



Australian Capital Territory

Health Professionals Act 2004

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About this republication

The republished law

This is a republication of the *Health Professionals Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 March 2010. It also includes any amendment, repeal or expiry affecting the republished law to 9 March 2010.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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Australian Capital Territory

Health Professionals Act 2004

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

Part 1 Introductory

1 Name of Act

This Act is the *Health Professionals Act 2004*.

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 the 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 ACAT hears applications to review decisions, and makes occupational discipline orders (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 *Human Rights Commission Act 2005*; 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 commission 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 apply to the ACAT for occupational discipline orders.

12 Interaction with Human Rights Commission Act

- (1) The commission must consult with the health profession board for a health profession in relation to a complaint made to the commission under the *Human Rights Commission Act 2005* (the *HRC Act*) relating to a health professional in the profession.
- (2) In considering a report (which may be a final review report under section 39) relating to a registered health professional, the health profession board must consult with the commission.
- (3) If the health profession board and the commission cannot agree about the action to be taken in relation to a report, the most serious action chosen by the board or commission prevails (see section 86 (2)).
- (4) This Act and the HRC Act set out a flexible system for dealing with reports and complaints.

Note The health services commissioner generally exercises the commission's functions in relation to health services.

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.

14 Who is a *health professional*?

- (1) A *health professional* is someone who provides a health service while working in a health profession.
- (2) To remove any doubt, each of the following is a *health professional*:
 - (a) a chiropractor;
 - (b) a dental hygienist;
 - (c) a dental prosthetist;
 - (d) a dental technician;
 - (e) a dental therapist;
 - (f) a dentist;
 - (g) an enrolled nurse;
 - (h) a medical practitioner;
 - (i) a medical radiation scientist;
 - (j) a midwife;
 - (k) a nurse;
 - (l) an optometrist;
 - (m) an osteopath;
 - (n) a pharmacist;
 - (o) a physiotherapist;
 - (p) a podiatrist;

- (q) a psychologist;
- (r) a veterinary surgeon.

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) For the application of this Act in relation to a health professional who is a veterinary surgeon, a *health service* is a service provided to an animal (the *service user*) for any of the purposes mentioned in subsection (1) (a) or (b).
- (3) 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?

- (1) In this Act:

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

- (2) To remove any doubt, a person is also a *registered* health professional if the person is registered in a specialist area of a health profession.

Example

an enrolled nurse enrolled in the specialist area of enrolled nurse (medications)

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).

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) A regulation may prescribe, but does 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 a regulation prescribes something that is inconsistent with the health code under the *Human Rights Commission Act 2005*, the regulation is 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, a regulation 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 a regulation 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) A regulation may also make provision for anything that is necessary or convenient to be prescribed for regulating the profession.

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 specialist 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, a regulation must establish a health profession board in relation to the profession.
- (2) A regulation—
 - (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, a regulation 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, a regulation 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 suspended or cancelled, the board cannot suspend or cancel the registration itself, but may apply to the ACAT for suspension or cancellation.

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) A regulation 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 the 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 by regulation, and include general competence.

- (2) However, a corporation may apply under subsection (1) in relation to a health profession only if a regulation allows 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) A regulation 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 (in addition to the circumstances already prescribed under this Act) a health profession board may apply for—
 - (i) the suspension or cancellation of registration; or
 - (ii) a declaration under section 44 (2) (f) (which is about a person who is not registered); and
 - (d) when a health professional's registration may be renewed, including when it may be renewed retrospectively.
- (6) The Executive may make a regulation under subsection (5) in relation to a health profession only after it has consulted with an entity that is generally accepted to represent the health profession.

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 ACAT 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 medicine 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 Occupational discipline—health professionals

40 Meaning of *health professional*—pt 7

In this part:

health professional means—

- (a) a registered health professional; or
- (b) a person who was, but is no longer, a registered health professional.

41 Grounds for occupational discipline

- (1) Each of the following is a *ground for occupational discipline* in relation to a health professional:
 - (a) the health professional has contravened, or is contravening, a standard of practice that applies to the health professional;
 - (b) the health professional has put, or is putting, public safety at risk;
 - (c) the health professional does not satisfy the suitability to practise requirements.
- (2) A ground for occupational discipline applies to a health professional who is no longer registered if the ground applied to the health professional while registered.

42 Application to ACAT for occupational discipline

If the health profession board believes on reasonable grounds that a ground for occupational discipline exists in relation to a health professional, the board may apply to the ACAT for an occupational discipline order in relation to the health professional.

43 Considerations before making occupational discipline orders—suspension or cancellation of registration

- (1) This section applies if the ACAT is considering whether to suspend or cancel the health professional's registration.
- (2) The ACAT must consider the following:
 - (a) whether the health professional has contravened a standard of practice that applied to the health professional;
 - (b) whether the health professional has put, or is putting, public safety at risk.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out considerations for the ACAT when considering what other occupational discipline orders to make.

44 Occupational discipline orders

- (1) This section applies if the ACAT may make an order for occupational discipline in relation to a health professional.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an order.
- (2) In addition to any other occupational discipline order the ACAT may make, the ACAT may make 1 or more of the following orders for occupational discipline in relation to the health professional:
 - (a) require the person to undergo stated medical, psychiatric or psychological assessment, counselling or both;
 - (b) require the person to take part in a review of the person's professional practice;
 - (c) require the person to report on the person's practice at stated times, in the way stated and to a named person;
 - (d) require the person to seek and take advice from a stated entity about the management of the person's practice;

- (e) require the supervision, monitoring or reporting about the effect of something the person is required to do by the ACAT;
- (f) if the person is not registered—declare that, if the person had been registered, the ACAT would have found that the person had contravened the required standard of practice or did not satisfy the suitability to practise requirements.

Note 1 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).

Note 2 The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

45 Emergency orders

- (1) The ACAT may make an occupational discipline order in relation to a health professional as an emergency order.
- (2) However, the ACAT may only make an emergency order if satisfied that it is necessary to make the order to protect the public or the wellbeing of the health professional.
- (3) An emergency order has effect—
 - (a) for the period stated in the order; or
 - (b) until an order made at the end of an application comes into force; or
 - (c) until the ACAT otherwise orders.

46 Referral to panel by ACAT

- (1) The ACAT 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 ACAT, the ACAT must consider the referral report.
- (3) The ACAT 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.

Part 7A Notification and review of decisions

47 Definition of *reviewable decision*—pt 7A

In this part:

reviewable decision means a decision prescribed by regulation.

48 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity prescribed by regulation in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

49 Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity prescribed by regulation for the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

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 or surgical prosthetics and orthotics; 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).

72A False representation of person as health professional

A registered health professional commits an offence if—

- (a) the health professional represents that someone employed or engaged by the health professional is a registered health professional; and
- (b) the representation is false; and
- (c) the representation was made in the course of practising as a health professional.

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

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.

73A Direction to engage in unprofessional conduct

A person commits an offence if—

- (a) the person—
 - (i) employs a registered health professional; or
 - (ii) provides premises where the registered health professional practises in the profession; and

- (b) the person directs the health professional to engage in conduct that, if engaged in, would contravene a standard of practice that applies to the health professional.

Maximum penalty: 50 penalty units.

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 People may also be able to make complaints to the commission under the *Human Rights Commission Act 2005*.

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 be given a report?

- (1) A report may be given to the relevant health profession board.
- (2) The health profession board must—
- (a) refer the report to the commission; and
 - (b) give a copy of the report, and all documents in its possession that relate to the report, to the commission.

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 may accept a report that does not comply with subsection (1).
- (3) If a health profession board accepts an oral report, the board 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 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 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 about a registered health professional.

Note 1 The requirements for a report are set out in s 81.

Note 2 In this division, *report* does not include a complaint made under the *Human Rights Commission Act 2005* that is referred to a health profession board by the commission (see dict, def *report*).

- (2) The health profession board 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
 - (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 maximum period after receiving notice of the report.
- Note* 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 its consideration.
- (3) The maximum period under subsection (2) (e) must not be less than 1 month.

Part 10 Joint consideration with commission

85 What does pt 10 apply to?

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

- (a) a report 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 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 referred back to the health profession board under section 112 (Inappropriate referral to professional standards panel).

86 Consultation with commission etc

- (1) The health profession board must—
 - (a) consult with the commission when it is considering what to do in relation to a report to which this part applies; and
 - (b) endeavour to agree with the commission about the action to be taken in relation to the report.
- (2) If the health profession board and the commission cannot agree about what to do in relation to the report, the most serious action proposed by either must be taken.

- (3) The action that may be taken in relation to a report, from most serious to least serious, is as follows:
- (a) apply to the ACAT for an emergency order in relation to the registered health professional to whom the report relates;
 - (b) apply to the ACAT for—
 - (i) the suspension or cancellation of the registration of the health professional to whom the report relates; or
 - (ii) if the health professional is not registered—a declaration under section 44 (2) in relation to the health professional;
 - (c) consideration under the *Human Rights Commission Act 2005* of a report by the commission;
 - (d) refer the health professional to whom the report relates to a professional standards panel;
 - (e) refer the health professional to whom the report relates to a personal assessment panel;
 - (f) refuse to investigate the report further.
- (4) Also, the health profession board must take action under section 87 (Indication that offence committed) if, after consultation with the commission, either the board, commission or both consider that the section applies to the report.
- (5) The health profession board may take action under this section even if it has already taken action in relation to the report.

Example

If the health profession board decides that a report 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 to a personal assessment panel. If the personal assessment panel recommends that the report be referred to a professional standards panel because, on further examination, the report 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 commission under this section, even though the board has already taken action in relation to the report.

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 report 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 report, with any other information the board has in relation to the report.
- (3) Giving the chief police officer a copy of the report does not prevent the health profession board and commission from taking further action under section 86 in relation to the report.

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 about a registered health professional to a personal assessment panel if—
 - (a) the report 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 about a health professional to a personal assessment panel if the commission asks it to refer the report.

89 Referral of application by ACAT

- (1) The health profession board must refer an application, or part of an application, to a personal assessment panel if the ACAT refers the application, or part, under section 46 (Referral to panel by ACAT).
- (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 ACAT 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
 - (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 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 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 about the health professional;
 - (b) any information provided by the commission or the person who made the report;
 - (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 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 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.

94A Lawyer assisting personal assessment panel

The health profession board that established a personal assessment panel may appoint a lawyer to assist the panel for an inquiry.

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 an application for a condition review, if the personal assessment panel believes, on reasonable grounds, that the report 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 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 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 commission); and
 - (b) may apply to the ACAT 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) ask the ACAT to suspend or cancel the health professional's registration; or
 - (d) ask the ACAT to make any other occupational discipline order the ACAT considers appropriate in relation to the health professional or matter;

- (e) 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 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) must give written notice of the decision to the commission.

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, 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 commission).
- (4) If the health profession board makes a decision without consulting the commission, the board must tell the commission 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;
 - (b) any information provided by the commission or the person who made the report;
 - (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 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 ACAT

- (1) The health profession board must refer an application, or part of an application, to a professional standards panel if the ACAT refers the application, or part, under section 46 (Referral to panel by ACAT).
- (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 ACAT about the application, or part of the application.

- (4) The referral report about an application relating to a health professional may recommend that the ACAT make a stated occupational discipline order 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 about a health professional is referred to a professional standards panel; and
 - (b) the health professional admits something mentioned in the report.
- (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 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 relating to a health professional that is referred to a professional standards panel if—
 - (a) the panel believes on reasonable grounds that the report, 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 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 commission).

Division 12.3 Procedural requirements for inquiry hearings

113 Setting inquiry hearing times

- (1) If a report 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 commission.
- (2) The health profession board may also give written notice of the inquiry to the person who made the report.

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 commission

At a standards inquiry, the commission may—

- (a) be represented; and
- (b) give evidence about the consideration of a complaint under the *Human Rights Commission Act 2005*; and
- (c) may be present at the inquiry 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.

119A Lawyer assisting professional standards panel

The health profession board that established a professional standards panel may appoint a lawyer to assist the panel for a standards inquiry (including the inquiry hearing).

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 commission;
 - (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 or application for a condition review, to the health profession board with—
 - (i) a recommendation that an application be made to the ACAT for the suspension or cancellation of the health professional's registration; and
 - (ii) the standards inquiry report on which the recommendation is based;

- (j) refer the report or complaint to the health profession board with—
 - (i) a recommendation that an application be made to the ACAT for a declaration under section 44 (2) (f) in relation to the health professional; and
 - (ii) the standards inquiry report on which the recommendation is based;
 - (k) accept a stated voluntary undertaking from the health professional.
- (3) If the professional standards panel acts under subsection (2) (other than under paragraph (i) or (j)), 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 commission.
- (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*—pt 13

In this part:

informed person means anyone who is, or has been—

- (a) a member of a health profession board; or
- (b) a member of a personal assessment panel or professional standards panel; or
- (c) a member of the staff of a health profession board; or
- (d) acting under the direction or authority of a health profession board.

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 an application for a condition review, before a health profession board, a personal assessment panel or a professional standards panel; 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 its consideration by the commission 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, another territory law or another law applying in the 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) A regulation 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 A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

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

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:

- ACAT
- disallowable instrument
- Executive
- function
- occupational discipline order
- penalty unit
- reviewable decision notice
- under.

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

commission means the human rights commission.

commissioner means the health services commissioner.

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

complaint means a health service complaint under the *Human Rights Commission Act 2005*.

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.

emergency order means an emergency order under section 45.

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

ground for occupational discipline, in relation to a health professional—see section 41.

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

health professional—

- (a) for this Act generally—see section 14; and
- (b) for part 7 (Occupational discipline—health professionals)—see section 40.

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

health service—see section 15.

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.

public, in relation to health services provided by veterinary surgeons, includes animals.

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, in relation to a report under division 9.2 or a complaint, includes a person who was registered under this Act at the time of the act or omission reported or complained about.

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—

- (a) means a report under division 9.2; and
- (b) except in division 9.2—includes a complaint made under the *Human Rights Commission Act 2005* that is referred to a health profession board by the commission.

required standard of practice—see section 18.

review means a review under division 6.2

reviewable decision, for part 7A (Notification and review of decisions)—see section 47.

standards inquiry—see section 113 (1).

suitability to practise requirements—see section 23.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Health Professionals Act 2004 A2004-38

notified LR 8 July 2004

s 1, s 2 commenced 8 July 2004 (LA s 75 (1))

pt 1 (except s 3), pt 3, pt 4, pt 5, s 134, pt 15 (except s 136), dict commenced 18 November 2004 (s 2 (1) and CN2004-25)

s 3, pt 2, pts 6-13, pt 14 (except s 134), s 136 (1) (f), (2) commenced 7 July 2005 (s 2 (1) and CN2005-11)

s 136 (1) (g) commenced 17 January 2006 (s 2 (1) and CN2006-2)

s 136 (1) (a)-(e) and (h)-(m) commenced 9 January 2007 (s 2 as am by A2006-27 s 12)

as modified by

Health Professionals Regulation 2004 SL2004-41 s 158, sch 15 (as am by SL2004-52 s 15, SL2006-2 s 5, SL2006-3 s 5)

notified LR 6 September 2004

s 1, s 2 commenced 6 September 2004 (LA s 75 (1))

s 158, sch 15 commenced 22 November 2004 (s 2 (2) and CN2004-26)

Health Professionals Amendment Regulation 2004 (No 1) SL2004-52 s 15

notified LR 17 November 2004

s 1, s 2 commenced 17 November 2004 (LA s 75 (1))

s 15 commenced 18 November 2004 (s 2)

Note This regulation only amends the Health Professionals Regulation 2004 SL2004-41.

as amended by

Health Legislation Amendment Act 2005 A2005-28 sch 1 pt 1.1

notified LR 6 July 2005

s 1, s 2 commenced 6 July 2005 (LA s 75 (1))

amdt 1.40 commenced 9 January 2007 (LA s 79A)

sch 1 pt 1.1 remainder commenced 7 July 2005 (s 2)

Endnotes

3 Legislation history

Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.4 (as am by A2006-3 amdt 1.3)

notified LR 1 September 2005

s 1, s 2 commenced 1 September 2005 (LA s 75 (1))

sch 1 pt 1.4 commenced 1 November 2006 (s 2 (3) (as am by A2006-3 amdt 1.3) and see Human Rights Commission Act 2005 A2005-40, s 2 (as am by A2006-3 s 4) and CN2006-21)

Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.12

notified LR 26 October 2005

s 1, s 2 commenced 26 October 2005 (LA s 75 (1))

sch 1 pt 1.12 commenced 23 November 2005 (s 2)

Health Professionals Amendment Regulation 2006 (No 2) SL2006-2 s 5

notified LR 16 January 2006

s 1, s 2 commenced 16 January 2006 (LA s 75 (1))

s 5 commenced 17 January 2006 (s 2)

Note This regulation only amends the Health Professionals Regulation 2004 SL2004-41.

Health Professionals Amendment Regulation 2006 (No 3) SL2006-3 s 5

notified LR 16 January 2006

s 1, s 2 commenced 16 January 2006 (LA s 75 (1))

s 5 commenced 17 January 2006 (s 2)

Note This regulation only amends the Health Professionals Regulation 2004 SL2004-41.

Human Rights Commission Legislation Amendment Act 2006 A2006-3 amdt 1.3

notified LR 22 February 2006

s 1, s 2 commenced 22 February 2006 (LA s 75 (1))

amdt 1.3 commenced 23 February 2006 (s 2)

Note This Act only amends the Human Rights Commission Legislation Amendment Act 2005 A2005-41

Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.22

notified LR 18 May 2006

s 1, s 2 commenced 18 May 2006 (LA s 75 (1))

sch 1 pt 1.22 commenced 2 June 2006 (s 2 (1) and see Crimes (Sentence Administration) Act 2005 A2005-59 s 2, Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

Note This Act only amends the Health Professionals Regulation 2004 SL2004-41.

Health Legislation Amendment Act 2006 A2006-27 pt 3

notified LR 14 June 2006

s 1, s 2 commenced 14 June 2006 (LA s 75 (1))

pt 3 commenced 16 June 2006 (s 2 and CN2006-11)

Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.18

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))

sch 2 pt 2.18 commenced 29 September 2006 (s 2 (1))

Health Legislation Amendment Act 2006 (No 2) A2006-46 sch 1

notified LR 17 November 2006

s 1, s 2 commenced 17 November 2006 (LA s 75 (1))

amdt 1.17, amdt 1.18 commenced 9 January 2007 (s 2 (2) and see A2004-38 s 2)

sch 1 remainder commenced 18 November 2006 (s 2 (1))

Statute Law Amendment Act 2007 (No 3) A2007-39 sch 3 pt 3.19

notified LR 6 December 2007

s 1, s 2 commenced 6 December 2007 (LA s 75 (1))

sch 3 pt 3.19 commenced 27 December 2007 (s 2)

Medicines, Poisons and Therapeutic Goods Act 2008 A2008-26 sch 2 pt 2.13

notified LR 14 August 2008

s 1, s 2 commenced 14 August 2008 (LA s 75 (1))

sch 2 pt 2.13 commenced 14 February 2009 (s 2 and LA s 79)

Endnotes

4 Amendment history

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.27

notified LR 4 September 2008

s 1, s 2 commenced 4 September 2008 (LA s 75 (1))

sch 1 pt 1.27 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.38

notified LR 1 September 2009

s 1, s 2 commenced 1 September 2009 (LA s 75 (1))

sch 3 pt 3.38 commenced 22 September 2009 (s 2)

Human Rights Commission Legislation Amendment Act 2010 A2010-5 pt 3

notified LR 2 March 2010

s 1, s 2 commenced 2 March 2010 (LA s 75 (1))

pt 3 commenced 9 March 2010 (s 2)

4 Amendment history

Commencement

s 2 am A2005-28 amdt 1.1; A2006-27 s 12
om LA s 89 (4)

Regulation of health professionals

s 7 am A2008-36 amdt 1.313

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

s 8 am A2005-41 amdt 1.26

Reports

s 9 am A2005-41 amdt 1.27

Professional standards panel

s 11 am A2005-41 amdt 1.28; A2008-36 amdt 1.314

Interaction with Human Rights Commission Act

s 12 sub A2005-41 amdt 1.29

Main object

s 13 am A2008-36 amdt 1.315

Who is a *health professional*?

s 14 sub A2006-46 amdt 1.1
am A2007-39 amdt 3.74

What is a *health service*?

s 15 am A2005-28 amdt 1.2

When is someone a *registered health professional*?

s 17 am A2006-46 amdt 1.2

What is the *required standard of practice*?

s 18 am A2005-41 amdt 1.30

How may the regulations regulate health professions?

s 22 am A2005-28 amdt 1.3

Suitability to practise requirements

s 23 am A2006-46 amdt 1.3

What do health profession boards do?

s 26 am A2005-28 amdt 1.4; A2008-36 amdt 1.316

Who may be registered as a health professional?

s 37 am A2005-28 amdts 1.5-1.7; A2008-36 amdt 1.317

Review of health professional's professional practice

s 38 am A2008-36 amdt 1.318; A2008-26 amdt 2.76

Occupational discipline—health professionals

pt 7 hdg sub A2008-36 amdt 1.319

Definitions—pt 7

s 39A ins A2005-28 amdt 1.8
sub A2006-46 amdt 1.4
om A2008-36 amdt 1.319
def ***non-presidential member*** ins A2006-46 amdt 1.4
om A2008-36 amdt 1.319
def ***presidential member*** sub A2006-46 amdt 1.4
om A2008-36 amdt 1.319

Meaning of *health professional*—pt 7s 40 am A2005-28 amdt 1.9
sub A2008-36 amdt 1.319**Members of health professions tribunal**s 40A ins A2005-28 amdt 1.10
am A2006-46 amdt 1.5
om A2008-36 amdt 1.319**Grounds for occupational discipline**

s 41 sub A2005-28 amdt 1.10; A2008-36 amdt 1.319

Terms of appointment of presidential members generallys 41A ins A2005-28 amdt 1.10
om A2008-36 amdt 1.319

Endnotes

4 Amendment history

Matters to be included in instrument of appointment of presidential members

s 41B ins A2005-28 amdt 1.10
om A2008-36 amdt 1.319

Role of president of tribunal

s 41C ins A2005-28 amdt 1.10
om A2008-36 amdt 1.319

Presiding member

s 41D ins A2005-28 amdt 1.10
om A2008-36 amdt 1.319

Ending of appointment of presidential members

s 41E ins A2005-28 amdt 1.10
om A2008-36 amdt 1.319

Application to ACAT for occupational discipline

s 42 am A2005-28 amdt 1.11
sub A2006-46 amdt 1.6; A2008-36 amdt 1.319

Considerations before making occupational discipline orders—suspension or cancellation of registration

s 43 am A2005-28 amdt 1.12
sub A2006-46 amdt 1.6; A2008-36 amdt 1.319

Health professions tribunal panel may hear multiple applications

s 43A ins A2006-46 amdt 1.6
om A2008-36 amdt 1.319

Occupational discipline orders

s 44 hdg sub A2005-28 amdt 1.13
s 44 am A2005-28 amdt 1.13, amdt 1.14; A2005-41 amdt 1.31
sub A2008-36 amdt 1.319

What happens if presidential member unavailable after tribunal panel hearing started?

s 44A ins A2006-46 amdt 1.7
om A2008-36 amdt 1.319

What happens if non-presidential member unavailable after tribunal panel hearing started?

s 44B ins A2006-46 amdt 1.7
om A2008-36 amdt 1.319

Emergency orders

s 45 sub A2005-28 amdt 1.15; A2008-36 amdt 1.319

Referral to panel by ACAT

s 46 sub A2008-36 amdt 1.319

Application to health professions tribunal by health profession board

s 46A ins A2005-28 amdt 1.16
om A2008-36 amdt 1.319

Notification and review of decisions

pt 7A hdg ins A2008-36 amdt 1.319

Definition of *reviewable decision*—pt 7A

s 47 sub A2008-36 amdt 1.319

Reviewable decision notices

s 48 sub A2005-28 amdt 1.17; A2008-36 amdt 1.319

Applications for review

s 49 sub A2008-36 amdt 1.319

Application to suspend or cancel health professional's registration

s 49A ins A2005-28 amdt 1.18
om A2008-36 amdt 1.319

Time and place of proceedings

s 50 om A2008-36 amdt 1.319

Notice of hearing

s 51 am A2005-28 amdt 1.19
om A2008-36 amdt 1.319

Hearings usually in public

s 52 om A2008-36 amdt 1.319

Closed hearings in special circumstances

s 53 om A2008-36 amdt 1.319

Evidence

s 54 om A2008-36 amdt 1.319

Procedures

s 55 om A2008-36 amdt 1.319

Natural justice

s 56 om A2008-36 amdt 1.319

Representation before tribunal

s 57 om A2008-36 amdt 1.319

Preliminary hearing

s 58 am A2005-28 amdt 1.20, amdt 1.21; A2006-46 amdt 1.8; pars
renum R12 LA
om A2008-36 amdt 1.319

Powers in relation to witnesses etc

s 59 am A2005-28 amdts 1.22-1.27
sub A2005-53 amdt 1.65
om A2008-36 amdt 1.319

Endnotes

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Adjournment

s 60 om A2008-36 amdt 1.319

Interim and emergency orders

s 61 am A2006-46 amdt 1.9
om A2008-36 amdt 1.319

Decision without inquiry

s 62 am A2005-28 amdt 1.28
om A2008-36 amdt 1.319

Deciding applications for review of decision by board or panel

s 62A ins A2006-46 amdt 1.10
om A2008-36 amdt 1.319

Deciding questions

s 63 sub A2005-28 amdt 1.29
om A2008-36 amdt 1.319

Orders tribunal may make

s 64 am A2006-46 amdt 1.11
om A2008-36 amdt 1.319

Notice of decision

s 65 om A2008-36 amdt 1.319

Referral of questions of law to Supreme Court

s 66 am A2005-28 amdt 1.30
om A2008-36 amdt 1.319

Appeals from health professions tribunal to Supreme Court

s 67 sub A2006-40 amdt 2.113
om A2008-36 amdt 1.319

Contempt of health professions tribunal

s 68 sub A2005-53 amdt 1.66
om A2008-36 amdt 1.319

Application of Criminal Code, ch 7

s 68A ins A2005-53 amdt 1.66
om A2008-36 amdt 1.319

Approved forms

s 69 om A2008-36 amdt 1.319

Orders tribunal may make

s 72 am A2006-46 amdt 1.12

False representation of person as health professional

s 72A ins A2006-46 amdt 1.13

Direction to engage in unprofessional conduct

s 73A ins A2006-46 amdt 1.14

Sale of optical lenses

s 75A ins A2006-46 amdt 1.15
om A2008-26 amdt 2.77

Standard of drugs

s 75B ins A2006-46 amdt 1.15
om A2008-26 amdt 2.77

Who may report?

s 78 am A2005-41 amdt 1.32

Who may be given a report?

s 79 sub A2005-41 amdt 1.33

How must report be made?

s 81 am A2005-41 amdt 1.34, amdt 1.35

Help in making report

s 82 sub A2005-41 amdt 1.36

Notice to health professional reported

s 84 am A2005-28 amdt 1.31; A2005-41 amdts 1.37-1.40; A2010-5
s 13

Joint consideration with commission

pt 10 hdg sub A2005-41 amdt 1.41

What does pt 10 apply to?

s 85 am A2005-41 amdt 1.42

Consultation with commission etc

s 86 hdg sub A2005-41 amdt 1.43
s 86 am A2005-28 amdt 1.32, amdt 1.33; A2005-41
amdts 1.44-1.48, amdts 1.50-1.52; pars renum R11 LA (see
A2005-41 amdt 1.49); A2008-36 amdt 1.320

Indication that offence committed

s 87 am A2005-41 amdt 1.53, amdt 1.54

Establishment of personal assessment panel

s 88 am A2005-41 amdt 1.55, amdt 1.56

Referral of application by ACAT

s 89 hdg sub A2008-36 amdt 1.321
s 89 am A2005-41 amdt 1.57; A2008-36 amdt 1.322, amdt 1.323

What does a personal assessment panel do?

s 90 am A2005-41 amdt 1.58

Who must be on a personal assessment panel?

s 91 am A2005-41 amdt 1.59

Assessment by personal assessment panel

s 93 am A2005-41 amdt 1.60, amdt 1.61

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4 Amendment history

Powers of personal assessment panel on inquiry

s 94 am A2005-41 amdt 1.62, amdt 1.63

Lawyer assisting personal assessment panel

s 94A ins A2005-28 amdt 1.34

Inappropriate referral to personal assessment panel

s 98 am A2005-41 amdt 1.64

Referral to board

s 99 am A2005-41 amdt 1.65

Board consideration of referral by personal assessment panel

s 100 am A2005-41 amdts 1.65-1.67; pars renum R11 LA (see A2005-41 amdt 1.68); A2008-36 amdt 1.324; A2009-20 amdt 3.88

Decision on referred health professional

s 102 am A2005-41 amdt 1.69, amdt 1.70

Applications for condition review

s 103 am A2005-41 amdt 1.71

Action by board on recommendations by personal assessment panel

s 105 am A2005-41 amdt 1.72, amdt 1.73

What does a professional standards panel do?

s 107 am A2005-41 amdts 1.74-1.76

Referral of application by ACAT

s 109 hdg sub A2009-20 amdt 3.89
s 109 am A2008-36 amdt 1.325, amdt 1.326

When may professional standards panel choose not to inquire?

s 110 am A2005-41 amdt 1.76

Inappropriate referral to professional standards panel

s 112 am A2005-41 amdt 1.76, amdt 1.77

Setting inquiry hearing times

s 113 am A2005-41 amdts 1.78-1.80

Role of commission

s 116 sub A2005-41 amdt 1.81
(2), (3) exp 1 December 2006 (s 116 (3))

Lawyer assisting professional standards panel

s 119A ins A2005-28 amdt 1.35

Representation at inquiry hearing

s 120 am A2005-41 amdt 1.82

Action of professional standards panel after inquiry

s 122 am A2005-28 amdt 1.36, amdt 1.38; pars renum R3 LA (see A2005-28 amdt 1.37); A2005-41 amdt 1.83; A2008-36 amdt 1.327; A2009-20 amdt 3.90

Inquiry report

s 123 am A2005-41 amdt 1.84

Meaning of *informed person*—pt 13

s 125 am A2005-28 amdt 1.39
sub A2008-36 amdt 1.328

Protection of participants and people reporting

s 126 am A2005-41 amdt 1.85; A2008-36 amdt 1.329

Nondisclosure of reports

s 128 am A2005-41 amdt 1.86

Secrecy

s 129 am A2006-46 amdt 1.16

Optometrists—authorisation for possession and use of poisons and restricted substances

pt 13A hdg ins A2006-46 amdt 1.17
om A2008-26 amdt 2.78

Definitions—pt 13A

s 129A reloc from Optometrists Act 1956 s 45A by A2006-46 amdt 2.33
om A2008-26 amdt 2.78
def **ACT requirements** reloc from Optometrists Act 1956 s 45A by A2006-46 amdt 2.33
om A2008-26 amdt 2.78
def **board** reloc from Optometrists Act 1956 s 45A by A2006-46 amdt 2.33
om A2008-26 amdt 2.78
def **optometrist drug authority** reloc from Optometrists Act 1956 s 45A by A2006-46 amdt 2.33
om A2008-26 amdt 2.78
def **optometrists drug authority committee** reloc from Optometrists Act 1956 s 45A by A2006-46 amdt 2.33
om A2008-26 amdt 2.78
def **poison** reloc from Optometrists Act 1956 s 45A by A2006-46 amdt 2.33
om A2008-26 amdt 2.78
def **restricted substance** reloc from Optometrists Act 1956 s 45A by A2006-46 amdt 2.33
om A2008-26 amdt 2.78

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4 Amendment history

ACT requirements for drug authorities

s 129B reloc from Optometrists Act 1956 s 45B by A2006-46
 amdt 2.33
 om A2008-26 amdt 2.78

Optometrist drug authorities

s 129C reloc from Optometrists Act 1956 s 45C by A2006-46
 amdt 2.33
 om A2008-26 amdt 2.78

Term of drug authorities

s 129D reloc from Optometrists Act 1956 s 45D by A2006-46
 amdt 2.33
 om A2008-26 amdt 2.78

Possession, use, supply and prescription of certain substances

s 129E reloc from Optometrists Act 1956 s 45E by A2006-46
 amdt 2.33
 om A2008-26 amdt 2.78

ACT Optometrists Board—reviewable decisions

s 129F ins A2006-46 amdt 1.17
 om A2008-26 amdt 2.78

ACT Optometrists Board—review of decisions

s 129G ins A2006-46 amdt 1.17
 om A2008-26 amdt 2.78

ACT Optometrists Board—notification of decisions

s 129H ins A2006-46 amdt 1.17
 om A2008-26 amdt 2.78

Pharmacists—record of prescriptions

s 130A ins A2006-46 amdt 1.18
 om A2008-26 amdt 2.79

Medical practitioner etc may dispense medicines

s 130B ins A2006-46 amdt 1.18
 om A2008-26 amdt 2.79

Restrictions on supply of certain medicines etc

s 130C ins A2006-46 amdt 1.18
 om A2008-26 amdt 2.79

Transitional provisions

pt 15 hdg exp 9 January 2009 (s 153)

Definitions for pt 15

s 135 exp 9 January 2009 (s 153)

Repeals

s 136 am A2005-28 amdt 1.40; A2005-28 amdt 1.41
exp 9 January 2009 (s 153)

Professions to be regulated

s 137 mod SL2004-41 mod 15.1 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65
am A2005-28 amdt 1.42, amdt 1.43
exp 9 January 2009 (s 153)

What happens to registration under repealed Acts?

s 138 exp 9 January 2009 (s 153)

Conditional registration

s 139 mod SL2004-41 mod 15.2 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65
am A2005-28 amdt 1.44
exp 9 January 2009 (s 153)

What about unfinished board inquiry under repealed Acts?

s 140 exp 9 January 2009 (s 153)

What about board orders under repealed Acts?

s 141 exp 9 January 2009 (s 153)

What about suspensions under repealed Acts?

s 142 exp 9 January 2009 (s 153)

Suspension or cancellation under repealed Acts

s 143 exp 9 January 2009 (s 153)

What about current board fines under repealed Acts?

s 144 exp 9 January 2009 (s 153)

What about past board fines under repealed Acts?

s 145 exp 9 January 2009 (s 153)

What about appeals from board decisions?

s 146 exp 9 January 2009 (s 153)

Vesting of assets and liabilities of Territory in health profession board

s 147 exp 9 January 2009 (s 153)

Registration of changes in title to certain assets

s 148 exp 9 January 2009 (s 153)

Proceedings and evidence in relation to vested assets and liabilities

s 149 exp 9 January 2009 (s 153)

Prerequisites for appointment to health profession board

s 150 exp 9 January 2009 (s 153)

Endnotes

4 Amendment history

People previously registered under repealed Act—s 77

s 150A ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65
ins A2005-28 amdt 1.45
exp 9 January 2009 (s 153)

People previously registered under Act or repealed Act

s 150B ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65
ins A2005-28 amdt 1.45
sub A2005-41 amdt 1.87
exp 9 January 2009 (s 153)

Existing inquiries

s 150C ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65
ins A2005-28 amdt 1.45
exp 9 January 2009 (s 153)

Appointment and election of health profession board members before Act fully commenced

s 150D ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65
ins A2005-28 amdt 1.45
exp 9 January 2009 (s 153)

Application of s 37 (5) (c)

s 150E ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65

Application of s 84 (2) (e) and s 84 (3)

s 150F ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65

Application of s 86 (3) (b)

s 150G ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65

Application of s 122 (2) (i) and s 122 (3)

s 150H ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65

Applications to health professions tribunal

s 150I ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65

Appointment and election of health profession board members before Act fully commenced

s 150J ins as mod SL2004-41 mod 15.3 (as ins by SL2004-52 s 15)
mod lapsed 7 July 2005 when sch 15 SL2004-41 om by
A2005-28 amdt 1.65

Complaints made before HRC commencement day

s 150K ins A2005-41 amdt 1.88
exp 9 January 2009 (s 153)

Nurses Act, s 82 (1) notice—transitional

s 150L ins as mod SL2004-41 mod 16.1 (as ins by SL2006-2 s 5)
exp 9 July 2006 (s 150L (3))
ins A2006-46 amdt 1.19
exp 18 November 2006 (s 150L (2) (LA s 88 declaration
applies))

References to *nurse* etc in certain legislation

s 150M ins as mod SL2004-41 mod 17.1 (as ins by SL2006-3 s 5; as
am by A2006-23 amdt 1.205)
exp 18 November 2006 (s 150M (10))

Transitional regulations

s 151 sub A2006-46 amdt 1.20
exp 9 January 2009 (s 153)

Modification of pt 15's operation

s 152 exp 9 January 2009 (s 153)

Expiry—pt 15

s 153 sub A2006-46 amdt 1.21
exp 9 January 2009 (s 153)

Dictionary

dict am A2008-36 amdt 1.330
def **commission** ins A2005-41 amdt 1.89
def **commissioner** sub A2005-41 amdt 1.90
def **complaint** sub A2005-41 amdt 1.90
def **deals with** ins A2006-46 amdt 1.22
om A2008-36 amdt 1.331
def **emergency order** sub A2008-36 amdt 1.332
def **ground for occupational discipline** ins A2009-20
amdt 3.91
def **health professional** sub A2009-20 amdt 3.92

Endnotes

5 Earlier republications

def **health professions representative list** ins A2006-46
amdt 1.23
om A2008-36 amdt 1.333
def **health professions tribunal** om A2008-36 amdt 1.333
def **presidential member** ins A2005-28 amdt 1.46
om A2008-36 amdt 1.333
def **public** ins A2005-28 amdt 1.47
def **registered health professional** sub A2005-28 amdt 1.48
def **report** sub A2005-41 amdt 1.90; A2010-5 s 14
def **reviewable decision** ins A2008-36 amdt 1.334

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 18 Nov 2004	18 Nov 2004– 21 Nov 2004	not amended	new Act
R2 22 Nov 2004	22 Nov 2004– 6 July 2005	not amended	modifications by SL2004-41 as amended by SL2004-52
R3 7 July 2005	7 July 2005– 22 Nov 2005	<u>A2005-28</u>	commenced provisions and amendments by A2005-28
R4 23 Nov 2005	23 Nov 2005	A2005-53	amendments by A2005-53
R5 17 Jan 2006	17 Jan 2006– 22 Feb 2006	A2005-53	commenced provision and modifications by SL2004-41 as am by SL2006-3

Republication No and date	Effective	Last amendment made by	Republication for
R6 23 Feb 2006	23 Feb 2006– 1 June 2006	A2006-3	updated endnotes as amended by A2006-3
R7 2 June 2006	2 June 2006– 15 June 2006	A2006-23	modifications by SL2004-41 as amended by A2006-23
R8 16 June 2006	16 June 2006– 9 July 2006	A2006-27	amendments by A2006-27
R9 10 July 2006	10 July 2006– 28 Sept 2006	A2006-27	commenced expiry
R10 29 Sept 2006	29 Sept 2006– 31 Oct 2006	A2006-40	amendments by A2006-40
R11 1 Nov 2006	1 Nov 2006– 17 Nov 2006	A2006-40	amendments by A2005-41 as amended by A2006-3
R12 18 Nov 2006	18 Nov 2006– 18 Nov 2006	A2006-46	amendments by A2006-46
R13 19 Nov 2006	19 Nov 2006– 1 Dec 2006	A2006-46	commenced expiry
R14 2 Dec 2006	2 Dec 2006– 8 Jan 2007	A2006-46	commenced expiry
R15 9 Jan 2007	9 Jan 2007– 26 Dec 2007	A2006-46	commenced provisions and amendments by A2005-28 and A2006-46
R16 27 Dec 2007	27 Dec 2007– 9 Jan 2009	A2007-39	amendments by A2007-39
R17 10 Jan 2009	10 Jan 2009– 1 Feb 2009	<u>A2008-36</u>	commenced expiry
R18 2 Feb 2009	2 Feb 2009– 13 Feb 2009	A2008-36	amendments by A2008-36

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R19* 14 Feb 2009	14 Feb 2009– 21 Sept 2009	A2008-36	amendments by A2008-26
R20 22 Sept 2009	22 Sept 2009– 8 Mar 2010	A2009-20	amendments by A2009-20

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