



Occupational Therapy Board of New Zealand

Kaihaumanu Tūroro o Aotearoa

*Fostering faith and confidence
in the profession*

OTBNZ Complaint Process Outline



A. Introduction

The Occupational Therapy Board of NZ (OTBNZ) is the statutory authority established under the [Health Practitioners Competence Assurance Act 2003](#) (HPCAA) responsible for the registration and regulation of occupational therapists in NZ. The principal purpose of the HPCAA is to protect the health and safety of members of the public by providing mechanisms to ensure that health practitioners are competent and fit to practise their professions.

This document provides an explanation of the processes applied by the Registrar to manage complaints received under the provisions of the HPCAA, related OTBNZ policies and other applicable legislation.

B. Complaint Categories

The Registrar receives complaints on behalf of the OTBNZ. The [OTBNZ Complaint Process Chart](#) categorises complaints received by the OTBNZ into six groups as follows:

1. Practitioner complaint affecting a health consumer;
2. Practitioner complaint as to conduct/competence/fitness;
3. Complaint regarding an unregistered person;
4. Complaint as to OTBNZ processes;
5. Complaint as to decision of a delegate under schedule 3, clause 17;
6. Complaint regarding OTBNZ staff.

Please see below a detailed explanation of the process flow in each of the above mentioned categories, with specific reference to the HPCAA.

C. Complaint processes

1. Practitioner complaint affecting a health consumer;

[View process chart](#)

[View section 64](#)

- a. If any person wishes to make a complaint about an occupational therapist, he or she may give notice of the complaint to the Office of the Health and Disability Commissioner (HDC), or the Registrar of the OTBNZ.
- b. Whenever the Registrar receives a complaint alleging that the practice or conduct of a practitioner has affected a health consumer, they must promptly forward the complaint to the HDC (section 64). The Registrar has delegated authority to refer complaints regarding occupational therapists to the HDC (*Delegations to Registrar, clause 3(h) December 2013*).
- c. A **health consumer** includes any person on or in respect of whom any health care procedure is carried out.



- d. When the Registrar has notified the HDC of a complaint, or the HDC has notified the Registrar of an investigation under the [Health and Disability Commissioner Act 1994](#) the Registrar and the Board may not take any action under Part 4 of the HPCAA (other than interim suspension under [section 69](#)) until the Board/Registrar receives a notification from the HDC under [section 70](#).
- e. Upon receipt of a notification under section 70, the Registrar pursuant to delegation clause 3(i), will undertake a preliminary assessment of the issues raised in the complaint, and may seek a response to matters raised in the complaint from the practitioner. Any preliminary assessment may involve seeking advice from OTBNZ senior staff, such as the Deputy Registrar, Professional Advisor and Solicitor, and reference to the [OTBNZ Competencies for Registration](#), [Code of Ethics](#) and the provisions of the HPCAA.
- f. The Registrar is to write to the complainant and practitioner and advise of the Registrar's decision made pursuant to [section 65\(1\)](#) of the HPCAA. Action taken by the Registrar may include sending an educative letter to the practitioner, or suggesting a meeting take place between the practitioner and the complainant to resolve concerns. If minor concerns arise, these may be addressed by voluntary agreement, or by referral to another agency such as the Accident Compensation Corporation or the Privacy Commissioner. If the appropriate action to be taken is outside of the current delegations, the Registrar will refer the matter to the Board to determine next steps.
- g. Options available to the Board include but are not limited to: [section 36](#) to refer the practitioner to a competence review, [section 68](#) to refer the matter to a Professional Conduct Committee (PCC), [section 69](#) to propose to suspend the practitioner's practising certificate or to impose one or more conditions on their scope of practice in the interim pending prosecution or investigation. Options available and appropriate will depend on the circumstances of each case.

2. Practitioner complaint as to conduct, competence, fitness to practise;

The Registrar may receive a complaint directly from a practitioner or other person, or the Registrar may receive a complaint via referral from HDC as outlined above at point 1(e).

[View process chart](#)

2.1 Competence: [Competencies for Registration](#)

[View section 36;](#)

- a. *Please note this category deals with issues arising from a complaint, not a competence notification under s34.*
- b. The Registrar may first determine to make enquiries into the competence of the practitioner, and undertake a preliminary assessment of the issues raised



- in the complaint, and may seek a response to matters raised in the complaint from the practitioner.
- c. The Registrar may request that the practitioner enter into a voluntary agreement with Registrar prior to the Board making any decision under section 36. In all circumstances, the use of a voluntary agreement with the practitioner will be considered only where:
 - The Registrar does not consider that the practitioner poses a risk of harm to the public;
 - The Registrar/Board is considering formal action under the HPCAA and determines a voluntary agreement is appropriate as an interim measure.
 - d. The Board has the discretion to determine to review the competence of an occupational therapist who holds a current practising certificate, at any time whether or not there is reason to believe that the practitioner's competence may be deficient ([section 36\(4\)](#)).
 - e. Having received a complaint which gives rise to concerns as to a practitioner's competence, it is prudent for the Registrar/Board (or a Committee of the Board with delegated authority) to consider the following:
 - What, if any, further inquiries are required?
 - Should a medical examination be ordered under [section 49](#)?
 - Should a competence review be ordered under [section 36](#)?
 - Is notification under [section 35](#) required?
 - Should the Board order interim conditions or interim suspension under [section 39](#) or [48](#)?

2.2 Conduct: [View the Code of Ethics for Occupational Therapists](#)

[View section 69;](#)

- a. Similar to category 2.1 above, following receipt of a complaint under this category, the Registrar may determine to make enquiries and undertake a preliminary assessment of the issues raised in the complaint. This may involve seeking a response to matters raised in the complaint from the practitioner.
- b. Where the complaint raises minor conduct issues which are not considered to pose a risk of harm to the public, the Registrar may consider requesting that the practitioner enter into a voluntary agreement, and/or whether issues can be addressed by way of educative letter. If the complaint raises serious conduct issues, the Registrar will refer the matter to the Board for consideration.
- c. The HPCAA allows the Board to appoint a PCC to in such circumstances to investigate complaints referred by the HDC; and other information the OTBNZ has that raises one or more questions "*about the appropriateness of the conduct or the safety of the practice of a health practitioner*" [.section 68](#)



- d. Referral of a complaint to a PCC is discretionary not mandatory under the HPCAA, however if the full Board decides to refer a complaint to a PCC it must do so as soon as practicable after it makes that decision [section 68\(1\)](#).
- e. Under [section 69](#) the Board may determine to propose to suspend the practitioner's practising certificate or to impose one or more conditions on their scope of practice in the interim pending prosecution or investigation. Suspending a practitioners practising certificate means they cannot practice as an occupational therapists.

2.3 Fitness:

[View section 49:](#)

- a. Similar to category 2.1, and 2.2 above, following receipt of a complaint under this category, the Registrar may determine to make enquiries and undertake a preliminary assessment of the issues raised in the complaint. This may involve seeking a response to matters raised in the complaint from the practitioner.
- b. The Registrar's enquiries will also involve requesting information from the practitioner as per the process outlined in the [OTBNZ Fitness to Practise Policy](#).
- c. Where a practitioner declares that they are affected by a health condition, and the Registrar considers this factor does not give rise to a risk of harm to the public or that the practitioner is prevented from performing the functions required for practice of occupational therapy, the Registrar may consider requesting that the practitioner enter into a voluntary agreement.
- d. In terms of health declarations, voluntary agreements are used to provide supports to a practitioner who may be returning to work following an injury or period of ill health. A voluntary agreement in this circumstance also fulfills the function of enabling the Registrar to monitor the practitioner's return to work in terms of their health to ensure all required supports are in place to be satisfied of public safety.
- e. If the complaint raises serious health issues, and the Registrar considers that the practitioner may be prevented from performing the functions required for practice, the Registrar will refer the matter to the Board for consideration.
- f. Where the Board considers that a practitioner *"may be unable to perform the functions required for the practise of his or her profession because of some mental or physical condition"* the Board can require a practitioner to submit him or herself for an examination or testing by a medical practitioner at the expense of the Board [section 49](#).
- g. Under [section 48](#) the Board may order interim suspension of a practitioner's practising certificate or include conditions in the practitioner's scope of practice. An interim suspension or condition/s imposed under section 48 can only apply for up to 20 working days, but the Board may extend this period for a further 20 working days under subsection (3) if a further period is necessary for any examination or testing required under section 49.



3. Complaint regarding an unregistered person (Statutory Offence);

[View process chart](#)

[View section 7;](#)

- a. The Registrar receives complaints alleging that an unregistered person is “holding themselves out” as a NZ registered occupational therapist.
- b. It is a statutory offence under [section 7](#) to practise without registration and a current practising certificate. Section 7 of the HPCAA prohibits an unqualified person from claiming to be a health practitioner, and any person who does not hold a current practising certificate cannot claim to be practising a profession as a health practitioner of a particular kind.
- c. The Ministry of Health is responsible for investigating and prosecuting potential breaches of section 7 of the HPCAA.
- d. The Registrar is to undertake a preliminary investigation into the matter, in order to determine whether a prima facie case exists that a person has committed a statutory offence. In the event that the Registrar believes section 7 may have been breached, the Registrar is then to determine to refer the matter to the Ministry of Health.
- e. Please note other statutory offences include [section 33](#); [sections 44\(1\) and \(3\)](#); and [59](#); [section 77](#); [section 78](#); [section 95](#); [section 98](#); [section 172](#); [schedule 1, clause 12](#); [schedule 1, clause 13](#).

4. Complaint as to OTBNZ processes;

[View process chart](#)

[View clauses 1 - 22;](#)

- a. The Registrar receives complaints as to OTBNZ processes undertaken in the course of making a decision under the HPCAA. Clear legal authority must exist for a decision that adversely affects a person’s interests. The Registrar and Board must ensure compliance with the general administrative provisions and process requirements set out in [schedule 3 of the HPCAA](#).
- b. Upon receipt of such a complaint, the Registrar is to investigate the matter with a view to assessing whether principles of good decision making have been exercised by OTBNZ.
- c. Principles of good decision making include the requirement that the Board/Registrar act within the statutory powers set out in the HPCAA; identify and understand the specific task or decision the Board/Registrar is authorised or required to make under the HPCAA; take into account and follow any criteria and/or procedures required by the HPCAA; observe the principles of administrative decision-making, including those relating to timeliness, delegation as well as specific procedural fairness requirements in terms of natural justice.



- d. The Court has confirmed that the two overriding controls on the exercise of a Board's powers are:
 - That the exercise of the power must relate to the public health and safety; and
 - Any action taken must not be unreasonable.
- e. *"The decision to exercise or not to exercise the discretion must be lawful and reasonable in the circumstances, following proper consideration of all relevant matters and the particular circumstances of the case. In making the decision, the decision-maker, after ascertaining the material or relevant facts, should correctly apply the relevant law to the facts and then reasonably exercise their discretion"¹.*
- f. Discretionary powers may also be abused if a decision-maker adopts a fixed rule or policy; acts for an improper purpose; fails to take into account all relevant considerations; takes into account irrelevant considerations.
- g. A decision made by the Board or Registrar exercising powers under the HPCAA may be challenged by judicial review in the High Court. The grounds for judicial review are illegality, unfairness and unreasonableness.
- h. The Registrar may resolve the matter by way of a letter to the practitioner providing an outline of processes used by OTBNZ. The Registrar to consider inviting the practitioner to a meeting to discuss any outstanding concerns, and to follow up with a written record of the meeting to the practitioner.
- i. The Registrar to refer unresolved complaints as to OTBNZ processes to the Board as required, and where requested by the complainant.

5. Complaint as to decision of a delegate under schedule 3, clause 17 [View process chart](#)

[View clause 18:](#)

- a. The Board may by written notice, delegate any of its functions, duties, or powers (other than any power under [section 69](#) or [section 71](#)) to a committee appointed under [clause 16](#), or to its Registrar.
- b. The Registrar may receive a complaint from a person who is adversely affected by a decision made by the Registrar, Deputy Registrar, Fitness Committee or other committee of the Board with delegated authority. In this circumstance, the complaint would be referred to the Board.
- c. A person who is adversely affected by a decision made by a person under a delegation given under [clause 17](#) may, within 20 working days after the communication of the decision to the person, by application in writing, request the Board to review the delegate's decision.

¹ *Wislang v Medical Council of New Zealand.*



- d. The Board must, as soon as practicable, review the delegate's decision, and must either confirm or revoke that decision.
- e. This option of review is only available if the person has not brought an appeal in the District Court against the decision. (The Board's use of its powers under the HPCAA may be subject to an appeal against the Board's decisions. The right of appeal is limited to the matters set out in [section 106](#)).
- f. Complaints relating to a decision of the Board are referred to the Board for consideration. (A decision by the Board may be challenged by judicial review in the High Court).

6. Complaint regarding OTBNZ staff

[View process chart](#)

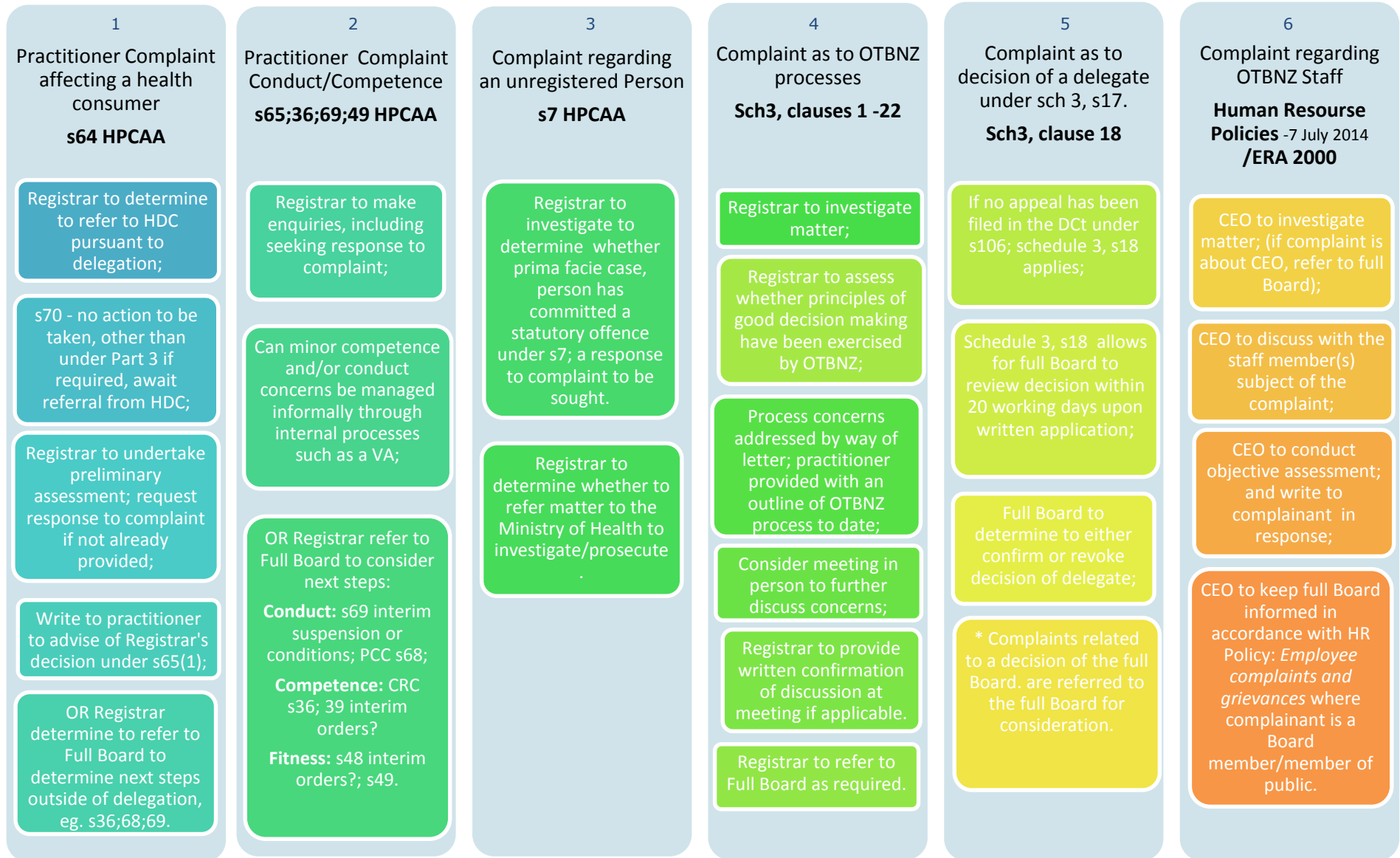
[View the Employment Relations Act 2000;](#)

- a. The OTBNZ Human Resource policy: *Employee Complaints and Grievances* OTBNZ establishes complaints procedures so that any concerns of staff, those outside the organisation or a Board member are addressed and solved as soon as possible.
- b. The Direct Report, and/or CEO is to investigate complaints about staff, bearing in mind the provisions of the Employment Relations Act 2000, individual employees' terms and conditions of employment, and OTBNZ Human Resource policy: *Employee Complaints and Grievances*, and/or any other applicable Human Resource Policies. The full Board to investigate complaints in respect of the CEO as above.
- c. The Direct Report/CEO is responsible for reporting back to the complainant on action taken. If the complaint relates to the CEO, the Chair will be responsible for investigating and reporting on the complaint.
- d. The employer must act in a fair and reasonable manner, and in accordance with natural justice when investigating allegations against employees, and before dismissing or taking action against an employee. The CEO/Board must act in a fair an objective manner.
- e. Support from an external human resources and/or legal advisor may be sought.

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OTBNZ Complaint Process Chart

Outline of process for considering complaints



Glossary

Board	The appointed members responsible for the registration and oversight of occupational therapy practitioners in NZ. The Board is made up of eight members (6 occupational therapists and 2 lay people).
Competence	Competence includes clinical competence, ethical competence, and the ability to communicate effectively. The Board has set standards for clinical and cultural competence and ethical practice through the Competencies for Registration as an Occupational Therapist .
Condition on scope of practice	Includes a restriction or limitation.
Conduct	The Board has set standards of conduct expected of occupational therapists through the Code of Ethics .
Delegation/delegate	The Board may delegate functions, duties or powers to the Registrar or to a Committee. The Registrar may delegate any of his functions, duties, or powers, either generally or specifically, to a person employed, engaged, or authorised by the Board.
Deputy Registrar	The Board may appoint a Deputy Registrar to assist the Registrar to carry out the Board's decisions and comply with the directions of the Board and the Health Practitioners Disciplinary Tribunal.
Fitness	With reference to health, <u>fitness</u> is the ability to perform the functions required to practice occupational therapy
Health and Disability Commissioner	The Office of the Health and Disability Commissioner (HDC) handles all complaints relating to patient care: any complaint alleging that the practice or conduct of a health practitioner has affected a health consumer
Health condition	Any mental or physical condition or impairment, including a condition or impairment caused by alcohol or drug use.
Health consumer	The Health and Disability Commissioner Act 1994 defines health consumer as any person on or in respect of whom any health care procedure is carried out.
Interim Suspension	Requires that a practitioner cease practising pending an outcome such as a decision of the Board.
Natural Justice	The requirement for decision-makers to act in accordance with certain procedures that are considered fundamental to the rule of law.
OTBNZ	The Occupational Therapy Board of New Zealand constitutes the secretariat and staff who provide services to the Board.

OTBNZ Senior Staff	Registrar, Deputy Registrar, Professional Advisor, Solicitor/Senior Registration Officer.
Professional Conduct Committee	A Professional Conduct Committee (PCC) is an independent committee appointed by the Board on a case by case to investigate complaints/convictions/conduct.
Registrar	The Board must appoint a Registrar of the OTBNZ who must carry out the Board's decisions and comply with the directions of the Board and the Health Practitioners Disciplinary Tribunal.
Risk of harm	A genuine belief that a practitioner's practice may pose a risk of harm (the risk is not unlikely) following consideration of various factors.
Scope of Practice	Health services that a practitioner is permitted to perform, subject to any conditions imposed by the Board. View the General Scope of Practice: Occupational Therapist here .
Voluntary Agreement (VA)	An informal method of monitoring entered into on a voluntary basis.