel; and
 - (b) the health professional admits something mentioned in the report or complaint.
- (2) The professional standards panel may choose not to inquire into whether the health professional is contravening, or has contravened, the required standard of practice, or does not satisfy the suitability to practise requirements, if the panel is satisfied, on reasonable grounds, that it is appropriate to make a decision about the report or complaint without an inquiry.

111 How does professional standards panel reach a decision?

- (1) A decision of a professional standards panel is a decision of the majority of panel members.
- (2) If, for any reason, a professional standards panel cannot reach a majority decision, the decision of the chairperson is the decision of the panel.

112 Inappropriate referral to professional standards panel

- (1) This section applies to a report or complaint relating to a health professional that is referred to a professional standards panel if—
 - (a) the panel believes on reasonable grounds that the report or complaint, if substantiated, may provide grounds for the suspension or cancellation of the health professional's registration; or
 - (b) the panel believes on reasonable grounds that the health professional would be more appropriately dealt with by a personal assessment panel; or
 - (c) the panel believes that emergency action is necessary in relation to the health professional.
- (2) The professional standards panel must refer the report or complaint back to the health profession board that established it, and take no further action in relation to the health professional.
- (3) If the professional standards panel refers a matter back under subsection (2), the panel must state the reason for the referral.
- (4) The health profession board must consider the referral under part 10 (Joint consideration with commissioner).

Division 12.3 **Procedural requirements for inquiry hearings**

113 **Setting inquiry hearing times**

- (1) If a report or complaint about a health professional is referred to a professional standards panel, the panel must—
 - (a) set a time and place to hold an inquiry (a *standards inquiry*) about the health professional; and
 - (b) at least 1 month before the day of the inquiry, give written notice of the time and place to—
 - (i) the health professional; and
 - (ii) the relevant health profession board; and
 - (iii) the commissioner.
- (2) The health profession board may also give written notice of the inquiry to the person who made the report or complaint.

114 **Conduct of inquiry hearing**

- (1) A professional standards panel may conduct a standards inquiry hearing about a health professional in any way the panel considers appropriate.
- (2) However, the professional standards panel must observe natural justice.

115 **Inquiry by professional standards panel**

At a standards inquiry about a health professional, a professional standards panel may—

- (a) make the inquiries and obtain any information the panel needs from any source the panel considers appropriate (including by talking to the health professional) to decide whether the health professional is contravening, or has contravened, the required

standard of practice or does not satisfy the suitability to practise requirements; and

- (b) arrange for a performance review to be conducted on the health professional, either generally or in relation to particular areas; and
- (c) consider patterns of practice by the health professional.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

116 Role of commissioner

- (1) At a standards inquiry, the commissioner may give evidence about an assessment or investigation by the commissioner under the *Community and Health Services Complaints Act 1993*.
- (2) The commissioner may be present at a standards inquiry hearing even if not giving evidence.

117 Inquiry hearings usually closed

- (1) A standards inquiry hearing about a health professional may be open to the public only if the professional standards panel directs that it be open.
- (2) The professional standards panel may direct that the standards inquiry hearing be held in public if satisfied that the benefit to the public of having the public present at the inquiry hearing outweighs the disadvantage to the health professional.

118 Interim actions

- (1) At a standards inquiry about a health professional, a professional standards panel may take action under section 122 (2) (Action of professional standards panel after inquiry), other than section 122 (2) (a), in relation to the health professional if satisfied that it is necessary to take action to protect the public, even though the panel has not finished the inquiry.

- (2) Action under subsection (1) has effect only until a decision is made by the professional standards panel at the end of the standards inquiry.

119 Adjournment

A professional standards panel may adjourn a standards inquiry for a stated time if, taking into consideration the need to deal with inquiries promptly, the panel is satisfied that it is appropriate to adjourn the inquiry.

120 Representation at inquiry hearing

- (1) This section applies to the following people at a standards inquiry about a health professional:
- (a) the health professional;
 - (b) the commissioner;
 - (c) a witness allowed to attend the standards inquiry.
- (2) A person to whom this section applies may be accompanied by, or represented at, the standards inquiry hearing by a legal adviser or other support person.

121 Record of standards inquiry

A professional standards panel must keep a record, in electronic or written form, of a standards inquiry (including the inquiry hearing).

122 Action of professional standards panel after inquiry

- (1) After an inquiry about a health professional, a professional standards panel must decide whether—
- (a) the health professional is contravening, or has contravened, the required standard of practice or does not satisfy the suitability to practise requirements; or

- (b) the health professional is putting, or has put, public safety at risk.
- (2) If the professional standards panel is satisfied that the health professional has done something mentioned in subsection (1), the panel may do 1 or more of the following:
- (a) counsel, caution or reprimand the health professional;
 - (b) require the health professional to undergo stated medical, psychiatric or psychological assessment, counselling or both;
 - (c) impose on the health professional's registration a condition that the panel considers appropriate to protect the public;
 - (d) require the health professional to take part in a review of the health professional's professional practice;
 - (e) require the health professional to complete a stated educational or other stated professional development course;
 - (f) require the health professional to report on the professional's practice at stated times, in the way stated and to a named person;
 - (g) require the health professional to seek and take advice from stated entities in relation to the management of the professional's practice;
 - (h) require the supervision, monitoring or reporting about the effect of something the health professional is required to do by the panel;
 - (i) refer the report, complaint or application for condition review, along with the standards inquiry report, to the health professions tribunal;
 - (j) accept a stated voluntary undertaking from the health professional.

- (3) If the professional standards panel acts under subsection (2), the act is an act of the health profession board.

123 Inquiry report

- (1) As soon as practicable after finishing a standards inquiry about a health professional, the professional standards panel must prepare a written report (the *standards inquiry report*) that includes the following:
- (a) if the standards inquiry found that the health professional is contravening, or has contravened, the required standard of practice—how the standard is being, or was, contravened;
 - (b) if the standards inquiry found that the health professional does not satisfy the suitability to practise requirements—which suitability to practise requirement is not satisfied;
 - (c) whether there is, or was, a risk to the public from the health professional's practise and, if there is or was, what the risk is or was;
 - (d) the action taken by the panel and reasons for the action.
- (2) Within 28 days after the end of the standards inquiry, the professional standards panel must give the standards inquiry report to—
- (a) the health professional; and
 - (b) the health profession board that established the panel; and
 - (c) the commissioner.
- (3) The professional standards panel may also give the standards inquiry report to anyone else.
- (4) However, the professional standards panel may omit material from a copy of the standards inquiry report given to a person under subsection (3) if the panel considers it appropriate to do so to protect someone's confidentiality.

124 Publication of standards inquiry report

- (1) A professional standards panel that prepares a standards inquiry report must publish the report.
- (2) However, the professional standards panel may omit material, including the name of the health professional, from the copy of the standards inquiry report published if the panel is satisfied on reasonable grounds that the public interest is not served by including the material.
- (3) If, because of the omission of material under subsection (2), the standards inquiry report cannot be readily understood, the professional standards panel may publish a summary of the report in a more easily read form.

Part 13 Protection and information

125 Meaning of *informed person* for pt 13

For this part:

informed person means anyone who is, or has been—

- (a) a member of a health profession board; or
- (b) a member of the health professions tribunal; or
- (c) a member of a personal assessment panel or a professional standards panel; or
- (d) a member of the staff of a health profession board; or
- (e) acting under the direction or authority of a health profession board; or
- (f) a member of the staff of the health professions tribunal; or
- (g) acting under the direction or authority of the health professions tribunal; or
- (h) providing advice or expertise to the health professions tribunal.

126 Protection of participants and people reporting

- (1) This section applies to—
 - (a) a person who is or has been a participant in a proceeding about a report or complaint, or an application for a condition review, before a health profession board, a personal assessment panel, a professional standards panel or the health professions tribunal; or
 - (b) a person who has made a report.

- (2) An action or proceeding does not lie against a person to whom this section applies in relation to an act done, or omitted to be done, honestly in that capacity.

127 Protection of informed people

- (1) An informed person does not incur civil or criminal liability for an act or omission done honestly and without negligence for this Act.
- (2) A civil liability that would, apart from this section, attach to an informed person, attaches instead to the Territory.

128 Nondisclosure of reports

- (1) This section applies in relation to a report made about a health professional.
- (2) An informed person must not disclose information to the health professional that allows the person who made the report (the *reporter*) to be identified if the informed person has reason to believe that the disclosure would, directly or indirectly—
- (a) put at risk the health or safety of anyone; or
 - (b) cause anyone to receive a lower standard of health service than the person would have received if the reporter had not been identified; or
 - (c) prejudice the management of the report or an investigation by the commissioner or a health profession board.

Maximum penalty: 20 penalty units.

129 Secrecy

- (1) In this section:

court includes any tribunal, authority or person with power to require the production of documents or the answering of questions.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, an informed person because of the exercise of a function under this Act.

- (2) An informed person must not—
- (a) make a record of protected information; or
 - (b) directly or indirectly divulge or communicate protected information about someone to anyone else; or
 - (c) produce to anyone, or give anyone access to, a document given under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the informed person makes the record, or divulges or communicates the information, in relation to the exercise of a function of the person under this Act or another Territory law.
- (4) Subsection (2) does not prevent an informed person from divulging or communicating protected information—
- (a) with the consent of the person from whom the information was obtained; or
 - (b) to a person administering or enforcing a corresponding law of a local jurisdiction; or
 - (c) to a law enforcement authority.
- (5) An informed person need not divulge or communicate protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another Act.

Part 14 Miscellaneous

130 Exemptions from Act

- (1) The Minister may, in writing, exempt a health professional from a provision of this Act if satisfied that it is in the public interest to do so.
- (2) An exemption under subsection (1) is a disallowable instrument.
Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (3) An exemption under subsection (1) must be made in accordance with the guidelines (if any) made under subsection (4).
- (4) The Minister may make guidelines for the giving of exemptions under subsection (1).
- (5) Guidelines are a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

131 Costs of supervising protective action

- (1) This section applies if—
 - (a) a health professional agrees under section 101 (Acceptance of condition) to having a condition imposed on the health professional's registration; or
 - (b) a requirement made by the professional standards panel under section 122 (Action of professional standards panel after inquiry) involves monitoring the compliance of a health professional with a requirement under that section.

- (2) The health profession board may charge the health professional a fee, or require the health professional to pay, for the reasonable cost of monitoring the health professional's compliance with the condition or requirement.

132 Determination of fees by board

- (1) A health profession board may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) However, the health profession board may only determine fees in relation to the health profession the board regulates.

- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) The regulations may prescribe when fees may not be charged, or must be refunded, by a health profession board.

133 Determination of fees by Minister

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) However, the Minister may not determine fees in relation to a health profession board.

- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

134 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may impose conditions, including restrictions, on the practice of a health profession to protect the public or the public interest.
- (3) The regulations may prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 30 penalty units for offences against the regulations.
- (4) Also, the regulations may apply, adopt or incorporate (with or without change) an instrument as in force at a particular time or from time to time.

Part 15 Transitional provisions

135 Definitions for pt 15

In this part:

board means a board established under a repealed Act.

commencement day, in relation to a health profession, means the day the repealed Act that relates to the profession is repealed.

repealed Act means an Act repealed under section 136.

136 Repeals

- (1) The following Acts are repealed:
 - (a) *Chiropractors and Osteopaths Act 1983* A1983-28
 - (b) *Dental Technicians and Dental Prosthetists Registration Act 1988* A1988-85
 - (c) *Dentists Act 1931* A1931-8
 - (d) *Health Professions Boards (Elections) Act 1980* A1980-45
 - (e) *Health Professions Boards (Procedures) Act 1981* A1981-46
 - (f) *Medical Practitioners Act 1930* A1930-13
 - (g) *Nurses Act 1988* A1988-61
 - (h) *Optometrists Act 1956* A1956-4
 - (i) *Pharmacy Act 1931* A1931-10
 - (j) *Physiotherapists Act 1977* A1977-60
 - (k) *Podiatrists Act 1994* A1994-82
 - (l) *Psychologists Act 1994* A1994-87.

- (2) Despite section 2 (Commencement), subsection (1) does not repeal an Act mentioned in subsection (1) (a), (b), (c), (f), (g), (h), (i), (j), (k) or (l) unless a schedule of the regulations deals with the health profession that is regulated by the Act.

137 Professions to be regulated

- (1) This section applies to a health profession that was regulated under a repealed Act immediately before its repeal.
- (2) The Executive is taken to have decided, under section 20 (Decision to regulate health profession), that the health profession should be regulated, and the decision is not a disallowable instrument.

138 What happens to registration under repealed Acts?

- (1) This section applies to a person who, immediately before the commencement day, was registered under a repealed Act if the health profession in which the person was registered is a regulated health profession on the commencement day.
- (2) The person's registration under the repealed Act is taken to be registration under this Act in the health profession that the person was registered in.
- (3) Unless the person's registration is cancelled or otherwise ends earlier under this Act, the person's registration ends when the registration would have ended under the repealed Act if the repealed Act had not been repealed.

139 Conditional registration

- (1) This section applies if a person was registered under a repealed Act and the registration was subject to a condition.
- (2) The condition applies to the person's registration until—
- (a) the registration ends for the first time under this Act; or
 - (b) the condition is removed or amended under this Act.

- (3) It does not matter if the condition could not have been imposed under this Act.

140 What about unfinished board inquiry under repealed Acts?

- (1) This section applies if, immediately before commencement day—
- (a) a board had begun an inquiry in relation to person registered by the board; and
 - (b) the inquiry had not finished.
- (2) The health profession board that regulates the profession in relation to which the board was established must treat the inquiry as a report made to it under this Act.
- (3) Any evidence the board had in relation to the inquiry must be given to, and may be taken into consideration by, the health profession board.

141 What about board orders under repealed Acts?

- (1) This section applies if—
- (a) a board has ordered someone to do something under a repealed Act; and
 - (b) immediately before commencement day, the person had not done the thing.
- (2) If this section applies—
- (a) the person is required to do the thing ordered; and
 - (b) a failure by the person to do the thing is taken to be a contravention of this Act.

Note A contravention of this Act by a registered health professional may be a ground for suspending or cancelling the health professional's registration (see the regulations).

142 What about suspensions under repealed Acts?

- (1) This section applies if—
 - (a) a person was registered under a repealed Act; and
 - (b) immediately before commencement day, the person's registration was suspended.
- (2) If this section applies—
 - (a) the person's registration under this Act is taken to be suspended; and
 - (b) the suspension continues until the time it would have ended had the repealed Act not been repealed; and
 - (c) the suspension may not be extended.
- (3) This section does not prevent the relevant health profession board from taking action under this Act to have the person's registration suspended or cancelled.

143 Suspension or cancellation under repealed Acts

- (1) This section applies if, before commencement day, a board suspended or cancelled a person's registration.
- (2) The suspension or cancellation may be taken into consideration if the person applies for registration under this Act.

144 What about current board fines under repealed Acts

- (1) This section applies if—
 - (a) before commencement day, a board imposed a fine on a person under a repealed Act; and
 - (b) immediately before commencement day—
 - (i) the time stated for payment of the fine had not ended; and
 - (ii) the person had not paid the fine.

- (2) If this section applies—
- (a) the person is required to pay the fine within the time stated for payment of the fine; and
 - (b) a failure of the person to pay the fine within the stated time is taken to be a contravention of this Act.

Note A contravention of this Act by a registered health professional may be a ground for suspending or cancelling the health professional's registration (see the regulations).

145 What about past board fines under repealed Acts

- (1) This section applies if—
- (a) before commencement day a board imposed a fine on a person under a repealed Act; and
 - (b) the time for payment of the fine ended not longer than 1 month before commencement day; and
 - (c) the person did not pay the fine.
- (2) The failure of the person to pay the fine is taken to be a contravention of this Act.

Note A contravention of this Act by a registered health professional may be a ground for suspending or cancelling the health professional's registration (see the regulations).

146 What about appeals from board decisions?

- (1) This section applies if, immediately before commencement day, a person had a right to appeal from a decision of a board under a repealed Act.
- (2) If this section applies—
- (a) the right to appeal is not affected by the repeal of the repealed Act; and

- (b) if the entity appealed to refers the decision appealed from back to the decision-maker—the decision-maker is taken to be the health profession board that regulates the profession that the board was established to regulate.

147 Vesting of assets and liabilities of Territory in health profession board

- (1) The Minister may, in writing, declare that a stated asset or liability of the Territory vest in a stated health profession board.
- (2) The asset or liability vests in the health profession board by force of this section.
- (3) If an asset or liability vested in a health profession board under this section is mentioned in a contract, agreement or arrangement, any reference to the Territory in the contract, agreement or arrangement is (except in relation to matters that happened before the vesting) a reference to the health profession board.
- (4) A declaration under this section is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

148 Registration of changes in title to certain assets

- (1) This section applies if—
 - (a) a registrable asset vests in a health profession board under section 147; and
 - (b) the health profession board gives the registering authority for the asset notice of the declaration under section 147 (1) for the asset.
- (2) The registering authority must make the entries in the appropriate register kept by the registering authority, and do anything else necessary or desirable to be done, to reflect the vesting of the asset in the health profession board.

- (3) The evidentiary value of a register mentioned in this section is not affected by—
- (a) the making of an entry under this section; or
 - (b) the failure to make an entry under this section; or
 - (c) the failure by the health profession board to give notice to the registering authority about the declaration of a registrable asset.
- (4) In this section:

registering authority, for a registrable asset, means the person who, under Territory law, is required or permitted to enter particulars about the ownership of the asset in a register.

registrable asset means an asset, including an interest in land, particulars of the ownership of which are required or permitted under Territory law to be entered in a register.

149 Proceedings and evidence in relation to vested assets and liabilities

- (1) This section applies in relation to an asset or liability that vests in a health profession board under section 147.
- (2) If a proceeding had been begun in relation to the asset or liability before it vested in the health profession board and the Territory is a party to the proceeding, the health profession board is substituted for the Territory as a party to the proceeding.
- (3) If a proceeding could have been begun by or against the Territory in relation to the asset or liability before it vested in the health profession board, the proceeding may be begun by or against the health profession board.

- (4) The *Limitation Act 1985* applies to a cause of action that accrued to or against the Territory in relation to the asset or liability as if the cause of action had accrued to or against the health profession board when it accrued to or against the Territory.
- (5) The court or other entity in which a proceeding is begun or continued by or against the health profession board in relation to the asset or liability may give directions about the conduct of the proceeding.
- (6) Any evidence that would have been admissible for or against the Territory in the proceeding is admissible for or against the health profession board.
- (7) In this section:
proceeding includes a right of appeal or review (including a right of review under the *Ombudsman Act 1989*) or any other civil proceeding.

150 Prerequisites for appointment to health profession board

- (1) This section applies if the regulations require a person to have been a particular kind of registered health professional for a stated period to be eligible to be appointed or elected as a member, including as president, of a health profession board.
- (2) If this section applies, the person satisfies the requirement if the person has been registered as that kind of health professional under a repealed Act, or under a repealed Act and this Act together, for the stated period.

151 Transitional regulations

The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act or the *Health Professionals Legislation Amendment Act 2004*.

152 Modification of pt 15's operation

The regulations may modify the operation of this part (including in its operation in relation to another Territory law) to make provision with respect to any matter that is not already, or is not (in the Executive's opinion) adequately, dealt with in this part.

153 Expiry of pt 15

This part expires 2 years after the day it commences.

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- disallowable instrument
- Executive
- function
- penalty unit
- under.

application, for registration, includes an application for renewal of registration.

community representative list means the list kept and endorsed under section 36.

complaint—see the *Community and Health Services Complaints Act 1993*.

condition review, in relation to a health professional, means a review, applied for under section 103, of the imposition of a condition on the health professional's registration.

corresponding law, of a local jurisdiction, means a law of that jurisdiction that corresponds to this Act.

commissioner means the commissioner for health complaints.

emergency order means an emergency order under section 61.

executive officer, for a health profession board, means the executive officer appointed by the board under the regulations.

health profession is a profession the main purpose of which is to provide health services.

health professional—see section 14.

health profession board means the health profession board established for a health profession.

health service—see section 15.

health professions tribunal means the Australian Capital Territory Health Professions Tribunal.

information includes documents.

informed person, for part 13 (Protection and information)—see section 125.

local jurisdiction means a State or New Zealand, but does not include the ACT.

president, of a health profession board, means the president of the board appointed under the regulations.

professional standards panel means a panel established under section 88.

register, a person, includes enrol the person or renew the person's registration.

registered, in relation to a health professional—

- (a) for Act (other than part 8)—see section 17; and
- (b) for part 8 (Offences)—see section 70.

registered health professional, for division 9.2 (Reporting)—see section 77.

regulated health profession means a health profession regulated under this Act.

regulated health service—see section 16.

relevant health professional, in relation to a health profession board, means a health professional who is registered by the health profession board.

relevant health profession board—see section 19.

report means a report under division 9.2.

required standard of practice—see section 18.

review means a review under division 6.2

standards inquiry—see section 113 (1).

suitability to practise requirements—see section 23.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 December 2003.

2 Notification

Notified under the Legislation Act on 8 July 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Health Professionals Bill 2004, which originated in the Legislative Assembly as the Health Professionals Bill 2003 and was passed by the Assembly on 1 July 2004.

Acting Clerk of the Legislative Assembly

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