

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

**TRADITIONAL HEALTH
PRACTITIONERS BILL**

(As read a First Time)

(Introduced by the Minister of Health and Social Services)

[B. 2 - 2014]

BILL

To provide for the establishment, constitution, powers and functions of the Traditional Health Practitioners Council of Namibia; to regulate the registration of traditional health practitioners and the practising of traditional healing; to prohibit the practising of traditional healing without being registered; to provide for different categories of traditional healing and different requirements for Namibian citizens and persons who are not Namibian citizens; to provide for the establishment of the Interim Traditional Health Practitioners Council of Namibia; and to provide for incidental matters.

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

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PART 1
INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates -

“annual fees” means the annual fees payable by a registered person under this Act and determined under section 27(1)(c);

“appeal committee” means the appeal committee established in terms of section 12(1);

“application fees” means the application fees payable to the Council and determined under section 27(1)(a);

“cancer”, includes all neoplasms, irrespective of their origin, lymphoma and leukaemia;

“category of traditional healing” means the categories of traditional healing prescribed under section 19;

“certificate of status” means a certificate of status referred to in section 30(2);

“chairperson” means the chairperson of the Council elected in terms of section 8;

“commissioner of oaths” means a commissioner of oaths appointed under section 5, or designated under section 6, of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963);

“committee” means a committee established in terms of section 10, 11, 12 or 13;

“continuing additional training and development” means the continuing additional training and development referred to in section 53;

“Council” means the Traditional Health Practitioners Council of Namibia established by section 2;

“deputy chairperson” means the deputy chairperson of the Council elected in terms of section 8;

“district” means a district as defined in section 1 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“education committee” means the education committee established in terms of section 13;

“examination fees” means the examination fees determined under section 27(1)(a);

“executive committee” means the executive committee established in terms of section 10;

“improper conduct” means improper, dishonourable or unworthy conduct that, when regard is had to the practising of traditional healing, is improper, disgraceful,

dishonourable or unworthy, and includes acts or omissions that constitutes improper conducts under section 32;

“inquiry into improper conduct” means an inquiry conducted under Part 5, and “inquiry” has a corresponding meaning;

“Interim Council” means the Interim Traditional Health Practitioners Council of Namibia established under section 58;

“investigation committee” means the investigation committee established in terms of section 11;

“investigation fees” means the fees determined under section 27(1)(a);

“legal practitioner” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“medical practitioner” means a medical practitioner as defined in section 1 of the Medical and Dental Act, 2004 (Act No. 10 of 2004);

“medicine” means -

- (a) a medicine as defined in section 1 of the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003); or
- (b) a traditional medicine used in traditional healing or any other traditional medicine determined under section 4;

“mental illness” means a mental illness as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973);

“Minister” means the Minister responsible for health;

“Ministry” means the Ministry responsible for the administration of health;

“newly constituted Council” means the Council constituted every five years under section 5;

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“prescribe” means prescribe by regulation;

“*pro forma* complainant” means the *pro forma* complainant appointed under section 41;

“region” means a region as defined in the Regional Councils Act, 1992 (Act No. 22 of 1992);

“register” -

- (a) when used as a verb, means to register a person under this Act, and “registration” has a corresponding meaning; and

(b) when used as a noun, means a register referred to in section 23;

“registered” means registered under this Act;

“registered person” means a person registered under this Act;

“registrar” means the registrar referred to in section 16;

“registration certificate” means a registration certificate issued under section 22(8)(b);

“registration fees” means the fees determined under section 27(1)(a);

“regulation” means a regulation made under section 53;

“restoration fees” means the fees determined by the Council under section 27(1)(a);

“review committee” means the review committee established under section 14;

“rule” means a rule made under section 32 or 54;

“staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);

“this Act”, includes the regulations and the rules;

“traditional healing” means the performance of a function, activity, process or service based on a traditional healing philosophy that includes the utilisation of traditional medicine or traditional practices, and that has the object of -

- (a) maintaining or restoring the physical or mental health or functions of a person;
- (b) diagnosing, treating or preventing a physical or mental illness in a person;
- (c) rehabilitating a person to enable the person to resume normal functioning within his or her family or the community; or
- (d) preparing a person for puberty, adulthood, pregnancy, childbirth or death, either physical or emotional,

but excludes -

- (i) the performance of professional activities or functions of a person registered under the Allied Health Professions Act, 2004 (Act No. 7 of 2004), the Medical and Dental Act, 2004 (Act No. 10 of 2004), the Nursing Act, 2004 (Act No. 8 of 2004), the Pharmacy Act, 2004 (Act No. 9 of 2004) or the Social Work and Psychology Act, 2004 (Act No. 6 of 2004), or any other activity not based on a traditional healing philosophy; and
- (ii) any act or other activity prohibited by or under the Witchcraft Suppression Proclamation, 1933;

“traditional healing philosophy” means the indigenous techniques, principles, theories, ideologies, beliefs, opinions and customs, and the use of traditional medicines communicated from ancestors to descendants or from generation to generation, with or without written documentation, whether or not supported by science and that are generally used in traditional healing;

“traditional health practitioner” means a person registered as a traditional health practitioner under section 22 of the Act;

“traditional medicine” means a medicine used as a traditional medicine or determined under section 4;

“traditional treatment” means the management and care of a patient for the purpose of combating any disease or disorder, including wounds and injuries, and includes the treatment that may be prescribed by a registered person, in or on or in respect of that patient, and “treat” has a corresponding meaning;

“Witchcraft Suppression Proclamation, 1933” means the Witchcraft Suppression Proclamation, 1933 (Proclamation No. 27 of 1933).

PART 2
ESTABLISHMENT, OBJECTS, FUNCTIONS AND POWERS OF
TRADITIONAL HEALTH PRACTITIONERS COUNCIL OF NAMIBIA

Establishment of Traditional Health Practitioners Council of Namibia

2. There is established a juristic person to be known as the Traditional Health Practitioners Council of Namibia.

Objects of Council

- 3.** The objects of the Council are to -
- (a) control and exercise authority in respect of all matters affecting the education, tuition, training and qualifications of traditional health practitioners;
 - (b) promote, improve and uphold the ethical standards of the practising of traditional healing in Namibia and the practising standards required of registered persons;
 - (c) encourage and promote efficiency and responsibilities in respect of practising traditional healing and to guide registered persons with regard to the respective codes of conduct and ethical standards relating to the practising of traditional healing;
 - (d) promote research in the various fields of traditional healing;
 - (e) assist in the promotion of the health of the population of Namibia;
 - (f) be transparent to the traditional healing and to the general public in achieving its objects, in performing its functions and executing its powers;

- (g) protect and serve the interests of the members of the public who make use of, or who are affected by, the services provided by registered persons;
- (h) ensure that acceptable quality of services are rendered by registered persons; and
- (i) maintain and enhance the dignity of traditional healing and the integrity of registered persons.

Functions and powers of Council

- 4.** (1) The functions of the Council are -
- (a) to register any person required to be registered in terms of this Act;
 - (b) to remove any name from the register in accordance with section 25 or restore such name to the register in accordance with section 26;
 - (c) to keep and maintain a register as contemplated in section 23;
 - (d) to consider any matter affecting traditional healing, and take any action it may consider necessary;
 - (e) to regulate the practising of traditional healing and to ensure that all persons practising traditional healing are registered with the Council under section 22;
 - (f) to control the practices of registered persons and the practising of traditional healing;
 - (g) to collect, publish, disseminate and exchange information on or relating to traditional healing;
 - (h) to establish, develop and maintain universally acceptable standards of control over persons registered as traditional health practitioners under this Act;
 - (i) to investigate all complaints, accusations or allegations relating to the conduct of registered persons;
 - (j) to liaison in the field of the education, tuition and training of persons in the practising of traditional healing in Namibia and elsewhere;
 - (k) to promote and control standards of training of persons for the purpose of registration under this Act or to practise traditional healing;
 - (l) to give advice or render assistance to an educational institution with regard to the education, tuition or training of persons for the purpose of registration or to practise traditional healing;
 - (m) to compile and maintain a code of conduct for registered persons;

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- (n) to deal firmly, fairly and promptly with a registered person against whom a complaint or allegation of improper conduct has been laid or whose fitness to practise as a traditional health practitioner is in doubt;
 - (o) with the approval of the Minister, determine, from time to time, traditional medicines that may be used by registered person;
 - (p) to advise the Minister on any matter falling within the scope of this Act;
 - (q) to communicate to the Minister information on matters of public interest acquired by the Council in the course of the performance of its functions under this Act.
- (2) To enable the Council to perform its functions, the Council may -
- (a) buy, lease, or otherwise acquire, or sell, let or otherwise dispose of, or hypothecate or pledge or otherwise deal with or alienate any movable or immovable property of the Council or any interest in movable or immovable property;
 - (b) take up, borrow, lend or invest money;
 - (c) open, maintain and operate banking accounts and saving account;
 - (d) make or accept donations;
 - (e) enter into agreements with any person, body, institutions or organisation on the terms and conditions that the Council and that person, body, institution or organisation may agree upon and decide the manner in which contracts must be entered into on behalf of the Council;
 - (f) obtain information necessary to achieve its objects and perform its functions, including requiring any registered person in writing to submit to the Council such information as the Council may consider necessary for the purposes of this Act;
 - (g) recognise a qualification held by a person in respect of traditional healing as being equal to a qualification prescribed under this Act, whether that qualification has been obtained in Namibia or elsewhere;
 - (h) co-opt any person to assist -
 - (i) the Council; or
 - (ii) any committee established under this Act,in the performance of their functions, subject to such conditions as the Council may determine, including conditions relating to remuneration;
 - (i) subject to section 48 or 49, authorise a person to assess, investigate or inspect, the practice of a registered person or matters relating to education, tuition and training of a person who is receiving education, tuition and training for the purpose of qualifying himself or herself

to practise as a traditional health practitioner, including the premises where that person is receiving the education, tuition and training and to report to the Council on his or her findings in respect of the assessment, investigation or inspection;

- (j) do all such things as it may consider necessary or expedient in order to achieve the objects of this Act.
- (3) Unless otherwise provided in this Act -
 - (a) the powers and functions exercised or performed by the Council under this Act, are exercised or performed by means of a decision by the Council under section 9.
 - (b) a person co-opted under subsection (1)(h) to assist the Council or a committee may not be regarded as a member of the Council or of that committee.

Constitution of Council

5. (1) The Council consists of nine members appointed by the Minister -

- (a) three persons of whom -
 - (i) one person is a staff member who has expertise and experience in primary health care matters to the satisfaction of the Minister;
 - (ii) one person is a staff member employed by the Ministry in the department administering pharmaceutical services;
 - (iii) one person representing the public and who in the opinion of the Minister is suitably qualified, having regard to the functions of the Council, to serve as a member of the Council;
- (b) two persons of whom -
 - (i) one person is nominated by the Minister responsible for trade and industry;
 - (ii) one is a legal practitioner nominated by the Minister responsible for justice; and
- (c) four persons registered as traditional health practitioners nominated by registered persons.

(2) The members of the Council referred to in subsection (1)(c) must be nominated, after having been duly elected by the registered person in accordance with subsections (3), (4) and (5).

(3) A person has no right to vote in an election referred to in subsection (2) unless that person is -

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- (a) registered as a traditional health practitioner; and
 - (b) a Namibian citizen; or
 - (c) permanent resident in Namibia.

(4) The election of persons for nomination as members of the Council referred to in subsection (1)(c) must be conducted in the prescribed manner and in accordance with the prescribed procedures.

(5) Despite subsection (4), the first election of the members of the Council after the commencement of this section must be conducted by -

- (a) the registrar; or
- (b) a person designated in writing by the registrar for that purpose; or
- (c) a person designated by the Minister in writing, if the registrar and the person referred to in paragraph (b) are not available or are unable to conduct the election, or if the registrar fails to designate a person under that paragraph.

(6) The expenses relating to the first election of members of the Council referred to in subsection (5) must be defrayed from moneys appropriated by Parliament for that purpose.

(7) The Minister must, for the purposes of appointing members of the Council under subsection (1), request -

- (a) in writing, the ministries referred to in paragraph (b) of that subsection;
- (b) by notice in the *Gazette*, persons referred to in paragraph (c) of that subsection,

to nominate and submit to the Minister, within 30 days from the date of the notice, the names of suitably qualified persons to be appointed as members of the Council under that subsection.

(8) If the institutions referred to in subsection (1)(b) and persons referred to in subsection (2) fail to nominate a person for appointment as members of the Council under subsection (1), the Minister, subject to this section, may appoint a suitable person as member of the Council.

(9) A person appointed as a member of the Council under subsection (8) is regarded as having been properly nominated for appointment as a member of the Council under the relevant provisions of this section.

(10) The Minister must make known in the *Gazette* the names of the members of the Council appointed under this Act, including the date and period of appointment.

(11) Subject to section 7, a member of the Council holds office for a period of five years, but is eligible for re-appointment after the expiry of his or her term of office.

(12) Before assuming office, a member of the Council must subscribe to the following oath or solemn affirmation before the Minister, or a person designated by him or her in writing for that purpose:

“I,, do hereby swear or solemnly affirm that at all times during my service as a member of the Traditional Health Practitioners Council of Namibia, I will be faithful to the Republic of Namibia and uphold its Constitution and laws, and perform my functions and further the aims and objects of the Council to the best of my ability.”.

(13) In appointing members or nominating persons for appointment as members of the Council, the Minister or the registered persons must take into account gender balance and representation from different regions.

(14) The Minister may extend, by notice in the *Gazette*, the term of office of a member or of all the members of the Council.

Disqualification for appointment as members of Council

6. A person is disqualified from being appointed as a member of the Council, if such person -

- (a) is not a Namibian citizen or permanent resident in Namibia;
- (b) is an unrehabilitated insolvent;
- (c) has been declared mentally ill by a competent court under any law;
- (d) has been convicted of an offence and sentenced to imprisonment without an option of a fine;
- (e) has been removed from an office of trust as a result of improper conduct;
- (f) has been found guilty of improper conduct under this Act;
- (g) has been disqualified by or under this Act or any other law from practising as a traditional health practitioner; or
- (h) is an executive member of an association or society established for the benefit or interest of traditional health practitioners.

Vacation of office and filling of vacancies

7. (1) A member of the Council vacates his or her office, if he or she -

- (a) becomes subject to any of the disqualification referred to in section 7;
- (b) resigns from his or her office by giving 30 days notice to the Minister;
- (c) has been absent from three consecutive meetings of the Council without leave of the Council;

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- (d) is a staff member appointed under section 5 and he or she ceases to be a staff member; or
 - (e) is removed from office under subsection (2).

(2) The Minister may, by notice in the *Gazette*, remove a member of the Council from office before the expiry of his or her term, if the Minister is satisfied, after having given the member an opportunity to be heard, that the member -

- (a) is physically or mentally unfit or unable to effectively perform his or her functions as a member of the Council;
- (b) neglects his or her functions as a member of the Council;
- (c) acts in a manner that prejudices or is in conflict with the interests of the Council, the public or any health profession; or
- (d) has contrary to section 9(15)(b), divulged a matter which has been entrusted to that member.

(3) If a member of the Council dies or vacates his or her office under subsection (1) or (2), before the expiration of the period for which he or she was appointed, the Minister may, within three months after the occurrence of the vacancy, appoint, but subject to section 6 and this section, a person as a member of the Council whom the Minister considers as a suitable person to fill such vacancy.

- (4) A person appointed under subsection (3) as a member of the Council -
 - (a) is appointed for the remainder of the term of office of his or her predecessor; and
 - (b) is regarded as having been properly appointed as a member of the Council under section 5.

(5) Before the removal of a member from office under subsection (2), the Minister may, after consultation with the registrar, by notice in writing suspend a member or all the members of the Council from the office to enable an investigation of any serious contravention of or failure to comply with any provision of this Act or any other law by the member or members.

(6) If the Minister suspends a member or all the members of the Council under subsection (5), the suspension must be for the period of time and subject to the conditions that the Minister may specify in the notice referred to in that subsection.

(7) If the Minister removes all the members of the Council from office under subsection (2) or suspends all members of the Council under subsection (5), all the powers and functions of the Council vest in the Minister until a new Council has been constituted or until the suspension of the members of the Council has lapsed or is lifted.

(8) The Minister may in writing request the registrar at any time to submit to him or her all the records of the Council or of any committee, including copies of the minutes of the meetings and the financial statements and the other documents that

the Minister may specify in the request in order to ascertain whether the Council has complied with, or the extent of its failure to comply with, this Act.

(9) The registrar must furnish the Minister with the records and documents requested under subsection (8) within 14 days after the receipt of the request under that subsection.

(10) If the Minister, after having examined the records and documents submitted to him or her in terms of subsection (9), is of the opinion that the Council or a committee has failed or is failing to comply with this Act, the Minister may appoint in writing a person to investigate the affairs of the Council and to report to the Minister the findings of his or investigation in the manner specified in the letter of appointment.

(11) If the Minister appoints a person under subsection (10), the Minister must, in writing, specify the powers and functions of the person so appointed.

(12) If a member of the Council is suspended under this section, the member may not during the period of suspension -

- (a) be regarded as a member of the Council;
- (b) attend any meeting of the Council; or
- (c) receive any benefit relating to the membership, unless the Minister decides otherwise upon application by the member.

Chairperson and deputy chairperson of Council

8. (1) At the first meeting of every newly constituted Council held under section 9(1) the members of the Council must elect from their number a chairperson and a deputy chairperson of the Council.

(2) Subject to subsection (3), the chairperson and deputy chairperson of the Council holds office as chairperson and deputy chairperson during their terms of office as members of the Council, unless he or she resigns as chairperson or deputy chairperson or ceases to be a member of the Council.

(3) The chairperson or deputy chairperson ceases to hold office as chairperson or deputy chairperson if at least four members of the Council at a meeting vote in favour of a motion for the removal from office of the chairperson or deputy chairperson.

(4) A motion and voting in terms of subsection (3) must be done in the prescribed manner.

(5) If the chairperson or deputy chairperson is removed from office under subsection (3) he or she retains his or her membership of the Council.

(6) If the chairperson or deputy chairperson is removed from office at a meeting referred to in subsection (3), the Council must at that meeting elect from their number another chairperson or deputy chairperson.

(7) If for any reason the chairperson of the Council is absent or unable to act as chairperson, the deputy chairperson of the Council must perform the functions and exercise powers of the chairperson.

(8) If both the chairperson and deputy chairperson of the Council for any reason are absent or unable to perform their functions or exercise their powers as a chairperson or deputy chairperson of the Council, the chairperson or deputy chairperson must designate in writing a member of the executive committee to act as chairperson of the Council.

(9) If the chairperson or deputy chairperson fails to designate a member of the executive committee under subsection (8), the registrar may designate in writing a member of the Council to act as chairperson of the Council.

(10) If both the chairperson and deputy chairperson of the Council and the person designated under subsection (8) or (9), are absent from any meeting of the Council, the members present at that meeting must elect a member from their number to preside at that meeting.

(11) The person designated under subsection (8) or (9) to act as chairperson or elected under subsection (10) to preside at a meeting of the Council may perform at that meeting the functions and powers of the chairperson.

(12) If the office of chairperson or deputy chairperson of the Council becomes vacant, the members of the Council must at the first meeting after the vacancy occurred, elect from their number a chairperson or deputy chairperson.

(13) The chairperson or deputy chairperson elected under subsection (12) holds office for the remainder of the term of office of his or her predecessor.

(14) Subject to subsection (15), a person may not hold the office of chairperson or deputy chairperson, of the Council for more than two consecutive terms of office.

(15) A term of office referred to in subsection (14) does not include a term of office referred to in subsection (13).

(16) The chairperson or deputy chairperson may vacate his or her office as chairperson or deputy chairperson without terminating his or her membership of the Council.

(17) If the offices of chairperson and deputy chairperson are both vacant at the same time, the registrar must convene a meeting of the Council under section 9, for the purpose of electing a new chairperson and deputy chairperson.

(18) Despite subsection (17), the registrar may designate in writing any member of the Council to act as the chairperson of the Council until a chairperson is elected in accordance with that subsection.

Meetings and decisions of Council

9. (1) The registrar, or if the registrar is not available for any reason, a person appointed by the Minister or the registrar in writing for that purpose, must convene the first meeting of every newly constituted Council.

- (2) The registrar, or the person appointed under subsection (1), must -
 - (a) determine the date, time and venue for, and the agenda to be discussed at the meeting;
 - (b) notify the members of the Council in the manner that he or she considers appropriate of the date, time and venue of the meeting;
 - (c) preside at the meeting;
 - (d) determine in writing, unless prescribed, the procedures including the proceedings relating to the election of the chairperson and the deputy chairperson under section 8(1), to be followed at the meeting referred to in that subsection; and
 - (e) furnish every member of the Council with a copy of the agenda, at least 14 days, before the commencement of the meeting.
- (3) The chairperson must -
 - (a) determine the date, time and venue for, and the agenda to be discussed at all the meetings of the Council;
 - (b) convene all the meetings of the Council;
 - (c) determine in writing, unless prescribed, the procedure to be followed at all meetings of the Council;

to be held subsequent to the first meeting contemplated by subsection (1).

- (4) The chairperson must convene a special meeting of the Council, to be held within 30 days after the date of receipt of a written request by -
 - (a) the Minister;
 - (b) not less than five members of the Council; or
 - (c) not less than one-third of the registered persons.

(5) A request made under subsection (4) must clearly state the purpose for which the meeting is to be convened.

(6) The Council must hold not less than two general meetings in each year and may in addition to those meetings hold other meetings that the Council may determine from time to time.

(7) The majority of all members of the Council present at a meeting forms a quorum for every meeting of the Council.

(8) The Minister may prescribe the procedures to be followed at a meeting of the Council in addition to the procedures specified by this section.

(9) A decision made by the majority of the members of the Council present and voting at a meeting of the Council constitutes a decision of the Council.

(10) If every member of the Council in writing under his or her signature approves a written motion submitted by the registrar to all the members the motion so approved, despite subsection (9) but subject to the other provisions of this section, must be regarded as a decision of the Council made under that subsection.

(11) The registrar, at the first meeting of the Council following the written decision made by the Council under subsection (10), must table a copy of the written decision for the purposes of subsection (12)(b).

(12) A written decision by the Council under subsection (10) -

- (a) may be made at any time between the meetings of the Council; and
- (b) must form part of the written record of the proceedings of the meeting of the Council at which such written decision is tabled in terms of subsection (11).

(13) The person presiding at a meeting of the Council -

- (a) has a casting vote, in the event of an equality of votes, in addition to his or her deliberative vote; and
- (b) must cause a written record to be kept of the proceedings of the meeting.

(14) A decision by the Council or an act performed on the authority of the Council is not invalid merely by reason of -

- (a) a vacancy in the membership of the Council;
- (b) a defect or irregularity in the appointment of any of its members; or
- (c) the fact that a person who is not entitled to attend a meeting of the Council was in attendance when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the required majority of the members of the Council present and entitled to sit as members and to vote.

(15) A member of the Council or of a committee -

- (a) who has a direct or indirect financial or other interest in a matter that the Council must consider or that the Council has interest in, must -
 - (i) disclose to the Council his or her interest and the nature of such interest, if the member is present at a meeting of the Council or the committee where the matter is to be considered, immediately before the matter is considered and may not take part in the meeting unless in accordance with subsection (19); or

(ii) disclose the nature of his or her interest in writing to the chairperson before the meeting commences, if the member is aware that the matter is to be considered at the meeting of the Council if that member is not going to be present; and

(b) must preserve confidentiality in relation to all matters contemplated in subsection (16) that has come to his or her knowledge as a result of being a member, except in so far as the making known of that matter is required by or may be made in terms of this Act or any other law or is required by an order of a competent court.

(16) For the purposes of subsection (15)(b), the Council must determine in writing the matters that are regarded as confidential.

(17) If a member referred to in paragraph (a) of subsection (15) is the chairperson, he or she must disclose the nature of the interest in terms of subparagraph (ii) of that paragraph to the chairperson or if the chairperson is not available to the members of the executive committee.

(18) Any person who contravenes or fails to comply with subsection (15) or (17), commits an offence and is liable to the penalties specified in section 55(a).

(19) A member, referred to in subsection (15) or (17) who has disclosed his or her interest in a matter under those subsections, may take part in the discussion relating to that matter, if the Council decides that the interest is of trivial nature.

(20) For the purposes of this section, the interest of a member of the Council or of a committee, includes an interest of his or her spouse, child, parent or business partner or associate or any organisation, business or association that he or she has an interest in.

Executive committee

10. (1) For the purposes of performing its functions and exercise its powers in terms of this Act, the Council must establish an executive committee of the Council -

- (a) to perform functions and exercise powers of the Council; or
- (b) perform additional functions that the Council may assign subject to this section and such conditions as it may determine,

during the periods between the meetings of the Council.

(2) The executive committee -

- (a) does not have, except in so far as the Council may direct in writing, the power to set aside or amend a decision of the Council;
- (b) must keep a written record of the proceedings of all the meetings of the committee;

(c) must report to the Council in writing at the first meeting of the Council after the executive committee has performed any function or exercised any power of the Council and must, on request by the Council, submit other particulars relating to the function performed or the power exercised by it.

(3) The Council may, without any prejudice of a right, amend, substitute or set aside at the meeting referred to in subsection (2)(c), any decision or act of the executive committee made or performed in terms of that subsection.

(4) The executive committee consists of the chairperson, the deputy chairperson and not less than three other members of the Council designated by the Council from their number by way of election.

(5) The chairperson, or if he or she is not available the deputy chairperson, is the chairperson of the executive committee.

(6) Unless otherwise provided for in this Act, subsections (7), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19) and (20) of section 9 apply with the necessary changes to the meetings and decisions of the committee established by or under this section.

(7) If a committee established under this section is unable for any reason to reach a decision on any matter under consideration, the chairperson of the committee must refer that matter to the Council for a decision.

(8) A decision of the Council on any matter referred to it by the executive committee under subsection (7) must be considered as a decision of the executive committee.

Investigation committee

11. (1) The Council must establish an investigation committee consists of -

(a) a legal practitioner who is a member of the Council and who is the chairperson of the investigation committee; and

(b) other members not exceeding four as the Council may determine and appoint.

(2) The chairperson of the investigation committee -

(a) must determine the procedures to be followed at the meetings of the committee; and

(b) may co-opt one or more persons, including but not limited to, legal practitioners, retired legal practitioner, retired judges or retired magistrates, as a member of the committee and must inform the Council of any member co-opted.

(3) The investigation committee must -

- (a) conduct an investigation into any matter referred to the committee by the registrar in the manner as the Council may determine;
- (b) obtain statements from persons, employer or former employer, including statements from the registered person whose conduct is being investigated and collect evidence relating to the matter under investigation that the committee may consider necessary;
- (c) submit evidence and statements and other documents collected under paragraph (b) and its findings and recommendations to the *pro forma* complainant; and
- (d) exercise powers and perform functions that may be prescribed or that the Council may delegate or assign to it.

(4) The investigation committee may not question the registered person whose conduct is being investigated, unless the investigation committee before questioning such registered person informs the registered person -

- (a) of the nature of the matter being investigated and the allegations made against him or her;
- (b) of his or her right to be represented or assisted by any person;
- (c) that he or she is not obliged to make any statement or answer any questions put to him or her by the investigation committee; and
- (d) that any statement that he or she makes is to be taken down in writing and that it may be used as evidence against him or her in an inquiry under Part 5.

(5) The investigation committee and the *pro forma* complainant acting conjointly must determine, on the evidence and findings submitted by the committee under subsection (3)(c), whether the Council must conduct an inquiry into the matter investigated by that committee.

(6) The investigation committee must inform the registrar in writing of the decision of that committee and the *pro forma* complainant under subsection (5), but may not divulge any of the evidence or information gathered by the committee during the investigation.

(7) If the investigation committee recommends to the registrar under subsection (6) that the Council must conduct an inquiry under Part 5 against the person investigated under subsection (3)(a), and if the person in respect of whom the investigation has been conducted is a member of the Council or committee, then subject to subsection (8), the membership of such person to the Council or committee is considered to have been suspended as from the date upon which the investigation committee delivers written recommendation to the registrar.

(8) The registrar must give notice of suspension in writing to the member referred to in subsection (7) of his or her suspension as a member of the Council or committee.

(9) A notice under subsection (8) must be sent to the member by prepaid registered post as specified in the register in which his or her name appears or be delivered to him or her personally or in the prescribed manner.

(10) The suspension of the membership of a member of the Council or committee under subsection (7) remains in force until the inquiry by the Council is finalised or until the suspension is lifted.

(11) When the investigation committee submits its report to the registrar under subsection (6), it must make recommendations to the registrar whether the Council may conduct -

- (a) an inquiry under Part 5 against the person who has been investigated; or
- (b) an investigation, assessment or inquiry under section 43 to determine whether the registered person is an impaired person;

(12) The Council, on the recommendation of the investigation committee under subsection (6), may conduct -

- (a) an inquiry under Part 5 against a person who has been investigated; or
- (b) an investigation, assessment or inquiry under section 43.

(13) Despite any provision of this section, if the investigation committee recommends to the registrar that the Council must conduct an inquiry into the matter investigated by that committee, the investigation committee must submit to the *pro forma* complainant all the information, statements and other evidence obtained by it during the investigation.

(14) The Minister, on the recommendation of the Council, may prescribe the powers and functions of the investigation committee in addition to the powers and functions specified by this section.

(15) Unless otherwise provided in this Act, subsections (7), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19) and (20) of section 9 apply with the necessary changes to the meetings and decisions of the committees established by or under this section.

(16) If a committee established under this section is unable for any reason to reach a decision on any matter under consideration, the chairperson of that committee must refer that matter to the Council for a decision.

(17) A decision of the Council on any matter referred to it by a committee under subsection (16) must be considered as a decision of the committee.

Appeal committee

12. (1) The Council must establish an appeal committee consists of -

- (a) a legal practitioner having not less than 10 years experience in the practising of law, or a retired magistrate, who is the chairperson of the appeal committee;

- (b) one or more registered persons but not exceeding three registered persons; and
- (c) one person who is not a registered person.

(2) For the purposes of subsection (1) “retired magistrate” means a magistrate as defined in section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003), who has reached the age of retirement and who on the date of his or her retirement had served as a magistrate for a period of not less than 10 years.

(3) The appeal committee must conduct an appeal under section 50.

(4) The chairperson of the appeal committee must -

- (a) determine the procedures to be followed at a meeting of the appeal committee when considering an appeal, including the requirements for a quorum, procedures relating to the making of decisions and the manner of voting, unless such procedures have been prescribed;
- (b) cause a written record to be kept of the proceedings of an appeal; and
- (c) furnish the registrar with a copy of the record kept under paragraph (b) as soon as practicable after the conclusion of an appeal referred to in that paragraph.

(5) A person who is a member of the Council or the investigation committee may not be a member of the appeal committee or be co-opted as member of the appeal committee.

Education committee and other committees of Council

13. (1) The Council must establish an education committee consists of a number of persons as the Council may determine and appoint, including persons who are not members of the Council.

(2) The education committee established under subsection (1) must investigate, report and advise the Council on any matter referred to it by the Council relating to education, tuition or training and the requirement pertaining to qualifications, educational or otherwise, prescribed for the registration of persons under this Act.

(3) The chairperson or a member of the Council designated by the chairperson for that purpose -

- (a) is the chairperson of the education committee; and
- (b) must determine the procedures to be followed at the meetings of the education committee.

(4) The Council may establish other committees in addition to those established under this Act consist of members as the Council may determine and appoint in writing, including persons who are not members of the Council.

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- (5) The functions of a committee established under subsection (4) are -
- (a) to advise the Council on the matters the Council may refer to that committee; or
 - (b) to exercise the powers of the Council or perform the functions of the Council under this Act as the Council may delegate or assign to that committee.
- (6) A delegation or assignment by the Council under subsection (5)(b) -
- (a) must be in writing;
 - (b) may -
 - (i) be made subject to the conditions and restrictions as the Council may determine; and
 - (ii) be withdrawn or amended in writing by the Council at any time.
- (7) The Council is not divested of any power delegated under subsection (5) (b) and may, without prejudicial of a right, amend or set aside a decision of a committee made under the powers so delegated.
- (8) The Council may -
- (a) dissolve or reconstitute at any time; or
 - (b) designate one of the members as the chairperson of,
- a committee established under subsection (4).
- (9) Unless otherwise provided in this Act, subsections (7), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19) and (20) of section 9 apply with the necessary changes to the meetings and decisions of the committees established by or under this section.
- (10) If a committee established under this section is unable for any reason to reach a decision on any matter under consideration, the chairperson of that committee must refer that matter to the Council for a decision.
- (11) A decision of the Council on any matter referred to it by a committee under subsection (10) is considered as a decision of that committee.
- (12) A person appointed under this section as a member of a committee, excluding a co-opted member, may vote on a matter before that committee.
- (13) The Council may remove from office a member of a committee established under section 10, 11, 12 or this section, including a co-opted member, if the Council is reasonably satisfied, after having afforded that member an opportunity to be heard, that that member -

- (a) is physically or mentally unfit or unable to effectively perform his or her functions as a member;
- (b) neglects his or her functions as a member of the committee;
- (c) deliberately acts in a manner that prejudices or is in conflict with the interests of the committee, the Council, the public or traditional health;
- (d) has failed to disclose in terms of section 9(15)(a) his or her financial or other interest in a matter before the Council;
- (e) has failed to preserve confidentiality, contrary to section 9(15)(b) relating to a matter referred to in that section.

(14) The Minister may, on the recommendation of the Council, prescribe the powers and functions of the education committee and any other committee established under this section in addition to the powers and functions specified by this section.

Review committee

- 14.** (1) The Minister may -
- (a) when the need arises establish a review committee consists of members not exceeding five that the Minister determines and appoints to the committee;
 - (b) prescribe -
 - (i) the manner in which a decision of the Council or the failure to make a decision referred to in subsection (2) must be reviewed; and
 - (ii) the procedure which the review committee must follow when considering an application for review;
 - (c) appoint any person to replace a member of the review committee who has been removed from office under paragraph (d) or who has resigned as a member or has died;
 - (d) remove, at any time, a member of a review committee from office if the Minister is satisfied, after having afforded that member an opportunity to be heard, that the member has neglected, or is mentally or physically unfit or unable to effectively perform, his or her functions as a member.
- (2) A person who is aggrieved by -
- (a) a decision of the Council, excluding a decision or a finding made under section 34 or a penalty imposed or an order made under section 38; or
 - (b) a failure of the Council to make a decision,

may request, subject to subsections (4), that the review committee, review the decision of the Council or the failure to make a decision.

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- (3) A request for a review under subsection (2) -
- (a) is made in the prescribed form and manner;
 - (b) must specify the decision or failure of the Council to make a decision that is to be reviewed; and
 - (c) is accompanied by -
 - (i) the prescribed fees; and
 - (ii) a copy of the notice referred to in subsection (4), together with proof of the delivery to the registrar and the date of delivery.

(4) A person referred to in subsection (2) who intends to request the review committee to review a decision or a failure to make a decision under that subsection, must give notice to the registrar of his or her intention to do so at least 30 days before he or she submits his or her request in terms of subsection (3).

- (5) A notice to the Council in terms of subsection (4) -
- (a) is made in writing;
 - (b) must specify the decision or failure of the Council to make a decision referred to in subsection (2) which a person referred to in that subsection intends to be reviewed; and
 - (c) is delivered to the registrar during office hours.
- (6) The review committee -
- (a) must review the decision of the Council or failure to make a decision in the prescribed manner and make a finding on the decision or failure; and
 - (b) may order the Council -
 - (i) to reconsider its decision; or
 - (ii) to make a decision on the matter on which the Council has failed to make a decision,

within a prescribe period.

- (7) A person aggrieved by -
- (a) the decision of the Council made after the review under subsection (6); or
 - (b) the failure of the Council to make a decision,

may appeal under section 51 to the High Court of Namibia for the review of the decision or the failure to make a decision.

Funds of Council

- 15.** (1) The funds of the Council consist of -
- (a) fees paid to the Council in terms of this Act;
 - (b) donations and grants made to the Council;
 - (c) moneys appropriated by Parliament for that purpose;
 - (d) interest derived from investments made under subsection (3);
 - (e) fines paid to the Council in terms of section 38; and
 - (f) other moneys received for the benefit of, or that accrued to, the Council.

(2) The Council must use its funds referred to in subsection (1) for the purpose of defraying expenses incurred in connection with the exercising of its powers and the performing of its functions under this Act.

- (3) The Council may -
- (a) invest any unexpended portion of its moneys; or
 - (b) establish reserve funds and pay into those funds the moneys that it may consider necessary.

- (4) The Council must cause -
- (a) complete and accurate accounts to be kept of all moneys received or expended by it;
 - (b) annual statement of its income and expenditure to be prepared in respect of every financial year, including a balance sheet reflecting its financial position at the end of the financial year;
 - (c) the annual statement and balance sheet referred to in paragraph (b) to be audited annually, within a period of six months after the closing of the financial year of the Council by a person registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951); and
 - (d) a copy of the audited annual statement and balance sheet referred to in paragraph (c) -
 - (i) to be submitted to every member of the Council; and
 - (ii) to lie open at the office of the registrar for inspection by any registered person.

(5) The Council must submit to the Minister the audited annual statement and balance sheet within 30 days from the date of receipt of the audited annual statement and balance sheet together with a report on its activities during the financial year.

(6) The Minister must table the report, audited statement and the balance sheet referred to in subsection (5) in the National Assembly within a period of 30 days after the date of receiving the report, audited statement and balance sheet under that subsection.

(7) The financial year of the Council ends on 31 March each year.

Appointment of registrar and staff

16. (1) The person appointed as the registrar by the Councils established by the allied health professions, the medical and dental profession, the nursing profession, the pharmacy profession, and the social work and psychology profession is the registrar of the Council.

(2) The Council and the Councils referred to in subsection (1) must enter into a written agreement to provide for -

- (a) the conducting of the office of the registrar and all matters relating to that office;
- (b) the contributions to be made by the respective Councils in respect of the -
 - (i) expenses incurred or to be incurred relating to the conducting of the office of the registrar referred to in paragraph (a);
 - (ii) payment of the remuneration payable to the registrar, the assistant registrar and the other persons employed by the Council and the other Councils under this section; and
 - (iii) running costs and the other expenditure relating to the office of the registrar referred to in paragraph (a); and
- (c) the other matters necessary for the efficient joint conducting of the office of the registrar referred to in paragraph (a).

(3) The registrar must -

- (a) with the written approval of the Council and of the Councils referred to in subsection (1) acting conjointly, determine the staff establishment of the Councils; and
- (b) employ persons to assist the Council with exercising the powers and performing functions of the Council under this Act or any other law, at the remuneration and subject to the conditions of service as the Council and the Councils referred to in subsection (1) acting conjointly may determine.

(4) Despite subsection (3), the registrar may enter into an agreement with an independent contractor, without the prior approval of the Councils referred to in subsection (1) but subject to subsection (5), to perform a tasks subject to the conditions as may be agreed upon between the registrar and the contractor.

- (5) For the purposes of subsection (4), the Council must determine the -
 - (a) conditions subject to which the registrar may enter into an agreement;
 - (b) purpose of the agreement and the tasks that may be performed by the independent contractor; and
 - (c) remuneration that may be paid to the independent contractor.

(6) The remuneration referred to in subsections (2)(b)(ii) and (5)(c) contributed or paid by the Council must be paid from the funds of the Council.

(7) Despite any other provision of this Act, the Council may appoint a deputy registrar to exercise the powers and perform the functions of the registrar as the Council may determine, at the remuneration and subject to the conditions of service as the Council and the person appointed may agree.

(8) The costs pertaining to the appointment of the deputy registrar under subsection (7), including the remuneration payable to that deputy registrar, must be paid by the Council, unless the Council and the Councils referred to in subsection (1) otherwise agree in the agreement entered into under subsection (2).

Powers and functions of registrar

- 17.** (1) The registrar -
- (a) must exercise the powers and perform the functions conferred or delegated to or imposed upon or assigned to the registrar by or under this Act;
 - (b) is the secretary of the Council and of its committees, unless otherwise provided in this Act;
 - (c) must perform the administrative work pertaining to the functions of the Council, including the keeping of the registers under section 23 on behalf of the Council;
 - (d) must perform the administrative work pertaining to the functions of every committee of the Council;
 - (e) is the accounting officer of the Council;
 - (f) must collect and recover all moneys due or accruing to the Council;
 - (g) has the administrative control, for and on behalf of the Council, over payments and withdrawals made from the funds of the Council;
 - (h) must keep books of account or cause those books of account to be kept as are necessary to fairly represent the state of affairs and business of the Council and to explain the transactions and financial position relating to the business of the Council; and

-
- (i) may appoint, at any time, a person to act as a mediator for the purpose of reconciling the parties to any dispute relating to any matter provided for in this Act or as may be prescribed.
- (2) The Minister may prescribe the powers and functions of the person appointed under subsection (1)(i) and the circumstances under which the registrar may appoint that person.
- (3) The registrar may in writing authorise the deputy registrar or any other member of his or her staff to exercise or perform any power or function conferred or imposed upon him or her by, or delegated or assigned to him or her under, this Act.
- (4) The registrar is not divested of any power exercised by a deputy registrar or by a member of his or her staff as authorised under subsection (3) and may amend or set aside a decision of the deputy registrar or the member.
- (5) If the registrar is absent or unable to exercise or perform any of his or her powers or functions under this Act, the person appointed as deputy registrar under section 16(7) may exercise or perform, during the period the registrar is so absent or unable to act, the powers or functions of the registrar.
- (6) If no appointment has been made under section 16(7), or the registrar has not authorised a member of his or her staff to exercise or perform the powers or functions of the registrar under subsection (3), the Council may appoint in writing a person to act as a registrar, at the remuneration and subject to the conditions of service as the Council and the person appointed may agree upon, for the period the registrar is absent or unable to exercise or perform his or her powers or functions.
- (7) A person appointed under subsection (6) must exercise and perform the powers or functions of the registrar, subject to the conditions and restrictions, as the Council may specify in writing.

PART 3 REGISTRATION OF TRADITIONAL HEALTH PRACTITIONERS

Registration prerequisite for practising as traditional health practitioner

- 18.** (1) From a date determined by the Minister by notice in the *Gazette*, a person may not practise in Namibia as a traditional health practitioner or in any of the categories of traditional healing prescribed under section 19, unless the person is registered under this Act.
- (2) Any person who contravenes subsection (1) commits an offence and is liable to a penalty specified by section 55(b).
- (3) Despite any other provision of this Act or any other law, a person registered under this Act may practise as a traditional health practitioner in one or more of the categories of traditional healing prescribed under section 19.
- (4) Registration under this Act may not be construed as authorising a person to -

- (a) practice witchcraft; or
- (b) supply a traditional medicine, alternative health medicine or other substance to a person, if that medicine or substance may endanger the life or may be detrimental to the health of a person.

(5) For the purposes of subsection (4), “witchcraft” means witchcraft as defined in the Witchcraft Suppression Proclamation, 1933.

Categories of traditional healing

19. (1) Subject to this Act, a person who applies for registration to practise as a traditional health practitioner may be registered to practise one or more of the categories of traditional healing prescribed under subsection (2).

(2) The Minister may, on the recommendation of the Council, prescribe the -

- (a) categories of traditional healing referred to in subsection (1);
- (b) the -
 - (i) minimum requirements of study for registration under this Act;
 - (ii) scope of practice; and
 - (iii) conditions and restrictions applicable to the practising,of each of the prescribed different categories of traditional healing.

(3) When the Minister makes regulations under this section, he or she may prescribe different scopes of practice and different conditions and restrictions in respect of persons who are Namibian citizens and non-Namibian citizens, under which a person may practise the different categories of traditional healing.

(4) The Minister may prescribe the titles that may be used by registered persons practising the different categories of traditional healing.

Requirements for registration as traditional health practitioner

20. (1) The Minister may prescribe the minimum requirements, in addition to the minimum requirements of study referred to under section 19(2)(b)(i), that a person must comply with before the person is registered as a traditional health practitioner.

(2) If the person referred to in section 21(1) has been previously registered in a country other than Namibia to practise as a traditional health practitioner under the laws of that country, or at the time of the application for registration is still registered, such a person must furnish the Council with a letter of good standing from the registering authority of each country in which the applicant has been registered or where he or she practised as a traditional health practitioner during the period of five years immediately preceding the date of the application, which certificate must be issued not more than 120 days before the date of the submission of that application to the Council.

(3) A person referred to in section 21(1), when making an application referred to in subsection (2) of that section must, for the purposes of section 40(1), disclose to the Council, whether he or she has been convicted of any offence by a court of law either in Namibia or elsewhere.

Application for registration

21. (1) A person may not practice as a traditional health practitioner, except if the person is registered under this Act as a traditional health practitioner to practice one or more of prescribed categories under section 19.

(2) An application for registration by a person referred to in subsection (1) must -

- (a) be made in the prescribed manner and form;
- (b) be submitted to the registrar; and
- (c) be accompanied by -
 - (i) the prescribed fee;
 - (ii) proof, to the satisfaction of the Council, that the applicant complies with the requirements of section 20;
 - (iii) the documents and information that may be prescribed in respect of the application under section 20(1); and
 - (iv) the additional documents or information that the registrar or the Council may require in respect of the application.

Registration

22. (1) The registrar must refer an application submitted to him or her in terms of section 21(2), including the documents and additional information attached to the application, if any, to the Council for its decision.

(2) The Council must require a person who applies for registration in terms of section 21, and who complies with the requirements for registration under sections 20 to pass an evaluation by the Council and to its satisfaction in order to determine whether or not the applicant -

- (a) possesses adequate knowledge, skills and competence to practise as a traditional health practitioner in the category of traditional healing in which such person applied for registration; and
 - (b) is proficient in the indigenous languages spoken in the region in which the applicant is residing or intends to practise as a traditional health practitioner.
- (3) For the purposes of subsection (2), the Council may determine -

- (a) the nature and contents of the evaluation to be conducted which may be a written, oral or practical evaluation;
- (b) the person or institution that must conduct the evaluation for or on behalf of the Council; and
- (c) subject to section 27, the fees payable by a person in respect of whom an evaluation must be conducted.

(4) The Council may determine different evaluations under subsection (3) in respect of the different categories of traditional healing.

(5) If a person referred to in subsection (2) fails to pass, to the satisfaction of the Council, an evaluation conducted by the Council under that subsection, the Council may not register the applicant as traditional health practitioner.

(6) The fees referred to in subsection (3)(c) must be paid to the Council before the Council may evaluate a person under subsection (2).

(7) The Council, after having considered an application for registration submitted in terms of section 21, and the documents and the other information, referred to in subsection (1) and, where applicable, the results of an evaluation made under subsection (2), may -

- (a) grant the application for registration if it is satisfied that the applicant -
 - (i) has complied with the minimum requirements for registration prescribed under sections 20;
 - (ii) has complied with section 21 and with this section;
 - (iii) is a fit and proper person to be registered as a traditional health practitioner in the category of traditional healing for which registration is applied for;
 - (iv) is competent to provide the traditional health care pertaining to the registration applied for, with confirmation from the evaluation in respect of the applicant conducted under subsection (2); and
 - (v) is proficient in one of the indigenous languages spoken in the region in which the applicant is residing or intends to practise as a traditional health practitioner.
- (b) refuse to grant the application for registration, if the Council is satisfied that the applicant -
 - (i) has not complied with the minimum requirements for registration prescribed under sections 20;
 - (ii) has not complied with section 21 and this section;

-
- (iii) is not a fit and proper person to be registered as a traditional health practitioner; or
 - (iv) is not competent to provide the traditional health care pertaining to the registration applied for.
- (8) The Council must -
- (a) notify the applicant in writing of its decision made under subsection (7);
 - (b) if the application for registration is granted, issue to the applicant a certificate of registration as prescribed; and
 - (c) if the application for registration is refused, inform the applicant as soon as possible and state the grounds for the refusal.
- (9) A registered person must restrict his or her practice to the category or categories of traditional healing specified in the certificate of registration issued under subsection (8)(b).
- (10) Despite the provisions of this section, the registrar acting on behalf and in the name of the Council may exercise the powers or perform functions of the Council under this section.

Registers

- 23.** (1) The Council must establish and keep -
- (a) for the purposes of this Act, a register of the traditional health practitioners; and
 - (b) in respect of the registered person, a separate register in respect of the different categories of traditional healing.
- (2) The registrar must enter or cause to be entered into a register referred to in subsection (1) the particulars of every registered person, including -
- (a) his or her full names, identity number, physical address, postal address and details of any other means by which that person may be contacted;
 - (b) the date of the registration and the registration number;
 - (c) the category in which he or she holds the registration; and
 - (d) the other particulars as the Council may determine.
- (3) Every registered person who changes his or her postal or physical address, telephone number or name, must notify the registrar in writing of his or her new postal or physical address, telephone number or name, within 30 days after the change has occurred.

(4) The registers referred to in subsection (1) must lie open for inspection by any person at the offices of the Council during office hours.

(5) The Council may direct the registrar in writing to perform the functions of the Council under this section on behalf of the Council and in its name, in the manner and to the extent, and subject to the conditions as the Council may determine and specify in the directive.

Extract from register

24. (1) The registrar must issue to a person, upon written application by the person and upon payment of the applicable fees determined under section 27, a certified extract from the register.

(2) The Council may determine the form of an extract referred to in subsection (1), the particulars it must contain and the conditions subject to which the extract may be issued.

Removal of name from register

25. (1) The Council may remove from the register the name of a registered person -

- (a) who has requested by written notice to the registrar that his or her name be removed from the register;
- (b) who fails to notify the registrar as required by section 23(3) of -
 - (i) any change of his or her address or telephone number; or
 - (ii) his or her correct address or telephone number after the date of a written request for particulars of the new address or telephone number by the registrar by prepaid registered post addressed to the registered person at his or her postal address as specified in the register in which his or her name appears or delivered to him or her in person or in any other prescribed manner;
- (c) who fails to pay to the Council the annual fees determined under section 27(1)(c), after 30 days written notice or within any other period of time that the Council may on good cause shown allow after the expiry of 30 days, which notice is sent by prepaid registered post to the registered person, at his or her postal address as specified in the register in which his or her name appears or delivered to him or her in person or in the prescribed manner;
- (d) who fails to comply with the regulations relating to continuing additional training and development;
- (e) who has been registered in error or as a result of fraud or in circumstances not authorised by this Act; or
- (f) who has been found guilty of improper conduct and upon whom the penalties specified by section 38(1)(c) has been imposed.

(2) The registrar may in respect of a request by a registered person in terms of subsection (1)(a), require such registered person to lodge with the registrar an affidavit to the effect that no proceedings relating to an improper conduct or to any criminal act have been, or are likely to be, instituted against him or her.

(3) If the Council takes a decision to remove the name of a registered person from the register on any of the grounds specified in subsection (1), excluding the removal of a name at the request of the registered person, the Council must give the registered person written notice, which notice must state that -

- (a) the Council intends to remove the name of the registered person from the register and specifying the grounds for the removal of his or her name; and
- (b) the registered person may submit, within 30 days after the date of the notice, written representations to the Council to show cause why his or her name may not be removed from the register.

(4) The Council must reconsider, after the expiry of 30 days referred to in subsection (3)(b), the removal of the name of the registered person from the register taking into consideration the representations, if any, made by the registered person under that subsection.

(5) The grounds for the removal of a name from a register under subsection (1) must be entered into that register as a part of the removal.

(6) The registrar or a person designated in writing by the registrar for that purpose must by notice in writing notify the person whose name has been removed from the register under this section that his or her name has been removed and the grounds for the removal.

(7) A notice under subsection (3) and (6) must be served by prepaid registered post addressed to the person referred to in that subsection at his or her postal address as specified in the register in which his or her name appears or delivered to him or her in person or in the prescribed manner.

(8) After the date of service of a notice under subsection (6), and until the name of the person referred to in subsection (1) is restored to the register -

- (a) the registration certificate relating to the person is considered withdrawn; and
- (b) the person is considered as not registered as a traditional health practitioner under this Act.

(9) If a registered person is declared mentally ill under any law or if a curator is appointed by the High Court to conduct or manage the affairs of the person, the registrar of the High Court must submit to the registrar, as soon as practicable possible, a copy of the order which declared the registered person as a mentally ill person or which appointed a curator.

(10) Upon receipt of the copy of the order referred to in subsection (9), the registrar, acting for the Council and in its name, must remove the name of the person specified in the order from the register and notify the Council in writing of the removal.

(11) A person who contravenes subsection (8) commits an offence and is liable to the penalties specified in section 55(b).

(12) The removal of the name of a registered person from a register does not -

- (a) affect a liability due to the Council and incurred by the registered person; and
- (b) prevent the Council from instituting or continuing with an inquiry under this Act relating to the conduct of the registered person,

before the date of removal.

Restoration of name to register

26. (1) Subject to this section a person, whose name has been removed from a register under section 25 may apply to the Council in the prescribed form and manner, within 12 months after the date of removal of his or her name from the register, to have his or her name restored to the register.

(2) The Council may not restore the name of a person to a register under this section -

- (a) if the person submits his or her application to the Council under subsection (1) after the expiry of the period referred to in that subsection; or
- (b) the name of the applicant has been removed from that register under section 26(1)(e) or (f),

unless there is a valid reason for the Council to consider the application.

(3) An application referred to in subsection (1) must be accompanied by -

- (a) the prescribed documents and information in respect of the application;
- (b) the additional documents and information that the Council may require;
- (c) if the name of a person has been removed from the register under section 25(1)(c), proof of payment of the outstanding annual fees or proof of payment of the annual fees;
- (d) if the name of a person has been removed from the register under section 25(1)(d), proof to the satisfaction of the Council that the applicant has complied with the requirements of that section or as the Council may require in respect of the application, and that the applicant is a fit and proper person to be restored to the register;
- (e) if the name of a person has been removed from the register under section 25(10), written proof to the satisfaction of the Council of his or her sound mental health by a person competent to assess the mental health of a person, or proof that the order of court placing him or her under curatorship has been set aside; and

- (f) payment of -
 - (i) the prescribed fees in respect of an application for restoration; and
 - (ii) all moneys due and payable by the person to the Council, including the expenses incurred by the Council to have his or her name removed from the register or relating to the collection of arrear annual fees or other fees payable to the Council.

(4) In the case of an application for the restoration of a name to a register removed under section 25(1)(a), (b), (c) or (d), the registrar, acting for the Council and in its name must -

- (a) restore to the register the name of the applicant referred to in subsection (1), if the registrar is satisfied that the applicant has complied with the provisions of subsection (2) and (3); or
- (b) refuse the application referred to in subsection (1), if the registrar is satisfied that the applicant has not complied with the applicable provisions of subsection (2) and (3).

(5) In the case of an application for the restoration of a name to a register removed under section 25(10), or if the registrar is in doubt as to the granting of an application for the restoration of a name to a register submitted in terms of subsection (1), the registrar must refer the application for restoration to the Council for a decision.

(6) Upon receipt of an application referred to in subsection (5), the Council -

- (a) must consider the application; and
- (b) may grant or refuse the application.

(7) The registrar must -

- (a) notify in writing a person who has applied to the Council in terms of subsection (1) of any decision made under subsection (4) or (6); and
- (b) if the name of the applicant has been restored to the register, issue to that applicant a certificate of registration.

(8) In the event of the refusal to grant an application for restoration under subsection (4)(b) or (6)(b), the registrar must notify the applicant in writing of the grounds for the refusal.

Fees payable to Council

27. (1) The Council, with the written approval of the Minister, may by notice in the *Gazette* determine -

- (a) the application fees, registration fees, restoration fees, investigation fees, examination fees and evaluation fees payable to the Council,

and may differentiate fees in respect of the different grounds for the removal of the name of a person from the register and in respect of period for which the name has been removed;

- (b) any other fees payable to the Council in respect of any power exercised or function performed by the Council; and
- (c) the annual fees or a portion of the annual fees in respect of a part of a year payable to the Council.

(2) When the Council determines the annual fees under subsection (1) payable by registered persons, the Council may determine different fees -

- (a) in respect of the different categories of traditional healing prescribed under section 19(1);
- (b) based on the other prescribed criteria.

(3) The Council may recover any unpaid fees determined under subsection (1), due and payable to the Council by a registered person by means of civil proceedings in a competent court irrespective of whether or not the name of the person has been removed from the register.

(4) If a person whose name has been removed from a register applies for the restoration of his or her name to the register, the Council may not consider the application for restoration until the applicant has paid in full all amounts due and payable by him or her to the Council under this Act.

(5) When the Council determines under subsection (1) the fees, or any of the fees, payable to the Council by any person, the Council may determine different fees payable by Namibian citizen and by person who is not a Namibian citizen.

(6) Unless the Council determines otherwise, a fee determined by the Council under this section and paid by a person to the Council is not refundable by the Council.

Maintaining of registration by registered person

28. (1) A registered person must pay to the Council the annual fees determined under section 27 before 31 March each year.

(2) The Council, on a written application, may exempt in writing a registered person or category of registered persons, in part or in full, from paying the annual fees referred to in subsection (1) for the period of time and subject to the conditions may be prescribed under subsection (6).

(3) When a registered person pays to the Council the annual fees referred to in subsection (1), the Council must issue a certificate in the name of the registered person as proof of the payment of the annual fees.

- (4) A certificate issued under subsection (3) -

-
- (a) must be in the form determined by the Council;
 - (b) must specify the -
 - (i) name of the Council;
 - (ii) full names and surname of the registered person;
 - (iii) categories of traditional healing in respect of which the person is registered;
 - (iv) amount of the annual fees paid;
 - (v) period of time in respect of which the certificate is valid; and
 - (vi) other particulars that the Council may determine;
 - (c) serves as proof, unless the contrary is proven, that the registered person named in the certificate is registered for the period specified in that certificate.
- (5) If a registered person fails to comply with subsection (1) -
- (a) he or she may be suspended from practice under section 57; or
 - (b) his or her name may be removed from the register under section 25.
- (6) The Minister, on the recommendation of the Council, may prescribe the requirements for the exemption of a registered person, or any category of registered persons, from the payment of annual fees.

Register as proof

29. (1) A copy of any register of the Council certified by the registrar as a true copy of the original is proof, until the contrary is proven, in all legal proceedings of the facts recorded in the certified copy.

(2) The absence of the name of a person from a copy of a register referred to in subsection (1) is proof, until the contrary is proven, that the person is not registered under this Act.

(3) If the name of a person -

(a) does not appear in a register, or copy of a register referred to in subsection (2), and such name has been added to the register after the date of absence of the name of such person under that subsection, a certificate under the hand of the registrar of the entry of the name of that person in the register is proof, until the contrary is proven, that the person is registered under this Act;

(b) has been removed from the register referred to in paragraph (a) and has not been restored in that register, a certificate under the hand of the registrar that the name of that person has been removed from the

register is proof, until the contrary is proven, that the person is not registered under this Act.

Certificate of status

30. (1) For the purposes of practising as a traditional health practitioner at any other place other than Namibia, the registered person may apply to the registrar for the issue of a certificate of status under subsection (2) in the prescribed form and manner.

(2) Upon payment of the application fees in respect of an application referred to in subsection (1), and upon submission to the registrar of an affidavit by a registered person that no criminal proceedings are pending against him or her, the registrar must issue to the registered person a certificate of status containing particulars relating to -

- (a) the status of the person in respect of registration under this Act;
- (b) whether or not the person is disqualified from practising as a traditional health practitioner under this Act;
- (c) whether or not a complaint relating to alleged improper conduct by that person has been lodged with the Council, and if any complaint has been lodged, the nature of the complaint;
- (d) whether or not any proceedings pertaining to improper conduct are pending against the person at the time of the issuing of the certificate of status;
- (e) whether or not that person has been found guilty of an improper conduct and if found guilty, the nature of the charge, the date of the finding and the penalties imposed; and
- (f) whether or not the person is an impaired person referred to in section 43, and if that is the case, the date of the finding made, the nature of the conditions of registration and practising that are applicable to the person at the time of the issuing of the certificate of status.

(3) A certificate of status referred to in subsection (2) may be issued subject to the conditions that the Council may determine.

PART 4

OFFENCES BY TRADITIONAL HEALTH PRACTITIONERS

Offences by persons practising as traditional health practitioner or using certain titles or performing certain acts while unregistered

31. (1) A person who is not registered as a traditional health practitioner under this Act, and who -

- (a) practises as a traditional health practitioner, whether or not purporting to be registered as such;

-
- (b) performs an act -
 - (i) prescribed by or under this Act or any other law as an act that may only be performed by a registered person; or
 - (ii) pertaining to the practice of a traditional health practitioner; or
 - (c) except under the Public Health Act, 1919 (Act No. 36 of 1919), the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003), the Allied Health Professions Act, 2004 (Act No. 7 of 2004), the Medical and Dental Act, 2004 (Act No. 10 of 2004), the Nursing Act, 2004 (Act No. 8 of 2004), the Pharmacy Act, 2004 (Act No. 9 of 2004), the Social Work and Psychology Act, 2004 (Act No. 6 of 2004) or under any other relevant law, performs an act whatsoever having as its object the diagnosing, treating or preventing of a physical or mental defect, illness, disease or deficiency in a person;
 - (d) pretends, or by any means whatsoever holds himself or herself out, to be a traditional health practitioner whether or not purporting to be registered as such or to be entitled to practise as a traditional health practitioner;
 - (e) uses a name or title prescribed under section 19 or any other name, title, description or symbol indicating or calculated to lead a person to infer that the person using that name or title or description or symbol is registered as a traditional health practitioner under this Act;
 - (f) except under the Public Health Act, 1919, the Medicines and Related Substances Control Act, 2003, the Allied Health Professions Act, 2004, the Medical and Dental Act, 2004, the Nursing Act, 2004, the Pharmacy Act, 2004 or the Social Work and Psychology Act, 2004, or other relevant laws, by word, conduct or demeanour holds himself or herself out to be able, qualified or competent to diagnose, treat or prevent a physical or mental defect, illness, disease or deficiency in a person or to supply a medicine, drug or similar substance, preparation, cure or thing in respect of that physical or mental defect, illness, disease or deficiency; or
 - (g) charge fees for any service rendered while not registered as a traditional health practitioner or not registered to practice in the category in which an act has been performed,

commits an offence and is liable to the penalties specified by section 55(b).

- (2) A person who knows that a person is not registered under this Act, and -
 - (a) describes that person as a traditional health practitioner or as a holder of the title that only a registered person may use, whether he or she describes that person by making use of that title alone or in combination with any word or letter; or
 - (b) holds that person out, directly or indirectly, as being registered in the capacity referred to in paragraph (a),

commits an offence and is liable to the penalties specified by section 55(b).

- (3) A person, whether or not registered under this Act, who -
 - (a) holds himself or herself out to be able to cure cancer, the human immunodeficiency virus and acquired immune deficiency syndrome or other prescribed terminal disease;
 - (b) holds out that an article, compound, medicine or apparatus is or may be of value for the curing of cancer, the human immunodeficiency virus or acquired immune deficiency syndrome or other prescribed terminal disease; or
 - (c) offers to cure, or prescribes any treatment as a cure for cancer, the human immunodeficiency virus or acquired immune deficiency syndrome, or any other prescribed terminal disease,

commits an offence and is liable to the penalties specified by section 55(b).

PART 5 DISCIPLINARY POWERS OF COUNCIL

Conduct rules

32. (1) The Council, with the approval of the Minister, may make rules specifying the acts or omissions by registered persons, in addition to those specified or referred to in this Act, that constitute improper conduct for which the Council may conduct an inquiry under this Part.

(2) The powers of the Council to inquire into an improper conduct by a registered person are not limited to the acts or omissions specified under subsection (1).

(3) Despite any provision of this section, a registered person who fails to comply with a lawful instruction of the Council commits improper conduct.

Inquiry by Council into complaint or allegation of improper conduct

- 33.** (1) The Council may conduct an inquiry into -
- (a) a complaint relating to improper conduct against a registered person lodged with the Council; or
 - (b) an act or omission by a registered person which amount to improper conduct.

(2) Without any limitation to the generality of subsection (1), the Council may conduct an inquiry referred to in that subsection, if a registered person -

- (a) fails to comply with or contravenes a provision of this Act, a regulation or rule made under this Act;
- (b) is convicted whether in Namibia or elsewhere -

-
- (i) of theft, forgery, uttering of a forged document, perjury, an offence under the Anti-Corruption Act, 2003 (Act No. 8 of 2003) or under other law relating to corruption or an offence involving dishonesty or violence and is sentenced in respect of such offence to a term of imprisonment with or without an option of a fine;
 - (ii) under the Witchcraft Suppression Proclamation, 1933, or a corresponding or similar law;
- (c) contravenes or fails to comply with a code of conduct, ethics or practice compiled under this Act; or
- (d) performs an act, including an omission that demonstrates a lack of adequate knowledge, skills, judgement or care expected of such person when practising as a traditional health practitioner.
- (3) If a person whose name has been removed from a register under section 25 is alleged to have committed improper conduct or any act referred to in subsection (2) at any time before the removal, the Council may institute an inquiry under this Part into the allegation.
- (4) A person referred to in subsection (3) is considered for the purposes of an inquiry under this Part to be a registered person.
- (5) Upon finding a registered person guilty of improper conduct at an inquiry under this Part the Council may impose any of the penalties specified by section 38(1) against the registered person.
- (6) If a complaint or allegation referred to in subsection (1) or (2) constitutes, or is likely to be the subject of criminal proceedings in any court of law, the Council may, if the Council so wishes, postpone the conducting of an inquiry referred to in that subsection until the criminal proceedings have been finalised in court.
- (7) The Council may -
- (a) when it is in doubt whether or not an inquiry should be conducted in connection with a complaint or allegation referred to in subsection (1) or (2), consult or seek information from any person, including the registered person against whom the complaint has been lodged or the allegation has been made in the manner that the Council may consider appropriate;
 - (b) for the purpose of a consultation under paragraph (a), permit or request any person to advise the Council on a matter relating to a complaint or allegation referred to in that paragraph;
 - (c) delegate any of its powers under this subsection to the investigation committee established by section 11.

Inquiry into improper conduct

34. (1) The Council must conduct an inquiry into improper conduct in accordance with the prescribed procedures and with this section.

(2) The Council, after having conducted an inquiry under this Part into allegations of improper conduct by a registered person, may find the person -

- (a) guilty of the improper conduct; or
- (b) not guilty of the improper conduct.

(3) The Council must record and keep the proceedings or cause the proceedings of an inquiry to be recorded and kept, and be certified by the person presiding at the inquiry as being a true and accurate reflection of the evidence and exhibits presented at the inquiry and of the decision of the Council.

(4) The record referred to in subsection (3) -

- (a) must be kept by the registrar for a period of five years; and
- (b) are, for the purpose of section 50 or 51, proof, until the contrary is proven, of the proceedings at the inquiry conducted, including the decisions by the Council.

(5) The Council must, not less than 21 days before the commencement of the inquiry against a registered person, give notice of the inquiry to the registered person in the prescribed form and manner, informing him or her -

- (a) of the particulars of the alleged charge of improper conduct;
- (b) of the date, time and venue of the inquiry;
- (c) that the registered person may, within 14 days from the date of receipt of the notice, deliver to the Council a written admission or denial of the charge of the alleged improper conduct; and
- (d) that in case of an admission of guilt to the charge he or she must submit an admission of guilt to the Council in terms of section 35.

(6) The registrar or a person designated by him or her in writing for that purpose must serve the notice referred to in subsection (5) together with a statement of particulars of the alleged improper conduct on the registered person referred to in that subsection and obtain from such registered person a written acknowledgement of receipt of the notice, including the date, time and place of the receipt of the notice.

(7) If the registrar or the person designated under subsection (6), certifies in writing that the registered person upon whom the notice must be served in accordance with that subsection -

- (a) cannot be traced;
- (b) refuses to accept service of the notice; or
- (c) refuses to sign the required acknowledgement of receipt relating to the service of the notice,

the registrar must send the notice by prepaid registered post, not less than 21 days before the date of the intended inquiry, addressed to that registered person at his or her postal

address as specified in the register in which his or her name appears or serve the notice in any other prescribed manner.

(8) If the registered person served with a notice under subsection (6) or to whom a notice has been sent under subsection (7), is not present at the commencement of the inquiry or is absent from the inquiry at any time after the commencement of the inquiry, without the leave of the Council, the Council may conduct the inquiry or may continue with the inquiry in the absence of the registered person.

(9) For the purpose of an inquiry under this Part, the Council may subpoena a witness to appear at a specified date, time and venue to give evidence before the Council and to submit to the Council any document, book, record or other thing relevant to the inquiry or as may specified in the subpoena.

(10) A subpoena referred to in subsection (9) must be substantially in the form determined by the Council and be signed by the chairperson of the Council or by the registrar and must be served on the witness in person or by prepaid registered post at his or her postal address as specified in the register in which his or her name appears or in any prescribed manner.

(11) Despite any provision of this section, a registered person referred to in subsection (8) and who is present at the inquiry may at that inquiry plead guilty to the charge of improper conduct against him or her as specified in the notice delivered or posted to him or her under subsection (6) or (7).

(12) If a registered person pleads guilty under subsection (11) or admits his or her guilt in terms of section 35 to a charge of improper conduct, the Council may, without leading any evidence, find the person guilty of the improper conduct to the charge to which the registered person pleaded guilty or admitted guilt.

(13) A registered person who has been duly summoned under subsection (6) or (7) to appear before the Council for the purposes of an inquiry under this Part and who fails to take the prescribed oath or to make an affirmation when required by the person presiding at the inquiry to do so, commits an offence and is liable to the penalties specified by section 55(a).

(14) A person appearing before the Council is entitled, but subject to this Act, to all the privileges to which an accused or a witness giving evidence before a court of law is entitled.

(15) A registered person at an inquiry may -

- (a) represent himself or herself or through a legal practitioner or any competent person;
- (b) be heard in his or her defence;
- (c) call witnesses to testify on his or her behalf;
- (d) submit a document, book, record or other evidence relevant to his or her case; and
- (e) cross-examine witnesses testifying against him or her.

(16) A registered person found guilty of improper conduct under this Part may in mitigation of sentence address the Council or call witnesses to give evidence on his or her behalf.

(17) The Council -

- (a) may for the purposes of an inquiry conducted under this Part, appoint in writing a legal practitioner having not less than 10 years experience in the practising of law, whether or not he or she has retired from practice, or a retired magistrate who complies with section 12(2) to be present at the inquiry and to advise the Council on any matter of law, procedure or evidence; and
- (b) must determine the conditions of service under which a person is appointed under paragraph (a).

(18) An inquiry conducted by the Council under this Part must be open to the public unless the Council, under Article 12(1)(a) of the Namibian Constitution, otherwise determines.

(19) Despite any provision of this section, the Council may delegate all or any of its powers to conduct an inquiry under this Part to a committee established by the Council under section 13(4) for the purpose of conducting an inquiry under this Part.

Admission of guilt by registered person

35. (1) If a registered person is served with a notice of inquiry in terms of section 34(6) or (7) the registered person may submit to the Council an admission of guilt to the allegation of improper conduct specified in the notice.

(2) An admission of guilt under subsection (1) -

- (a) is made in the form of an affidavit or a solemn declaration duly sworn to or affirmed and signed by the registered person before a commissioner of oaths;
- (b) must set out in full the facts relating to the allegation of improper conduct that the registered person admits of being guilty;
- (c) may include arguments in mitigation of sentence; and
- (d) must be submitted to the registrar, not less than 14 days before the date of commencement of the inquiry proceedings.

(3) At an inquiry held under this Part, the Council may accept the admission of guilt made by the registered person in terms of subsection (1) and submitted to the registrar under subsection (2)(d), as a plea of guilty for the purposes of sections 34(11) or (12), irrespective of whether or not that person is present at the inquiry.

Inquiry into improper conduct not to prejudice civil or criminal liability

36. (1) The instituting or conducting of -

- (a) an inquiry into improper conduct under this Part against a registered person does not prejudice the right of any other person, body or organisation from instituting civil or criminal proceedings or the employer of the registered person to take disciplinary action against such registered person; or
- (b) civil or criminal proceedings against a registered person or the fact that his or her employer has taken disciplinary action against such registered person does not prejudice the right of the Council to institute and conduct an inquiry into improper conduct under this Part against the registered person, or from imposing penalties on that person for improper conduct,

arising from or based on the same facts.

(2) An incriminating reply or information obtained or incriminating evidence directly or indirectly derived from the evidence given or the questioning in an improper conduct inquiry under this Part, is not, subject to subsection (3), admissible as evidence against a person in criminal or civil proceedings in any court of law.

(3) Despite subsection (2), incriminating evidence referred to in that subsection is admissible in criminal proceedings against any person where he or she stands trial on a charge of the contravention of section 37.

Penalties for false evidence

37. A person who gives false evidence under oath or affirmation at an inquiry conducted under this Part knowing the evidence to be false, commits an offence of perjury.

Penalties for improper conduct

38. (1) If the Council finds a registered person guilty of improper conducts the Council may -

- (a) reprimand or caution the registered person;
- (b) suspend the registered person from practising or performing acts pertaining to traditional healing for a specified period of time not exceeding one year;
- (c) remove the name of the registered person from the register;
- (d) impose a fine as prescribed but not exceeding N\$20 000; or
- (e) impose more than one of the penalties referred to in paragraphs (a) to (d).

(2) In addition to any of the penalties specified under subsection (1), the Council may order a person referred to in that subsection to -

- (a) pay the costs relating to the conducting of the inquiry; or

(b) repay any moneys paid by the complainant to the registered person in respect of any service rendered by the registered person to the complainant.

(3) The costs relating to an inquiry referred to in subsection (2)(a) and the manner in which the costs are calculated are as prescribed.

(4) The -

(a) Council may recover a fine imposed under subsection (1)(d) or the costs referred to in subsection (2)(a);

(b) complainant referred to in subsection (2)(b), may recover any amount due and owing to him or her in terms of an order under that paragraph,

by means of civil proceedings in a competent court.

(5) The Council must -

(a) set out in writing its findings, penalties or orders imposed or made under this section; and

(b) make known in writing the findings, penalties or orders referred to in paragraph (a) to any prescribed body or person.

(6) The registrar must notify a registered person who has been found guilty of improper conduct under this Part, whether or not he or she was present at the inquiry -

(a) in the case of a penalty imposed under subsection (1)(a), of the findings of the Council and the penalties imposed, by forwarding a copy of the findings and particulars of the penalty duly signed by the person who presided at the inquiry, by prepaid registered post to the address of the registered person as it appears in the relevant register of the Council;

(b) in the case of penalties imposed under subsection (1)(b), (c), (d) or (e) by serving a copy of the findings of the Council and particulars of the penalties, duly signed by the person who presided at the inquiry or having the copy served -

(i) upon the registered person in person; or

(ii) at his or her place of business on a partner, employer or employee of that person.

(7) The persons referred to in subsection (6)(b)(ii), upon whom a copy of the findings and the penalties is served in accordance with that subsection, must acknowledge receipt of the copy of the finding of the Council and particulars of the penalties in writing and state his or her capacity.

(8) If the registered person referred to in subsection (6) or any of the persons referred to in paragraph (b)(ii) of that subsection -

(a) cannot be traced;

- (b) refuses to accept service of the copy of the findings and particulars of the penalties referred to in that subsection; or
- (c) refuses to sign an acknowledgement of receipt relating to the service the service referred to in paragraph (b),

the registrar must send the copy of the findings and particulars of the penalties to the registered person by means of prepaid registered post addressed to his or her postal address as specified in the register in which his or her name appears or in any other prescribed manner.

(9) If a registered person has been found not guilty of improper conduct, the registrar must notify the registered person in writing of the findings of the Council by prepaid registered post addressed to his or her postal address as specified in the register in which his or her name appears or by the delivery of the notice to him or her in person or in any other prescribed manner.

(10) A decision made, penalty imposed or decision made by the Council under this Part is of force and effect -

- (a) in case of a person who is present at an inquiry from the date when the decision, penalty or decision was given; and
- (b) in the case of a person who was not present at an inquiry from the date when the person was served with a notice of the decision or penalty,

unless the penalty or decision is appealed in terms of section 50.

Effect of suspension or removal from register

- 39.** (1) A registered person -
- (a) who has been suspended from practice or from performing an act pertaining to the practising of his or her profession; or
 - (b) whose name has been removed from the register,

under any provision of this Act, is disqualified from practising as a traditional health practitioner or from performing that act pertaining to the practising of his or her profession during the period of suspension until his or her name has been restored to the register.

(2) The registration certificate of the registered person referred to in subsection (1) is considered to be cancelled until -

- (a) the period of suspension referred to in that subsection has lapsed;
- (b) his or her appeal against the penalty is upheld; or
- (c) the Council restores his or her name to the register.

(3) On the date of lapsing of the suspension period referred to in subsection (1), the registration and the registration certificate of the registered person is considered as being restored.

(4) Any person who contravenes subsections (1) commits an offence and is liable to the penalties specified by section 55(b).

Cognisance by Council of conduct of registered person under certain circumstances

40. (1) The Council may conduct an inquiry under this Part into the conduct of a registered person who, before or after his or her registration under this Act, was convicted by a court of law of an offence either in Namibia or elsewhere, and who fails to disclose to the Council under section 20 that he or she was so convicted, if the Council is of the opinion that the offence constitutes improper conduct.

(2) If the improper conduct with which a staff member is charged, constitutes an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court must, upon the identification of the registered person as the person referred to in that record, be conclusive proof to the Council that the registered person is guilty of improper conduct on account of the commission of that offence, unless the conviction has been set aside by a superior court.

(3) The Council may request from the clerk of court a transcript of the court proceedings finalised before the court for the purposes of subsection (2), or which is relevant to an inquiry that the Council intends to conduct.

(4) The clerk of the court referred to in subsection (3) must make the transcript referred to in that subsection available to the Council as soon as practicable.

(5) A transcript referred to in subsection (4) is regarded as evidence, until the contrary is proven, in any inquiry conducted under this Part.

Pro forma complainant

41. (1) When the Council exercises any of the disciplinary powers conferred upon it by this Part, it may appoint any person as a *pro forma* complainant to execute the powers and perform the functions specified by this section.

(2) The *pro forma* complainant appointed under subsection (1) may at an inquiry conducted under this Part -

- (a) institute disciplinary proceedings against a registered person;
- (b) call witnesses to testify against the registered person;
- (c) submit any document, book, record or any other thing relevant to the inquiry;
- (d) cross-examine witnesses testifying for the registered person; and
- (e) perform any other prescribed function.

(3) The Minister may prescribe the functions of the *pro forma* complainant in addition to the functions specified by subsection (2).

(4) A member of the Council may not be appointed as a *pro forma* complainant under subsection (1).

(5) The Council may appoint, subject to subsection (4), any other person to institute proceedings or to continue the proceedings in any case referred to in subsection (1), if the person appointed under subsection (1) is for any reason unable to act as a *pro forma* complainant or to continue to act.

Limitation of liability

42. (1) Unless otherwise provided in this Act, the Minister, the Permanent Secretary, the Council, a committee, a member of the Council or committee, the registrar, the deputy registrar, a person employed by the Council, a person appointed by the Council or the registrar to perform an act under this Act or any person who exercise a power or perform a function required to be performed in terms of this Act, is not liable in respect of anything done or omitted to be done in good faith in the exercise of the power or the performance of function under this Act or anything that may result from anything done or omitted.

(2) For the purposes of subsection (1) -

(a) “Council” includes the Interim Council; and

(b) “committee” includes the review committee.

Impaired registered person

43. (1) In this section -

(a) “impaired” means -

(i) a mental or physical condition; or

(ii) the abuse of, or the dependence on, any medicine, scheduled substance, dependence-producing substance, chemical substance or any traditional medicine determined under section 4,

which negatively affects the competence, attitude, judgement or performance of a registered person;

(b) “dependence-producing substance” means a dependence-producing substance as defined in section 1 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971); and

(c) “scheduled substance” means a scheduled substance as defined in the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003).

(2) If it appears to the Council after an investigation, assessment or inquiry under the regulations made under subsection (3)(a), (b) and (c) that a registered person has become impaired to the extent that -

(a) it would be against the public interest to allow that person to continue to practise the traditional healing;

- (b) he or she is unable to practise the traditional healing with reasonable skills; or
- (c) the safety of his or her patients may be at risk,

the Council may deal with the person in the manner prescribed under subsection (3).

(3) The Minister may make regulations in respect of an impaired registered person referred to in subsection (2) relating to -

- (a) the investigation in respect of an impaired registered person, when that investigation is conducted and the procedures relating to the investigation;
- (b) the assessment of the condition of the registered person, including the procedures relating to the assessment;
- (c) the manner in which an investigation or inquiry is conducted in order to make a finding relating to a registered person's competence to practise traditional healing, including the procedures relating to the investigation or inquiry;
- (d) the conditions or restrictions that may be imposed on the registration or practice of an impaired registered person;
- (e) the suspension or removal of the name of an impaired registered person from the register;
- (f) the rescission of a condition imposed or of an order for the suspension or removal of a name from a register under regulations made under this subsection; and
- (g) generally all other matters that the Minister may consider necessary or expedient to prescribe in order to achieve the purposes of this section.

(4) The Council may in writing appoint a person to conduct the investigation, assessment or inquiry as contemplated in subsection (3)(a), (b) and (c).

(5) A person who practises traditional healing or performs an act relating to traditional healing, while he or she is -

- (a) suspended from practising;
- (b) his or her name is removed from the register under any regulation made under subsection (3);
- (c) who acts contrary to, or does not comply with, any condition applicable to him or her in terms of any regulation made under this section,

commits an offence and is liable to the penalties specified by section 55(b).

Incompetent registered person

44. (1) If a person reports to the Council that a registered person appears to be incompetent or not capable of practising traditional healing, the registrar must refer the report to the investigation committee, together with instructions to conduct a preliminary investigation into the allegations contained in the report.

(2) Section 11(3), (4), (5), (6), (7), (8), (9), (10) or (11) apply with the necessary changes to an investigation conducted by the investigation committee on instructions given under subsection (1).

(3) The investigation committee, when submitting to the registrar its report relating to a preliminary investigation conducted pursuant to instructions by the registrar under subsection (1), the investigation committee must make recommendations to the registrar whether the Council must -

- (a) conduct an inquiry under Part 5 against the person who has been investigated; or
- (b) require the registered person to pass to the satisfaction of the Council an evaluation under section 22(2).

(4) Unless the investigation committee recommends to the registrar that the Council must conduct an inquiry under Part 5, the registrar must submit the report received from the investigation committee, including his or her own comments or recommendations to the Council and any other information relevant to the matter which the registrar may wish to bring to the attention of the Council for its consideration.

(5) The Council, after having considered the report, comments and recommendations, if any, submitted to it under subsection (4), and after having afforded the registered person concerned the opportunity to be heard, may -

- (a) conduct an inquiry into the matter under Part 5;
- (b) refer the matter back to the investigation committee for further investigation; or
- (c) require the registered person to sit for an evaluation under section 22(2).

(6) If the Council requires the registered person to pass an evaluation as contemplated in subsection (5)(c), and if that registered person fails to -

- (a) sit for the evaluation after having been given 21 days written notice by the Council by prepaid registered post, of the date, time and venue of the evaluation, addressed to him or her at his or her postal address as specified in the register in which his or her name appears or delivered to him or her in person or in any other prescribed manner; or
- (b) pass the evaluation to the satisfaction of the Council,

the Council may remove the name of the registered person from the register, after having given the registered person 21 days written notice by prepaid registered post,

addressed to him or her at his or her postal address as specified in the register in which his or her name appears or delivered to him or her in person or in any other prescribed manner, of its intention to remove his or her name from the register and informing the registered person to make written representation why the Council must not remove his or her name from the register.

PART 6 GENERAL PROVISIONS

Limitations in respect of person not registered as traditional health practitioner

45. A person may not claim or charge fees for any service rendered in respect of any act pertaining to the practising of traditional healing unless the person is registered as a traditional health practitioner or to perform that act under this Act.

Death of patient

- 46.** (1) A registered person must give written notice to -
- (a) the traditional authority as defined in the Traditional Authorities Act, 2000 (Act No. 25 of 2000) having jurisdiction in respect of that registered person or the Namibian police as soon as possible; and
 - (b) the Council,

of the death of a person who dies on the premises on which the registered person is conducting his or her practice or who is in the care of the registered person, in addition to the notification of the death required under Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963) or in terms of other laws.

- (2) A notice to the Council in terms of subsection (1) is -
 - (a) made within a period of 30 days after the death of a person;
 - (b) made in the prescribed form; and
 - (c) submitted to the Council by hand or forwarded by pre-paid registered post.
- (3) A registered person who fails to comply with this section commits an improper conduct.

Offences relating to registers, registration and impersonation

- 47.** A person who -
- (a) procures or attempts to procure for himself or for herself or for any other person registration under or a certificate, order, receipt or other document referred to in this Act by means of a false representation, whether made verbally or in writing, or aids and abets any other person in doing so;

-
- (b) makes or causes to be made an unauthorised entry or alteration in or on or to, or removal from, a register or a certified copy of the register or an extract from the register or on or to a certificate, receipt or other document issued under this Act;
 - (c) makes a false statement in connection with the identity or qualifications of himself or of herself or of any other person applying for registration under this Act or causes a false statement to be made;
 - (d) unless at the direction of the Council, wilfully destroys or damages a certificate, register or other document issued under this Act or renders illegible an entry on that certificate, register or other document or causes that certificate, register or other document to be destroyed, damaged or rendered illegible;
 - (e) forges or knowing it to be forged, utters a document purporting to be a certificate or other document issued under this Act;
 - (f) impersonates a registered person or the registrar;
 - (g) supplies or offers to supply, subject to any other law, to a person who is not registered under this Act, any instrument, equipment or appliance which can be used or is claimed to be effective for the purpose of diagnosing, treating or preventing any physical defects, illnesses, diseases or deficiencies in persons knowing that that instrument, equipment or appliance may be used by that person for the purpose of performing an act that that person is under this Act prohibited from performing; or
 - (h) aids and abets any other person in the contravention of or the failing to comply with any of the provisions of paragraph (a), (b), (c), (d), (e), (f) or (g),

commits an offence and is liable to the penalties specified by section 55(b).

Assessment of registered person or practice

48. (1) In this section -

- (a) “assessment” means the evaluation of the ability, competency and proficiency of a registered person in the conducting of his or her practice;
- (b) “assessment officer” means a person appointed under subsection (2) for the purpose of conducting an assessment; and
- (c) “practice” includes a building, premises or place utilised for the conducting of the practice of a registered person or a motor vehicle used by the registered person.

(2) Despite anything in this Act or in any other law, the registrar may appoint in writing, on the instructions of the Council and subject to the conditions that the Council may determine, a person as an assessment officer to assess, under this section -

- (a) a registered person; or
- (b) the practice of a registered person,

specified in the appointment.

(3) The registrar must issue to the assessment officer a certificate of appointment, in the form determined by the Council, specifying the full names of the assessment officer, his or her identity number, the nature of the purpose of his or her appointment and the period for which he or she has been appointed.

(4) An assessment officer must assess the registered person or the practice of the registered person specified in the appointment under subsection (2) and subject to the instructions and conditions as the Council may determine under that subsection.

(5) An assessment officer who conducts an assessment under this section -

(a) must preserve secrecy, subject to paragraph (b), in respect of any fact which comes to his or her knowledge during the performing of his or her functions;

(b) may not disclose any fact referred to in paragraph (a) to a person other than -

(i) the registrar;

(ii) the *pro forma* complainant; or

(iii) a member of the Namibian Police as defined in the Police Act, 1990 (Act No. 19 of 1990) investigating a criminal matter specified by this Act;

(c) must comply with the prescribed requirements and conditions;

(d) must produce his or her certificate of appointment to a person in respect of whom he or she is conducting an assessment.

(6) Despite subsection (5)(b), an assessment officer may not disclose to a person any personal particulars relating to a person being treated by or under the care of a registered person, unless -

(a) by an order of a competent court;

(b) to the *pro forma* complainant on the instructions of the person presiding at an inquiry conducted under Part 5; or

(c) when testifying at the inquiry referred to in paragraph (b).

(7) A person who -

(a) hinders or obstructs an assessment officer in the exercise of his or her powers or the performance of his or her functions under this section;

- (b) prevents a person from entering a premises;
- (c) presents himself or herself as an assessment officer when he or she has not been appointed under subsection (2); or
- (d) contravenes a provision of subsection (5), (6) or (9),

commits an offence and is liable to the penalties specified by section 55(a).

(8) In so far as this section provides for a limitation on the fundamental rights contemplated in Article 13 of the Namibian Constitution, in that it authorises interference with the privacy of a person relating to his or her correspondence or communication, that limitation is enacted upon the authority of that Article.

(9) An assessment conducted under this section -

- (a) is conducted with strict regard to decency and orderly manner; and
- (b) may not be excessively intrusive.

(10) An assessment may enter the practice of a registered person without a warrant to enter such practice for the purposes of conducting an assessment.

(11) On the completion of an assessment under subsection (4), the assessment officer must submit to the registrar, in the form and manner determined by the registrar, a written report on the assessment and his or her findings.

(12) The Council on receipt of the report referred to in subsection (11), and if it appears from the report that the registered person specified in the report may be failing to practise or to conduct his or her practice in terms of this Act, the Council may -

- (a) suspend, under section 57, the registered person from practising for the period of time and subject to the conditions as the Council may determine;
- (b) conduct an inquiry under Part 5 into the alleged failure of the registered person; and
- (c) execute the powers and perform functions as may be prescribed.

(13) The Minister may prescribe, on the recommendation of the Council -

- (a) the manner in which an assessment must be conducted; and
- (b) the powers and functions of the assessment officer,

under this section, in addition to the powers and functions specified by this section.

Inspections of practice

49. (1) In this section -

- (a) “inspector” means a person appointed for the purpose of conducting an inspection under this section; and

- (b) “practice” includes a building, premises or place utilised for the conducting of the practice of a registered person or where a person is receiving education, tuition or training relating to traditional healing or motor vehicle used by the registered person.

(2) Despite anything in this Act or in any other law to the contrary, the registrar may appoint in writing, on the instructions of the Council and subject to the conditions that the Council may determine, a person as an inspector to inspect the practice of a registered person, if -

- (a) a person has lodged a complaint of improper conduct with the registrar against a registered person; and
- (b) the complaint referred to in paragraph (a) is supported by an affidavit setting out the facts relating to the complaint.

(3) The registrar must issue to the inspector a certificate of appointment, in a form determined by the Council, specifying the full names of the inspector, his or her identity number, the purpose of his or her appointment and the period for which he or she has been appointed.

(4) The inspector must produce, at the request of a person at or on or in the premises and before entering the premises or conducting an inspection under this section -

- (a) the certificate of appointment issued under subsection (3); and
- (b) his or her identity document.

(5) An inspector may, for the purpose of conducting an inspection under this section, enter any practice without a search warrant.

(6) An entry and inspection under this section is conducted between sunrise and sunset, unless the entry and conducting of inspection between sunset and sunrise is essential and justifiable.

(7) During an inspection under this section, an inspector may require a person -

- (a) found in the practice immediately or at any reasonable time and place determined by the inspector to -
 - (i) produce a book, record, document or thing which relates to the conducting of his or her practice or which on reasonable grounds is believed to relate to his or her practice and which is or was on the premises or in the possession or custody or control of the person or his or her employer, employee or agent;
 - (ii) give an explanation to the inspector in respect of the contents of or an entry made into a book, record, document or thing referred to in subparagraph (i);

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- (b) who has or is suspected on reasonable grounds to have in his or her possession or custody or under his or her control a book, record, document or thing referred to in paragraph (a), to -
 - (i) produce such book, record, document or thing immediately or at any reasonable time and place determined by the inspector for the purpose of the examination or to make copies or extracts of such book, record, document or thing; and
 - (ii) give an explanation to the inspector in respect of the contents or an entry of a book, record, document or thing.
 - (8) An inspector who conducts an inspection under this section -
 - (a) must preserve secrecy, subject to paragraph (b), in respect of a fact which comes to his or her knowledge in or during the performing of his or her functions; and
 - (b) may not disclose a fact referred to in paragraph (a) to a person other than -
 - (i) the registrar;
 - (ii) the *pro forma* complainant; or
 - (iii) a member of the Namibian Police as defined in the Police Act, 1990 (Act No. 19 of 1990) investigating a criminal matter specified by this Act.
 - (9) Despite subsection (8)(b), an inspector may not disclose to a person any personal particulars relating to a patient, unless -
 - (a) in terms of an order of a competent court;
 - (b) to the *pro forma* complainant on the instructions of the person presiding at an inquiry conducted under Part 5; or
 - (c) when testifying at the inquiry referred to in paragraph (b).
 - (10) A person who -
 - (a) hinders or obstructs an inspector in the exercising of his or her powers or the performing of his or her function under this Act;
 - (b) prevents an inspector from entering a practice;
 - (c) fails to produce a book, record, document or thing referred to in subsection (9)(a) or (b);
 - (d) presents himself or herself as an inspector, when he or she has not been appointed under subsection (2); or
 - (e) contravenes any provision of this section,

commits an offence and is liable to the penalties specified by section 55(a).

(11) In so far as this section provides for a limitation on the fundamental rights contemplated in Article 13 of the Namibian Constitution, in that it authorises interference with the privacy of a person relating to his or her correspondence or communication, that limitation is enacted upon the authority of that Article.

(12) An inspection conducted under this section -

- (a) must be conducted with strict regard to decency; and
- (b) may not be excessively intrusive.

(13) This section does not -

- (a) prevent a person or authority from investigating, under the authority of any other law, an alleged contravention of or failure to comply with any provision of;
- (b) prejudice the rights of a person to institute civil proceedings in terms of;
- (c) prevent the Namibian Police as defined in the Police Act, 1990 (Act No. 19 of 1990) to investigate an allegation of the contravention of or failure to comply with any provision of; or
- (d) prevent the Prosecutor-General to institute criminal proceedings under,

this Act or any other law.

(14) Despite any provision of this section, the Minister may prescribe, on the recommendation of the Council, the powers and functions of an inspector, in addition to those specified by this section and the manner in which an inspector must exercise or perform his or her powers and functions.

Appeals to appeal committee

50. (1) A registered person may appeal to the appeal committee against a decision imposed under section 34 or a penalty imposed under section 38.

(2) An appeal in terms of subsection (1) is made by lodging a notice of appeal -

- (a) with the registrar in the prescribed form and manner;
- (b) be lodged within 30 days of receipt of the decision under section 34 or imposition of a penalty under section 38; and
- (c) set out in detail the grounds for the appeal and the relief sought by the appellant; and
- (d) be accompanied by the prescribed fees.

(3) The registrar must submit the notice of appeal to the chairperson of the appeal committee, within five days of receipt of the notice of appeal under subsection (2).

(4) The appeal committee -

(a) must -

(i) hear and decide on an appeal submitted to it under subsection (3);

(ii) allow the appellant or his or her representative, the *pro forma* complainant, the registrar or a member of the Council, to address the appeal committee on an issue relating to the appeal; and

(iii) submit its written decision on an appeal to the registrar within a period of 60 days after receipt of the notice of appeal referred to in subsection (3);

(b) may -

(i) obtain from the appellant, the Council or from any other person the documents, particulars or information that the appeal committee may regard as necessary for the purpose of the appeal;

(ii) allow or dismiss the appeal;

(iii) amend or confirm the finding, decision or penalty appealed against;

(iv) make an order as to the payment of the costs or any other order, relating to the appeal as the appeal committee may consider appropriate;

(v) perform any other act relating to the hearing of the appeal that the Council may determine.

(5) The costs relating to the appeal referred to in subsection (4)(b)(iv) is calculated in the prescribed manner.

Reviews by High Court

51. (1) A person who is aggrieved by a decision of -

(a) the appeal committee under section 50;

(b) the Council under any provision of this Act; or

(c) the review committee under section 14,

may apply for review of the decision by the High Court.

(2) A person referred to in subsection (1) must apply for review in the manner prescribed by the Rules of the High Court of Namibia.

(3) The provisions of the Magistrates' Court Act, 1994 (Act No. 32 of 1944) relating to an appeal against a decision of magistrate's court in a criminal matter apply, with necessary changes, to an application for review to the High Court of Namibia under this section.

Delegation of powers and assignment of functions

52. (1) The Minister may delegate a power or assign a function conferred or imposed upon him or her by or under this Act to the Permanent Secretary or to any other staff member employed by the Ministry, except the powers or functions under section 5, 7, 14, 53 or 58.

(2) The Council may -

- (a) delegate to a committee, the registrar, the deputy registrar or any other person employed by the Council any power or function conferred upon it; or
- (b) assign to the registrar, to the deputy registrar or to any other person employed by the Council any power or function conferred upon it,

by or under this Act, except power to make rules under this Act.

(3) A delegation or assignment made under subsection (1) or (2) -

- (a) is made in writing; and
- (b) may be made subject to the conditions or restrictions as the Minister or the Council may determine and specify in the delegation or assignment.

(4) The Minister or the Council -

- (a) may withdraw or amend in writing a delegation or assignment made by it under subsection (1) or (2); and
- (b) is not divested of a power delegated under subsection (1) or (2) and may, without prejudice of a right, amend or set aside a decision made under that subsection.

Regulations

53. (1) The Minister may, on the recommendation of the Council, make regulations not inconsistent with the provisions of this Act relating to -

- (a) the allowances payable to members of the Council or committee for services rendered;
- (b) the conditions subject to which a registered person may practise as a traditional health practitioner, including -

-
- (i) the conducting of a practice by a registered person or by registered persons practising in partnership and the requirements for establishing a practice;
 - (ii) the name under which a registered person may conduct a practice and names that are prohibited; and
 - (iii) the manner in which a registered person may advertise his or her practice, including the different kinds of advertising that may be allowed or prohibited, the restrictions on advertising and on the name plates at the premises where the practice is conducted;
- (c) the acts which for the purposes of this Act is regarded as acts pertaining to traditional healing and the practising of the different categories of traditional healing and specifying the conditions and restrictions applicable to different categories;
- (d) the continuing additional training and development applicable to registered person or categories of registered person, including -
- (i) the attendance of seminars, lectures, meetings and the presenting thereof by registered persons;
 - (ii) the nature, contents, ambit, extent and duration of the continuing additional training and development, including the subjects, disciplines, domains, practices and ethics, and the nature and extent thereof, that must form part of the continuing additional training and development;
 - (iii) conditions pertaining to and the requirements for the continuing additional training and development, including, but not limited to, the attending or completion or presenting of study courses or refresher courses or the passing of examinations relating to the continuing additional training and development; and
 - (iv) procedures relating to presenting continuing additional training and development to registered persons.
- (e) the instituting and conducting of an improper conduct inquiry under Part 5, including -
- (i) the procedures for the lodging of a complaint with the Council against a registered person;
 - (ii) the form of a subpoena for the purpose of the attendance of a witness at an inquiry or for the production of a book, record, document or thing by that witness;
 - (iii) the form of the notice to a registered person against whom a complaint of improper conduct has been lodged to attend an inquiry relating to the complaint, the penalties for the failure

or refusal on the part of a registered person against whom a complaint, charge or allegation has been lodged to attend an inquiry relating to the complaint or for obstructing or interrupting any part of the proceedings at the inquiry;

- (iv) the leading of evidence, the recording of the proceedings and the actions to be taken against a person who fails to answer a question or who in any way delays, obstructs or disrupts the proceedings at an inquiry;
 - (v) the continuation of an inquiry after a plea has been entered, should one or more of the members of the Council not be able to continue to serve on the Council for the purpose of the inquiry;
 - (vi) the institution of inquiry proceedings afresh in the event of the members referred to in subparagraph (v) not being available to continue with the inquiry; and
 - (vii) any other matter relating to the institution and conducting of an inquiry;
- (f) the circumstances, in addition to the circumstances specified in this Act, in which a name may be removed from or restored to a register or a registered person may be suspended from practice or the suspension may be rescinded;
- (g) the manner in which the Council may perform or execute a power or function under this Act;
- (h) the conducting of inspections under section 49, in addition to the provisions of that section, including the powers of the Council relating to a report received from an inspector, including the powers to close down the practice referred to in that section for the period of time that the Council may determine;
- (i) the conditions subject to which a person may resume practising under this Act, including the examinations that he or she must pass before he or she may resume practising, if he or she has not been practising for a period of time as may be prescribed;
- (j) generally all other matters which are by this Act required or permitted to be prescribed or which the Minister considers necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) If a scope of practice, referred to under section 19(2), appears to encroach upon the scope of practice of any other health profession to which this Act does not apply, the scope of practice may only be prescribed after consultation with the other health profession council or other governing body established by law in terms of that other health profession.

(3) Different conditions relating to persons who are Namibian citizens and non-Namibian citizens may be prescribed under this section.

(4) A regulation made under this section may provide for penalties upon contravention of, or a failure to comply with, a regulation not exceeding a fine of N\$12 000 or imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

Rules

- 54.** The Council may make rules, not inconsistent with this Act, relating to -
- (a) the conducting of the business of the Council and committees;
 - (b) the manner in which the funds of the Council are handled and the books of the Council are kept;
 - (c) the functions and the conditions of service of the registrar and other employees of the Council;
 - (d) the returns and information to be furnished to the Council by a registered person; and
 - (f) any other matter that is required or permitted by or under this Act or that the Council considers expedient or necessary to make rules in order to achieve the objects of this Act.

Penalties for offences

- 55.** A person convicted of an offence in terms of -
- (a) section 9(18), 48(7) or 49(10) is liable to a fine not exceeding N\$12 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment;
 - (b) section 18(2), 25(11), 31(1) or (2) or (3), 39(4), 43(5) or 47 is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

Prescription of actions and notification of proceedings

- 56.** (1) Any claim by a person against -
- (a) the Minister;
 - (b) the Council or the Interim Council;
 - (c) a committee;
 - (d) a member of the Council, the Interim Council or of a committee; or
 - (e) a person employed by the Council or the Interim Council,

which is based on an act or omission or failure under, or in pursuance of this Act, becomes extinguished by prescription after the lapse of a period of one year calculated from the date on which the cause of action relating to that claim arose.

(2) A person who intends to institute any proceedings based on a claim referred to in subsection (1), must give written notice of his or her intention to institute a proceeding under subsection (1).

(3) A written notice by a person in terms of subsection (2) must -

(a) specify particulars of the proceedings which a person intends to institute against the persons referred to in subregulation (1), including particulars of the cause of action and the relieve a person intends to claim; and

(b) be delivered -

(i) to the Minister, if a person intends to institute proceedings against the Minister;

(ii) to the registrar, if a person intends to institute proceedings against the Council or committee;

(iii) to the registrar and the member or person referred to in paragraph (d) or (e) of subsection (1), if a person intends to institute proceedings against a member of or a person referred to in that paragraphs,

not less than 30 day but not more than 60 days before the proceedings under subsection (1) are instituted.

(4) A person may not institute any proceedings under subsection (1) unless the person has complied with subsections (2) and (3).

(5) For the purposes of this section, “the Council” includes the Interim Council.

Suspension of registered person from practice

57. (1) The Council may and subject to the other provisions of this section, suspend a registered person from practice for the period of time and subject to the conditions that the Council may determine, if the registered person -

(a) has failed to -

(i) notify the registrar -

(aa) in terms of section 23(3), of the change of his or her name, postal or physical address or telephone number;

(bb) of his or her correct name, postal or physical address or any other particulars relating to him or her or to his or her registration or practice within a period of three months after the date of a written request by the registrar by prepaid registered letter addressed to the registered person at his or her postal address as it appears in the register, to furnish the address or other particulars;

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- (ii) pay to the Council the annual fees determined under section 27(1)(c), after 30 days written notice or within any other period of time that the Council may, on good cause shown, allow after the expiry of the 30 days send by the registered person in the prescribed manner; or
 - (iii) comply with the rules, and regulations relating to continuing additional training and development made under section 53;
 - (b) has been found guilty of improper conduct and upon whom a penalty specified by section 38(1)(b) have been imposed;
 - (c) has under section 43 been found to be an impaired registered person, if the impairment appears to be not of a permanent nature;
 - (d) in the opinion of the Council, is a risk to the health and safety of a member of the public; or
 - (e) shows or expresses disrespect or contempt for or towards the Council, any of his or her members or any of the staff employed by the Council.
- (2) The Council must inform a registered person in writing -
- (a) of the intention of the Council to suspend the registered person from practice under subsection (1), excluding a suspension referred to in paragraph (b) of that subsection, not less than 30 days before the date of the intended suspension; and
 - (b) the grounds for, and the period of, the intended suspension from practice.
- (3) When a registered person receives a notice under subsection (2), he or she may submit, within a period of 14 days after receipt of the notice, a written reply to the registrar, putting forward grounds why -
- (a) he or she must not be suspended from practice;
 - (b) the suspension must be deferred, subject to the conditions that the Council may determine; or
 - (c) the intended period of suspension must be reduced.
- (4) The Council must -
- (a) when considering the suspension of a registered person from practice, under subsection (1), take into account the written reply by the registered person under subsection (3); and
 - (b) must inform a registered person in writing of his or her suspension from practice under this section, excluding a suspension referred to in subsection (1)(b), not less than seven days before the date of the commencement of the suspension, including the date of commencement, the period, and the conditions of suspension.

(5) A notice under subsections (2) or (4) must be delivered to the registered person in person or by prepaid registered post addressed to the registered person at his or her address as it appears in the register or in the prescribed manner.

(6) If a registered person is suspended from practice on the grounds specified by paragraphs (a), (c), (d) or (e) of subsection (1), he or she may submit to the registrar a written application, in the form that the Council may determine, for the rescission of the suspension, if in the case of a suspension on the grounds specified by -

- (a) paragraph (a)(i) of that subsection, the registered person has furnished to the Council his or her new name, postal address or physical address or other particulars referred to in that paragraph;
- (b) paragraph (a)(ii) of that subsection, the registered person has paid to the Council the annual fees;
- (c) paragraph (a)(iii) of that subsection, the registered person has complied, to the satisfaction of the Council, with the rules, and regulations relating to continuing additional training and development made under section 53;
- (d) paragraph (c) of that subsection, the registered person is no longer an impaired registered person;
- (e) paragraph (d) of that subsection, if the registered person is no longer a risk to the health and safety of any member of the public; or
- (f) paragraph (e) of that subsection, the registered person does no longer show or express any disrespect or contempt for or towards the Council, any of his or her members or any of the staff employed by the Council,

and if the registered person has complied with the other conditions relating to the suspension determined by the Council under subsection (1) and the prescribed conditions and has paid to the Council the fees for the rescission of the suspension determined by the Council.

(7) An application in terms of subsection (6) must -

- (a) be made in the prescribed form; and
- (b) be accompanied by -
 - (i) the prescribed documents and information;
 - (ii) the additional documents and information that the Council may require; and
 - (iii) payment of the fees determined under section 27 in respect of the application.

(8) The Council, after having considered an application for the rescission of a suspension submitted in terms of subsection (6), may -

- (a) grant the application for the rescission of the suspension, if the Council is satisfied that the registered person has complied; or
- (b) refuse the application for the rescission of the suspension, if the Council is not satisfied that the registered person has complied,

with the applicable provisions of this Act.

- (9) The Council must -
 - (a) inform the applicant in writing of a decision of the Council under subsection (8);
 - (b) issue to the applicant a certificate of rescission of suspension in the form determined by the Council, if the application for the rescission of the suspension is granted under subsection (8)(a);
 - (c) inform the applicant in writing, if the application for the rescission of the suspension is refused under subsection (8)(b), as soon as practicable and the grounds for the refusal.

(10) The registrar may perform, in the name, place and stead of the Council, the functions of the Council under subsections (2), (4)(b) and (9).

(11) The registrar may notify the public, in the prescribed form and manner, of the suspension of a registered person under this section.

- (12) The Minister may prescribe, on the recommendation of the Council -
 - (a) the circumstances under which a registered person may be suspended from practice, in addition to the circumstances specified by this section;
 - (b) the nature of disrespect or contempt referred to in subsection (1)(e);
 - (c) conditions and procedures relating to the suspension of a registered person from practice, in addition to the conditions and procedures specified by this section;
 - (d) the form and manner in which the public may be notified under subsection (11) of the suspension of a registered person from practice and the particulars of the suspension that may be notified; and
 - (e) the requirements for the rescission of a suspension under this section, including the requirements for the application for the rescission of a suspension, in addition to the requirements specified by this section.

Interim Council

58. (1) There is established a juristic person to be known as the Interim Traditional Health Practitioners Council of Namibia consists of members appointed by the Minister as set out in the Schedule.

- (2) The Interim Council must act as a forerunner to the Council.

(3) Upon the constitution of the members of the Council under section 5, the Interim Council is deemed to have been dissolved and the Schedule is deemed to have been repealed.

(4) A reference in this Act to the Council, unless the context otherwise indicates, is construed as a reference to the Interim Council.

(5) Anything done by the Interim Council is deemed to have been done by the Council.

Short title and commencement

59. (1) This Act is called the Traditional Health Practitioners Act, 2014, and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

SCHEDULE

INTERIM COUNCIL (Section 58)

Definitions

1. In this Schedule a word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

“traditional health practitioner” means a person who is a Namibian citizen or is permanent resident in Namibia and who is recognised by the majority of the inhabitants of the region, district or local authority area in which that person is ordinarily resident, to the satisfaction of the Minister, as a traditional health practitioner.

Constitution of Interim Council

2. (1) The Interim Council consists of the following members appointed by the Minister -

- (a) not less than three persons who are traditional health practitioners;
- (b) one person who is -
 - (i) registered as a pharmacist under the Pharmacy Act, 2004 (Act No. 9 of 2004);
 - (ii) staff member of the Ministry; and
 - (iii) a member of the Namibia Medicines Regulatory Council established by the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003), or of a committee established under that Act;

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- (c) one staff member of the Ministry and who has expertise and experience in primary health care matters to the satisfaction of the Minister; and
 - (d) one person who, in the opinion of the Minister, is suitably qualified, having regard to the functions of the Interim Council, to serve as a member of the Interim Council but who is not a traditional health practitioner or a staff member.

(2) Despite any provision of this Act, the Minister may appoint at any time one or more persons as a member of the Interim Council, in addition to the members appointed under subsection (1), if the Minister considers the appointment necessary or expedient, subject to the conditions and the period as the Minister may determine.

(3) The Minister must announce by notice in the *Gazette* the names of the members of the Council appointed under subsection (1) or (2).

(4) For the purpose of determining whether a person is recognised as a traditional health practitioner under section 1, the Minister may obtain information, at his or her discretion, from a person or organisation within an area in which the traditional health practitioner is resident or conducting his or her practice.

Functions and powers of Interim Council

3. The Interim Council must exercise the powers and perform the functions of the Council conferred or imposed upon the Council by or under this Act.

Registrar

4. The registrar referred to in section 16 is the registrar of the Interim Council.

Vacation of office and filling of vacancies

5. Section 7 apply with necessary changes to the members of the Interim Council.

Categories of traditional healing

6. Subject to this Act, the Interim Council may, when registering a person to practise as a traditional health practitioner, register the person in one or more of the following categories of traditional healing -

- (a) specialist herbalist;
- (b) faith herbalist;
- (c) faith healer;
- (d) diviner herbalist;
- (e) diviner;

- (f) traditional birth attendant; or
 - (g) any other prescribed category.
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