

Witness Name: David Peter Dunbar

Statement No.: [WITN0276002]

Dated: 22.04.2021

ROYAL COMMISSION OF INQUIRY INTO ABUSE IN CARE

WITNESS STATEMENT OF DAVID PETER DUNBAR

Dated this 22nd day of April 2021



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I, **David Peter Dunbar**, Registrar of the Medical Council of New Zealand, will say as follows:

1. I have been employed as the Registrar of the Medical Council since February 2009.
2. I make this witness statement to assist the Commission by providing what relevant information I am able to in response to questions 1(a), 1(c) and 1(d) of the Royal Commission's Notice to Produce No. 3, issued to the Medical Council of New Zealand on 14 December 2020. I have also expanded on my earlier statement ("WITN0276001") at the request of the Commission and these comments can be found at [42].
3. I am not able to provide a full account of the matters as requested by the Commission. However, I have recently reviewed the relevant legislation. My statement is based on my interpretation of provisions in the relevant repealed legislation, drawing on my knowledge of the current legislation, rather than any direct knowledge or experience of the repealed legislation.

1(a): The respective functions of the New Zealand Medical Council and the New Zealand Medical Association and any substantive variations in their functions between 1950 and the present day

4. The Medical Council is a statutory body and its functions are described in legislation. The relevant legislation for the period 1950 to the present day is as follows:
 - (a) Medical Practitioners Act 1950.
 - (b) Medical Practitioners Act 1968.
 - (c) Medical Practitioners Act 1995.
 - (d) Health Practitioners Competence Assurance Act 2003.

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5. I am not familiar with the Medical Practitioners Act 1950, but from my review of that Act, it appears that, broadly, the Medical Council's function at that time was the registration of individuals as medical practitioners and the discipline of medical practitioners.
6. I am also not familiar with the Medical Practitioners Act 1968. However, the Medical Council's functions under that Act also appear to broadly relate to registration and discipline.
7. The 1950 Act can be accessed at this [link](#);¹ and the 1968 Act can be accessed at this [link](#).
8. The Medical Practitioners Act 1995 expressly set out the functions of the Medical Council at s 123:

123. Functions of Council – The functions of the Council are as follows:

 - (a) To authorise the registration of medical practitioners under this Act, and to maintain the register:
 - (b) To consider applications for annual practising certificates referred to it by the Registrar:
 - (c) To review the competence of medical practitioners to practise medicine:
 - (d) To consider the cases of medical practitioners who, because of some mental or physical condition, may not be fit to practise medicine:
 - (e) To promote medical education and training in New Zealand:
 - (f) To provide administrative and related services for the Tribunal:
 - (g) To advise, and make recommendations to, the Minister in respect of any matter relating to the practice of medicine:
 - (h) To exercise and perform such other functions, powers and duties as are conferred or imposed on it by or under this Act or any other enactment.
9. A copy of the 1995 Act can be accessed at this [link](#).

¹ Amended in 1957 and the Amendment Act can be found [here](#).

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10. Section 118 of the Health Practitioners Competence Assurance Act 2003 sets out the functions of authorities appointed under that Act, including the Medical Council. The section reads:

118 Functions of authorities

The functions of each authority appointed in respect of a health profession are as follows:

- (a) to prescribe the qualifications required for scopes of practice within the profession, and, for that purpose, to accredit and monitor educational institutions and degrees, courses of studies, or programmes:
- (b) to authorise the registration of health practitioners under this Act, and to maintain registers:
- (c) to consider applications for annual practising certificates:
- (d) to review and promote the competence of health practitioners:
- (e) to recognise, accredit, and set programmes to ensure the ongoing competence of health practitioners:
- (f) to receive information from any person about the practice, conduct, or competence of health practitioners and, if it is appropriate to do so, act on that information:
- (g) to notify employers, the Accident Compensation Corporation, the Director-General of Health, and the Health and Disability Commissioner that the practice of a health practitioner may pose a risk of harm to the public:
- (h) to consider the cases of health practitioners who may be unable to perform the functions required for the practice of the profession:
- (i) to set standards of clinical competence, cultural competence (including competencies that will enable effective and respectful interaction with Māori), and ethical conduct to be observed by health practitioners of the profession:
- (j) to liaise with other authorities appointed under this Act about matters of common interest:
- (ja) to promote and facilitate inter-disciplinary collaboration and co-operation in the delivery of health services:
- (k) to promote education and training in the profession:
- (l) to promote public awareness of the responsibilities of the authority:

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(m) to exercise and perform any other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment.

New Zealand Medical Association

11. The New Zealand Medical Association website describes the association as a professional membership organisation for medical practitioners and medical students. Brief information about the history of the New Zealand Medical Association (**the ‘Medical Association’**) is available on its website [here](#).
12. The Medical Council has published on its website a publication “*A History of the Medical Council of New Zealand*” by Dr Richard Sainsbury. I note that Dr Sainsbury’s *History* has a footnote reference to a book called *A History of the New Zealand Medical Association: The First 100 Years*, by RE Wright-St Clair. The Council possesses a copy of the book, however I’m not familiar with its content.
13. Dr Sainsbury’s publication refers to the role of the Medical Association under the 1950 and 1968 Acts as follows:
 - (a) He explained the 1950 Act constituted the Medical Practitioners Disciplinary Committee, with this Committee comprising four doctors appointed by the Council of the New Zealand Branch of the British Medical Association. Likewise, under the 1968 Act, the MPDC comprised four doctors appointed by the Medical Association. Under both Acts, the fifth member of the MPDC was appointed by the Minister of Health.
 - (b) Dr Sainsbury also noted the 1968 Act changed the composition of the Medical Council to 11 members, two members being nominated by the Medical Association.

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(c) He went on to explain that a new body, the Medical Education Committee was introduced under the 1968 Act.² This Committee consisted (in part) of a person appointed by the Medical Association.³

14. The Medical Association plays no statutory role in the discipline of medical practitioners today.

15. Other than what is set out above and in the repealed legislation, I cannot comment further on the Medical Association's functions or any statutory connection between its functions and those of the Medical Council over the past 70 years. A representative of the Medical Association may be better placed to respond to this query in more detail.

1(c): The legislative basis for, jurisdiction and functions of the Medical Practitioners Disciplinary Committee (the MPDC), and any prior or subsequent iteration of that body, between 1950 and the present day; and how the functions of the MPDC, its predecessors and successors have intersected and currently intersect with the functions and jurisdiction of the New Zealand Medical Council

16. I am not personally familiar with the MPDC, or how it intersected with the Medical Council.

17. I understand, from my reading of the repealed legislation that the MPDC was first established under the Medical Practitioners Amendment Act 1949. It was also referred to in the Medical Practitioners Act 1950.

18. The publication "A History of the Medical Council of New Zealand"⁴ by Dr Sainsbury, says (at p 60) that:

² Medical Practitioners Act 1968, s 8.

³ Medical Practitioners Act 1968, s 8(e).

⁴ Available at: <https://www.mcnz.org.nz/assets/Publications/266593c823/History-of-the-Medical-Council.pdf>

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The 1950 Act also constituted the Medical Practitioners Disciplinary Committee. The Committee comprised four doctors appointed by the Council of the New Zealand Branch of the British Medical Association and one doctor, not being a Medical Council member, appointed by the Minister of Health.

The Committee elected its own Chair and had a quorum of three members. The General Secretary of the New Zealand Branch of the British Medical Association was to be the Disciplinary Committee Secretary. Another tier to the disciplinary structure was also established – divisional disciplinary committees were set up, with one of the committee members appointed as Honorary Secretary. The Medical Practitioners Disciplinary Committee could ask the local divisional committees to conduct all or part of an enquiry. All reports of enquiry outcomes were to be sent to the Council. The Council was also empowered to appoint a legal assessor, and disciplinary findings could be published in the New Zealand Medical Journal.

...

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...

In 1957, a further amendment streamlined the disciplinary regime by:

- allowing the Chairs of disciplinary committees casting votes
- setting out the functions of the disciplinary committees
- creating an investigation committee to enquire into complaints that possibly amounted to grave impropriety
- clarifying the disciplinary powers of the Council and giving a right of appeal to the Supreme Court
- permitting disciplinary committees at all levels to engage legal assessors.

19. I have had a general read of the 1950 Act and the 1957 amendment Act and in addition to the extract above, I note the following:

- (a) Costs and expenses of the MPDC were paid partly by the Medical Association and partly out of parliamentary appropriation (the proportion agreed by the Medical Association and the Minister of Health, with the agreement of the Minister of Finance).
- (b) The MPDC considered charges of professional misconduct.
- (c) The MPDC was required, if it considered a charge amounted to a charge of grave impropriety or infamous conduct in a professional respect, to refer that charge to the Medical Council

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for consideration (1950-1957) or, from 1957, on to an Investigation Committee (**IC**).

- (d) The MPDC was able to request a Divisional Disciplinary Committee to undertake all or part of an MPDC inquiry and report back to the MPDC.

20. The IC was added in 1957. It appears that:

- (a) Four registered medical practitioners would be appointed as 'Investigation Committee members' by the Governor-General on the recommendation of the Medical Council. One of the four members was appointed as Convenor of Investigations Committees.
- (b) Complaints that a doctor had been guilty of grave impropriety or infamous conduct in a professional respect had to be made to a Crown Solicitor in the relevant Supreme Court district.
- (c) The Crown Solicitor conducted preliminary inquiries and, if considering it warranted the necessary threshold, notified the Convenor of Investigations Committees who convened an Investigation Committee.
- (d) An IC comprised a Chairman, being the Crown Solicitor who advised the Convenor of the complaint (or another Crown Solicitor as the Solicitor-General appointed), and two of the appointed IC members.
- (e) The IC would complete its investigation and then report its findings to Solicitor-General.

21. The 1950 Act also referred to divisional disciplinary committees (**DDC**). The Medical Association was able to appoint DDCs for any division or group of divisions of the Medical Association.

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22. The 1950 Act described the functions and jurisdiction of the MPDC as follows (at s 32):

32. (1) The Disciplinary Committee shall have power, where a charge of professional misconduct has been made by any person against a person who is a registered medical practitioner or who is conditionally registered, to inquire into that charge:

Provided that, where in the opinion of the Disciplinary Committee any such charge amounts to a charge of grave impropriety or infamous conduct in a professional respect, the Disciplinary Committee shall not deal with the charge but shall refer it to the Medical Council.

(2) If after inquiring into any charge the Disciplinary Committee is of opinion that the person against whom the charge is made has been guilty of professional misconduct, it may, if it thinks fit, but subject to the following provisions of this Act as to appeals, do one or more of the following things namely:—

- (a) Order him to pay a penalty not exceeding one hundred pounds to the Association:
- (b) Censure him:
- (c) Order him to pay any costs or expenses of and incidental to the inquiry.

23. The 1950 Act also refers to other MPDC functions, including enforcement of contracts and inquiries into complaints arising under the Social Security Act 1938 (at ss 33 and 34).

24. The MPDC appears to have been continued under the Medical Practitioners Act 1968. Its functions under the 1968 Act were detailed as follows (at s 43):

43. Functions of Disciplinary Committee as to charges of professional misconduct—(1) The Disciplinary Committee shall have power, where a charge of professional misconduct has been made by any person against a person who is a registered medical practitioner or who is conditionally registered, to inquire into that charge:

Provided that, where the Disciplinary Committee is of the opinion, whether before or after it has completed its inquiry into any such charge, that the charge amounts to a charge of disgraceful conduct in a professional respect, the Disciplinary Committee shall cease to inquire into or deal with the charge and shall refer it to the Secretary to the Council as a complaint under section 55 of this Act.

(2) If after inquiring into any charge the Disciplinary Committee is of opinion that the person against whom the charge is made has been guilty of professional misconduct, it may, if it thinks fit, but subject to the following provisions of this Act as to appeals, do one or more of the following things, namely:

- (a) Order him to pay a penalty not exceeding two hundred dollars to the Association:
- (b) Censure him:
- (c) Order him to pay any costs or expenses of and incidental to the inquiry.

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25. The MPDC is not referred to in the Medical Practitioners Act 1995. The 1995 Act established the Medical Practitioners Disciplinary Tribunal to hear and determine disciplinary charges against medical practitioners.
26. The functions of the MPDT were described in the 1995 Act as follows (at s 97):
- 97. Functions of Tribunal**—The functions of the Tribunal are—
- (a) To consider and adjudicate on proceedings brought pursuant to section 102 of this Act:
- (b) To exercise and perform such other functions, powers, and duties as are conferred or imposed on it by or under this Act or any other enactment.
27. Under the Health Practitioners Competence Assurance Act 2003, the Health Practitioners Disciplinary Tribunal (**HPDT**) was established. The functions of the HPDT are described in this Act as follows (at s 85):
- 85 Functions of the Tribunal**
- The functions of the Tribunal are –
- (a) To hear and determine charges brought under section 91:
- (b) To exercise and perform any other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment.
28. On the question of the relationship between the MPDT and Medical Council, I note that section [216](#) of the Health Practitioners Competence Assurance Act 2003 (HPCA Act) provided for the continuation of investigations, inquiries and disciplinary proceedings that had commenced under a former registration Act but had not been completed before the commencement of the HPCA Act.⁵
29. In such cases, the proceedings continued as if the former registration Act had not been repealed by the HPCA Act.

⁵ Health Practitioners Competence Assurance Act 2003, s 216.

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30. Sections 216 to 218 of the HPCA Act read:

216 Continuation of pending investigations, inquiries, and disciplinary proceedings

- (1) All investigations, inquiries, and disciplinary proceedings under a former registration Act that have been commenced before the commencement of this section and that have not been completed before that commencement are to be continued and completed as if the former registration Act had not been repealed.
- (2) Every committee and tribunal constituted under a former registration Act in respect of complaints and disciplinary proceedings continues to have and may exercise all its powers, functions, and duties under that Act for the purpose of giving effect to subsection (1).
- (3) For the purpose of continuing, under subsection (1), any investigation, inquiry, or proceeding concerning a health practitioner or former health practitioner, any reference in a former registration Act to a board or council with which the health practitioner or former health practitioner was previously registered must be read as a reference to the successor authority.
- (4) For the purpose of continuing, under subsection (1), any investigation, inquiry, or proceeding concerning a health practitioner or former health practitioner, the successor authority may impose a disciplinary levy.
- (5) Sections 131 and 132 apply, with the necessary modifications, to a levy imposed under subsection (4).

217 Complaints about conduct before commencement of this section

- (1) An authority and the Health and Disability Commissioner may each deal with a complaint about the conduct of a health practitioner or former health practitioner under Part 4, even though the conduct is alleged to have occurred before the commencement of this section.
- (2) If the Health and Disability Commissioner deals with a complaint to which subsection (1) applies, he or she must deal with it under the Health and Disability Commissioner Act 1994.
- (3) Subsection (1) does not apply if an inquiry or investigation into the conduct concerned has been commenced under a former registration Act or under the Health and Disability Commissioner Act 1994.
- (4) In dealing with a complaint to which subsection (1) applies, neither an authority nor the Health and Disability Commissioner may have regard to any duty or obligation that was not binding on the health practitioner or former health practitioner at the time that the conduct complained about is alleged to have occurred.

218 Charges about conduct before commencement of this section

- (1) The Tribunal may consider a charge against a health practitioner or a former health practitioner in respect of conduct alleged to have occurred before the commencement of this section, but only if the Tribunal is satisfied that,—
 - (a) at the time of the occurrence of the conduct, the health practitioner or former health practitioner was registered under a former registration Act and could have been charged under that Act in respect of that conduct; and
 - (b) the health practitioner or former health practitioner has not been charged under a former registration Act in respect of that conduct.
- (2) If, after conducting a hearing on a charge of the kind referred to in subsection (1), the Tribunal finds the health practitioner or former health practitioner guilty of a disciplinary offence under section 100 in respect of conduct that occurred before the commencement of this section, the Tribunal may not impose on that person, in respect of that conduct, any order in the nature of a penalty that could not have been made against that person at the time when the conduct occurred.
- (3) In this section and in sections 216 and 217, **former health practitioner** includes a person who was registered under a former registration Act and who would have been deemed to have been registered with an authority had the person still been registered under that former registration Act on the commencement of the relevant section of this subpart.

31. Section 178(1) of the HPCA Act contains a list of “former registration Acts”, which, in the context of the Medical Council, means the Medical Practitioners Act 1995.⁶ I understand that, as a result, some MPDT proceedings commenced under the 1995 Act, continued after the commencement of the HPCA Act.

⁶ Health Practitioners Competence Assurance Act 2003, s 178(1).

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1(d): The legislative basis for, jurisdiction and functions of the Penal Cases Committee, and any prior or subsequent iteration of that body, between 1950 and the present day.

32. As noted above, I am not familiar with the earlier legislation relating to the establishment of the Medical Council. I am also not personally familiar with the Penal Cases Committee.

33. The publication "*A History of the Medical Council of New Zealand*" by Dr Sainsbury, says (at p 68) that:

Under the 1968 Act, the Medical Practitioners Investigation Committee was renamed the Penal Cases Committee (not to be confused with professional conduct committee for which the abbreviation PCC now stands). The Penal Cases Committee comprised two members of the Council and a solicitor of the High Court and was charged with investigating complaints to the Council concerning the conduct of any registered doctor. The name of the Penal Cases Committee was changed to the Preliminary Proceedings Committee in 1983. There continued to be a Medical Practitioners Disciplinary Committee comprising four doctors appointed by the New Zealand Medical Association (which gained independence from the British Medical Association in 1967) and a fifth appointed by the Minister of Health.

34. It appears that the Investigation Committee established under the 1957 Amendment Act was an earlier iteration of the Penal Cases Committee.

35. The 1968 Act described the functions and jurisdiction of the Penal Cases Committee as follows (at ss 11 and 56):

11. Penal Cases Committee—(1) There shall be a committee to be known as the Penal Cases Committee, which shall have the functions and powers imposed or conferred on that Committee by this Act, and shall consist of two members of the Council and a solicitor of the Supreme Court.

(2) The members of the Penal Cases Committee shall be appointed by the Council, which shall nominate one of the members who is a member of the Council to be Convener of the Penal Cases Committee, and shall hold office at the pleasure of the Council.

(3) If, in relation to any particular complaint, the Chairman is satisfied that it would be impracticable, inappropriate, or unduly inconvenient for a member of the Penal Cases Committee to serve on that Committee for the purposes of investigating that complaint, he may appoint some other person who is a member of the Council, or a solicitor of the Supreme Court, as the case may require, to serve on that Committee in the place of that member for that purpose, and that person shall, while he is so serving, be deemed to be a member of the Penal Cases Committee, and, if he is appointed in the place of the Convener, to be the Convener of that Committee.

Cf. 1950, No. 50, s. 43A; 1957, No. 83, s. 6 (1)

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56. Penal Cases Committee to investigate complaint—

(1) Upon being notified of the complaint in accordance with section 55 of this Act, the Convener of the Penal Cases Committee shall cause that Committee to investigate the complaint and determine whether any further action shall be taken in respect thereof.

(2) Before the Penal Cases Committee decides whether or not further action shall be taken in respect of the complaint,—

(a) The Convener shall post or deliver to the person concerned a notice specifying the substance of the complaint with sufficient particularity to enable that person to answer it and inviting him within such period (not being less than fourteen days) as may be specified in the notice, to give to the Convener any written explanation he may wish to offer and to advise the Convener if he wishes to be heard by the Committee:

(b) The Penal Cases Committee shall allow the time specified in the notice to elapse, and shall give the person concerned reasonable opportunity to be heard, and shall give due consideration to any explanation he may make.

(3) Where at the conclusion of any investigation as aforesaid the majority of the Penal Cases Committee are of the opinion that the person concerned has been guilty of disgraceful conduct in a professional respect in relation to the subject-matter of the complaint, that Committee shall frame an appropriate charge and refer it to the Chairman of the Council who shall thereupon convene a meeting of the Council for the purpose of hearing the charge.

(4) Where at the conclusion of any investigation as aforesaid the majority of the Penal Cases Committee are of the opinion that the person concerned has not been guilty of disgraceful conduct in a professional respect but has been guilty of professional misconduct in relation to the subject-matter of the complaint, that Committee shall frame an appropriate charge and refer it to the Disciplinary Committee to be dealt with under section 43 of this Act.

(5) Every charge that is referred to the Chairman of the Council pursuant to subsection (3) of this section or to the Disciplinary Committee pursuant to subsection (4) of this section shall be prosecuted at the hearing by the Penal Cases Committee, and that Committee may for this purpose be represented by counsel or otherwise.

(6) In any case where the Disciplinary Committee has, pursuant to the proviso to subsection (1) of section 43 of this Act, referred a charge in respect of which it has completed its inquiry to the Secretary to the Council, the Penal Cases Committee may forthwith proceed under subsection (3) of this section without complying with the provisions of subsections (1) and (2) of this section, and, if it refuses so to do, the Disciplinary Committee may refer the charge to the Chairman of the Council, whereupon the provisions of subsections (3) and (5) of this section shall apply as if the Disciplinary Committee were the Penal Cases Committee.

(7) No member of the Penal Cases Committee shall act as a member of the Council at the hearing of, or deliberation and adjudication on, any charge arising out of a complaint which has been referred to that Committee under this section.

Cf. 1950, No. 50, ss. 43B and 43C; 1957, No. 83, s. 6 (1)

36. Under the Medical Practitioners Act 1995, the use of complaints assessment committees (**CAC**) was introduced. A CAC appears to be a revised form of the earlier Penal Cases Committee. The 1995 Act outlines the functions and jurisdiction of CACs as follows:

88. Complaints assessment committee—(1) Subject to section 91 of this Act, the president may from time to time appoint, in relation to a particular case or class of cases, 2 medical practitioners and 1 person who is not a medical practitioner to be a complaints assessment committee, and may at any time revoke any such appointment or reconstitute any such committee.

(2) Before making any such appointment, revocation, or reconstitution, the president shall consult with at least 3 members of the Council (including at least 1 member who is not a medical practitioner).

(3) No member of the Council or the Tribunal shall be appointed to be a member of a complaints assessment committee.

(4) The president shall appoint 1 of the members of each complaints assessment committee to preside at meetings of that committee.

Cf. 1988, No. 150, s. 45 (1), (4)–(6), (9)

89. Complaints assessment committee to regulate own procedure—(1) Subject to this Act and any regulations made

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under this Act, a complaints assessment committee may regulate its procedure in such manner as it thinks fit.

(2) A complaints assessment committee may appoint a legal assessor, who, subject to subsection (3) of this section, may—

- (a) Be present at meetings of the committee; and
- (b) At any time advise the committee on matters of law, procedure, or evidence.

(3) No legal assessor shall be entitled to be present during the deliberations of a complaints assessment committee.

92. Determination of complaint by complaints assessment committee—(1) On the referral to a complaints assessment committee under section 87 of this Act of a complaint or notice of conviction in relation to a medical practitioner, the complaints assessment committee shall determine whether,—

- (a) The Council should review, under Part V of this Act, the competence of the practitioner to practise medicine; or
- (b) The Council should review, under Part VII of this Act, the ability of the practitioner to practise medicine; or
- (c) In the case of a complaint, the complaint should be the subject of conciliation under section 94 of this Act; or
- (d) The complaint or conviction should be considered by the Tribunal; or
- (e) No further steps should be taken under this Act in relation to the complaint or conviction.

(2) A complaints assessment committee shall make a determination under subsection (1) of this section as soon as reasonably practicable after the complaint or notice of conviction is referred to it.

(3) Before a complaints assessment committee makes a determination under subsection (1) of this section,—

- (a) The committee shall give the medical practitioner concerned and, in the case of a complaint, the complainant a reasonable opportunity to make a written explanation or statement in relation to the complaint or conviction; and
- (b) The committee may, on the application of the medical practitioner concerned or the complainant, or on its own motion, give that medical practitioner and, where applicable, the complainant a reasonable opportunity to appear before the committee to make an explanation or statement in relation to the complaint or conviction.

(4) A complaints assessment committee may require that any complaint referred to it under section 87 of this Act be supported by such statutory declaration as it thinks fit.

Cf. 1988, No. 150, s. 53

93. Procedure after complaints assessment committee makes determination—(1) A complaints assessment committee shall,—

- (a) In the case of a determination made under paragraph (a) or paragraph (b) of section 92 (1) of this Act, give written notice of that determination, and the reasons on which that determination is based, to,—

- (i) The Registrar; and
- (ii) The medical practitioner concerned; and
- (iii) In the case of a complaint, the complainant;

- (b) In the case of a determination made under paragraph (d) of section 92 (1) of this Act,—

- (i) Frame an appropriate charge and lay it before the Tribunal by submitting it in writing to the chairperson of the Tribunal; and
- (ii) In the case of a complaint, give written notice of that determination to the complainant;

- (c) In the case of a determination made under paragraph (e) of section 92 (1) of this Act, advise the medical practitioner concerned, the president, and, in the case of a complaint, the complainant, by written notice, of—

- (i) That determination; and
- (ii) The reasons on which that determination is based.

(2) On receiving notice under subsection (1) (a) of this section of a determination of a complainants assessment committee, the Registrar shall—

- (a) Forthwith forward the notice to the president; and
- (b) Take all reasonable steps to have the determination considered by the Council.

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37. The former roles and functions performed by CACs appear to have been taken up by professional conduct committees under the Health Practitioners Competence Assurance Act 2003.

38. Under the HPCA Act, the Medical Council may appoint a professional conduct committee (**PCC**) to investigate information and questions relating to a medical practitioner's conduct, or the safety of their practice ([s 68](#)). A PCC is made up of two medical practitioners and one layperson ([s 71](#)). Sections 72 to 79 relate to the procedure of PCCs, and s 80 sets out recommendations and the determinations that a PCC can make.

80 Recommendations and determinations of professional conduct committee

- (1) Within 14 working days after completing its investigation into a matter concerning a health practitioner, the committee must make—
 - (a) 1 or more of the recommendations specified in subsection (2); or
 - (b) one of the determinations specified in subsection (3); or
 - (c) both
- (2) The recommendations referred to in subsection (1)(a) are—
 - (a) that the authority review the competence of the health practitioner to practise his or her profession;
 - (b) that the authority review the fitness of the health practitioner to practise his or her profession;
 - (c) that the authority review the practitioner's scope of practice;
 - (d) that the authority refer the subject matter of the investigation to the Police;
 - (e) that the authority counsel the practitioner
- (3) The determinations referred to in subsection (1)(b) are—
 - (a) that no further steps be taken under this Act in relation to the subject matter of the investigation;
 - (b) that a charge be brought against the health practitioner before the Tribunal;
 - (c) in the case of a complaint, that the complaint be submitted to conciliation
- (4) The committee may not make a recommendation or determination unless the health practitioner concerned and any complainant has each been given a reasonable opportunity to make written submissions and be heard on the matter under investigation, either personally or by a representative; and for that purpose the committee must give the health practitioner and the complainant written notice of—
 - (a) the latest date by which the committee will receive written submissions from the health practitioner and the complainant; and
 - (b) the date on which the committee will hear persons who are entitled to be heard and wish to be heard.

Compare: 1995 No 95 s 92

Health and Disability Commissioner Act 1994

39. In addition to the changes in investigative and disciplinary procedures for medical practitioners over the course of successive Acts from 1950 to 2003, it is relevant to note the enactment of the Health and Disability Commissioner Act 1994 (HDC Act). That Act can be found [here](#).

40. The function of the Health and Disability Commissioner (HDC) under the HDC Act intersects in part with the function of the Medical Council where concerns arise over a doctor's conduct or practise. For example, the Council must promptly forward to the HDC any

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complaint it receives, alleging that the practice or conduct of a doctor has affected a health consumer.⁷

41. In such cases, the Medical Council has the authority to consider interim conditions on, or the suspension of, the doctor's practising certificate⁸, however, the Council may not refer the complaint to a professional conduct committee until, in general terms, a final decision on the complaint has been made by the HDC or, in some cases, by the Director of Proceedings.⁹

Historic complaints

42. I have been asked to refer to the three complaints referred to in Ms Hall's statement (dated 25 February 2021) and to comment on the legislation that would have applied to each complaint. I do not have any first-hand knowledge of these complaints, but it appears that:

- (a) Mr **GRO-A Mr DD** complaint was made in 1977, and therefore the Medical Practitioners Act 1968 would have applied to his complaint.
- (b) A person recorded as **GRO-B** made a complaint in 1991. The Medical Practitioners Act 1968 would have been in force at that time.
- (c) Mr **GRO-B** made a complaint on 29 January 1999, meaning that the Medical Practitioners Act 1995 would have applied to his complaint.

⁷ Health Practitioners Competence Assurance Act 2003 s64(1).

⁸ Health Practitioners Competence Assurance Act 2003 s69.

⁹ Health Practitioners Competence Assurance Act 2003 s 70.

