



## ANALYSIS

|   |  |
|---|--|
| <p>Title</p> <p>1. Short Title and commencement</p> <p>2. Appeals from decisions of Council, Board, and Tribunals</p> <p>3. New heading and sections inserted</p> <p style="padding-left: 40px;"><i>Application of Health and Disability Commissioner Act 1994</i></p> <p>68A. Interpretation</p> <p>68B. Complaints to be notified to Commissioner</p> | <p>68C. Consultation with Commissioner</p> <p>68D. Suspension of action under this Act</p> <p>68E. Director of Proceedings may lay charge under this Part of this Act</p> <p>68F. Director of Proceedings to prosecute charge</p> <p>68G. Costs may be awarded to Commissioner</p> |
|---|--|

---

1994, No. 99

**An Act to amend the Dental Act 1988**

[20 October 1994

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

**1. Short Title and commencement**—(1) This Act may be cited as the Dental Amendment Act 1994, and shall be read together with and deemed part of the Dental Act 1988 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

**2. Appeals from decisions of Council, Board, and Tribunals**—Section 64 (1) (g) of the principal Act is hereby amended by inserting, after the expression “section 61 (3)”, the expression “or section 68G”.

**3. New heading and sections inserted**—The principal Act is hereby amended by inserting in Part III, after section 68, the following heading and sections:

*“Application of Health and Disability Commissioner Act 1994*

**“68A. Interpretation**—In this section and sections 68B to 68G of this Act, unless the context otherwise requires,—

“‘Code’ means the Code of Health and Disability Services Consumers’ Rights for the time being prescribed by regulations made under section 74 of the Health and Disability Commissioner Act 1994:

“‘Commissioner’ means the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994:

“‘Director of Proceedings’ means the person for the time being designated under section 15 of the Health and Disability Commissioner Act 1994 as the Director of Proceedings.

**“68B. Complaints to be notified to Commissioner—**

(1) Where a complaint is made under section 52 of this Act to the Council, the Secretary to the Council shall forthwith notify the Commissioner of that complaint.

“(2) Where a complaint is made under section 52 of this Act to the Board, the Secretary to the Board shall forthwith notify the Commissioner of that complaint.

**“68C. Consultation with Commissioner—**Where, in accordance with section 68B of this Act, a complaint is notified to the Commissioner, the Commissioner may at any time after receiving the notification, consult with the Council (in the case of a complaint against a dentist) or the Board (in the case of a complaint against a clinical dental technician or a dental technician) in relation to the complaint.

**“68D. Suspension of action under this Act—**

(1) Notwithstanding anything in this Part of this Act, but subject to subsection (2) of this section and to subsections (3) and (4) of section 68E of this Act, where a complaint is notified to the Commissioner in accordance with section 68B of this Act, no action shall be taken under this Act concerning that complaint until—

“(a) The Commissioner notifies the Council (in the case of a complaint against a dentist) or the Board (in the case of a complaint against a clinical dental technician or a dental technician)—

“(i) That the complaint or matter is not to be investigated, or investigated further, under the Health and Disability Commissioner Act 1994; or

“(ii) That the complaint or matter has been resolved; or

“(iii) That the complaint or matter has been investigated under that Act and the complaint or matter is not to be referred to the Director of

Proceedings in accordance with section 45 (f) of that Act; or

“(b) The Director of Proceedings notifies the Council (in the case of a complaint against a dentist) or the Board (in the case of a complaint against a clinical dental technician or a dental technician) that the Director of Proceedings has decided, pursuant to section 49 of that Act, not to institute disciplinary proceedings under this Act in relation to the complaint or matter.

“(2) Nothing in this section prevents the taking of any action under sections 37 to 44 of this Act.

**“68E. Director of Proceedings may lay charge under this Part of this Act—**(1) This section applies where,—

“(a) After conducting an investigation under Part IV of the Health and Disability Commissioner Act 1994, the Commissioner is of the opinion that any action (within the meaning of that Act) that was the subject-matter of the investigation, being the action of a dentist or a clinical dental technician or a dental technician, was in breach of the Code; and

“(b) The Director of Proceedings decides, pursuant to section 49 of that Act, that proceedings should be taken under this Part of this Act against that person.

“(2) Where this section applies, the Director of Proceedings shall frame an appropriate charge, and lay the charge,—

“(a) In the case of a charge against a dentist, before the Dentists Disciplinary Tribunal:

“(b) In the case of a charge against a clinical dental technician, before the Clinical Dental Technicians Disciplinary Tribunal:

“(c) In the case of a charge against a dental technician, before the Dental Technicians Disciplinary Tribunal.

“(3) Where the Director of Proceedings lays a charge under subsection (2) of this section before a Tribunal, that Tribunal shall deal with the matter as if the laying of the charge were a report of the Complaints Assessment Committee under section 53 (3) of this Act in relation to the subject-matter of the charge, and, subject to section 68f of this Act, the provisions of this Part of this Act shall apply accordingly with all necessary modifications.

“(4) Notwithstanding subsection (2) (a) of this section, where this section applies, and the person against whom the Director of Proceedings has decided to take proceedings is registered as

a specialist, the Director of Proceedings may, in addition to or instead of laying a charge against that person before the Dentists Disciplinary Tribunal, lay an appropriate charge before the Council seeking the exercise of the powers of the Council under section 60 of this Act, and the provisions of this Part of this Act shall apply accordingly with all necessary modifications.

**“68F. Director of Proceedings to prosecute charge—**Notwithstanding anything in this Part of this Act, any charge laid under section 68E of this Act by the Director of Proceedings shall be prosecuted at the hearing by the Director of Proceedings, who for that purpose may be represented by counsel or otherwise.

**“68G. Costs may be awarded to Commissioner—(1)** In any proceedings under this Part of this Act relating to a charge laid by the Director of Proceedings under section 68E of this Act, the person so charged may be ordered to pay—

“(a) Any costs and expenses of and incidental to any investigation made by the Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject-matter of the charge:

“(b) The costs and expenses of and incidental to the prosecution of the charge by the Director of Proceedings.

“(2) Any costs and expenses payable pursuant to subsection (1) of this section—

“(a) Shall be recoverable as a debt due to the Tribunal; and

“(b) Notwithstanding anything in section 79 of this Act, shall be paid to the Commissioner.

“(3) Subsections (7) and (8) of section 61 of this Act shall apply in respect of an order made under subsection (1) of this section as if it were an order made under section 54 of this Act.

“(4) Nothing in this section limits section 56 of this Act.”