NOTE: HIGH COURT ORDER IN [2025] NZHC 4045 GRANTING INTERIM SUPPRESSION OF THE NAMES OF MEDICAL WITNESSES REMAINS IN FORCE.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA855/2025
[2026] NZCA 8

BETWEEN	PROFESSIONAL ASSOCIATION FOR TRANSGENDER HEALTH AOTEAROA INCORPORATED Appellant
AND	MINISTER OF HEALTH Respondent

Hearing:	26 January 2026 (further information received 27 January 2026)
Court:	French, Palmer and Collins JJ
Counsel:	V E Casey KC, E B Moran and T J Keenan for Appellant A M Powell, V A Howell and C D Fuller for Respondent
Judgment:	5 February 2026 at 12 pm

JUDGMENT OF THE COURT

A The application to adduce fresh evidence is granted.

B The appeal is dismissed.

C There is no order as to costs.

REASONS OF THE COURT

(Given by Palmer J)

Summary

[1] On 17 November 2025, on advice of the Minister of Health (the Minister), the Medicines (Restriction on Prescribing Gonadotropin-releasing Hormone Analogues) Amendment Regulations 2025 (the Regulations) were made by Order in Council. Their effect is to ban new prescriptions for puberty blockers to treat gender dysphoria or gender incongruence in children and adolescents. The Professional Association for Transgender Health Aotearoa Inc (PATHA) challenges the validity of the Regulations in the High Court. A hearing is set down for two days starting on 6 May 2025. PATHA sought interim orders directing the Minister to take all necessary steps to suspend the Regulations pending further order of the Court. The High Court declined that application but declared that the Crown should take no steps to enforce the Regulations pending determination of the application for judicial review.[1] PATHA appeals this decision.

[2] To go further than the relief ordered by the High Court, this Court would need to be satisfied that that relief is not effective to preserve PATHA's position.[2] That depends on the risk of private prosecution or successful disciplinary action initiated by statutory bodies other than the Crown. The Crown submits that risk is highly unlikely and the evidence before us provided by PATHA is consistent with that. We agree that, in light of the High Court's order preventing enforcement of the Regulations, it would be extraordinary for any public body to facilitate a complaint about the prescription of puberty blockers as unethical because it is illegal, when doing so would disregard the intent of an order of the High Court which has, in effect, suspended the enforcement of the Regulations. Taking such steps would be an unduly narrow and technical interpretation of the rule of law. In light of this Court making that clear in this judgment, the relief granted by the High Court is effective to preserve PATHA's position. Accordingly, the appeal is dismissed. Costs lie where they fall.

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1 *Professional Association for Transgender Health Aotearoa Inc v Minister of Health* [2025] NZHC 4045 [judgment under appeal] at [187].

2 See *Carlton & United Breweries Ltd v Minister of Customs* [1986] 1 NZLR 423 (CA) [*Carlton & United Breweries Ltd*] at 430 per Cooke J; and *Minister of Fisheries v Antons Trawling Company Ltd* [2007] NZSC 101, (2007) 18 PRNZ 754 at [3].

What happened?

The policy and Regulations

[3] The High Court judgment provides a comprehensive account of the factual background.[3] For the purposes of this appeal regarding interim orders, we summarise the key points.

[4] Gonadotropin-releasing hormone analogues are commonly known as "puberty blockers". From 21 November 2024 to 20 January 2025, the Ministry of Health (the Ministry) conducted public consultation on whether there should be additional safety measures for the use of puberty blockers in young people with gender-related health needs.[4] In July 2025, the Ministry provided advice to the Minister, identifying four policy options and advised that clinicians retaining prescribing discretion best met the policy objectives.[5] Banning new prescriptions was described as having a high risk of adverse health outcomes due to possible negative impacts on mental health.[6] We do not need to review the evidence in detail, which will be the subject of further argument in the High Court.

[5] On 10 September 2025, the Minister took a paper to the Cabinet Social Outcomes Committee (the Committee), which he chaired, asking ministers to agree which of the four policy options should be implemented.[7] The Committee agreed to "regulate to prohibit puberty blocker prescribing to treat gender incongruence or dysphoria in new patients, while making youth gender services more accessible" and invited the Minister to report back for approval for regulations to be submitted to the Executive Council.[8]

[6] On 12 November 2025, the Committee authorised the submission to the Executive Council of the Regulations accordingly.[9] On 17 November 2025, under

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3 Judgment under appeal, above n 1, at [26]–[49].
4 At [26]–[31].
5 At [42]–[43].
6 At [43].
7 At [44] and [110].
8 Cabinet Minute "Cabinet Social Outcomes Committee Minute — Minute of Decision" (10 September 2025) SOU-25-MIN-0104 at [5] and [9].
9 Judgment under appeal, above n 1, at [45].

s 105 of the Medicines Act 1981, the Regulations were approved by the Executive Council and then signed by the Administrator.[10] On 19 November 2025, the Government announced the decision and on 20 November 2025 the Regulations were published in the Gazette.[11] They ban the prescription of puberty blockers for the purpose of suppressing puberty in a child or adolescent with gender incongruence or gender dysphoria.[12] Puberty blockers remain available for other purposes, including to treat precocious puberty in young children.

[7] The Regulations were due to come into effect on 19 December 2025.[13] Before they did, on 1 December 2025, the same day as the challenge in these proceedings was filed in the High Court, the Regulations were amended to ensure the ban does not inadvertently apply to adults who may use puberty blockers to undergo gender transition.[14]

Application for judicial review and interim orders

[8] PATHA is an interdisciplinary professional organisation that promotes the health, wellbeing and rights of transgender people. It says it "represents the vast majority of health professionals engaged with transgender healthcare in New Zealand".[15] It opposes the ban on puberty blockers in the Regulations on the basis that it "will cause immense harm, both directly and indirectly, to transgender children and their whānau".

[9] On 1 December 2025, PATHA applied to the High Court for judicial review of the Regulations, seeking a declaration that the Regulations are unlawful and an order quashing them. The statement of claim, which was drafted on the basis of only the press statements, includes nine grounds of review: failure to consult; wrong decision-maker; improper purpose; evidential threshold not met; three grounds under the New Zealand Bill of Rights Act 1990; irrationality and errors of fact; and relevant

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10 At [45]–[46].
11 At [1] and [46]
12 Medicines (Restriction on Prescribing Gonadotropin-releasing Hormone Analogues) Amendment Regulations 2025, reg 4.
13 Judgment under appeal, above n 1, at [47].
14 At [49], citing Medicines (Restriction on Prescribing Gonadotropin-releasing Hormone Analogues) Amendment Regulations (No 2) 2025.
15 At [23].

and irrelevant considerations. The statement of claim is expected to be amended before the High Court hearing, in light of disclosure.

[10] Ms Casey KC, for PATHA, says that the case was not then ready for an urgent hearing primarily because the Crown did not release any of the decision papers or advice relating to the ban. So, also on 1 December 2025, PATHA applied to the High Court for urgent interim orders in its inherent jurisdiction, directing the Minister "to take all necessary steps to suspend the [Regulations] pending further order of the Court". The Minister opposed the application. The case was heard in the High Court on 9 December 2025.

Judgment under appeal

[11] On 17 December 2025, in the High Court at Wellington, Wilkinson-Smith J issued judgment on the application for interim orders. After traversing the factual context and substantive evidence, the Judge held that, while interim relief under s 15 of the Judicial Review Procedure Act 2016 (JRPA) "would have been unexceptional given the lack of any apparent urgency in bringing a ban into effect",[16] "no order under s 15 is possible" because the ban was not publicly known until two days after the Regulations were signed and there are no further steps to be taken to bring the Regulations into force.[17]

[12] The Judge stated that the Court has jurisdiction to make mandatory interim orders but that they will be exceptionally rare where their effect would suspend or make unenforceable a regulation, and there are strong policy reasons against making mandatory interim orders or declarations requiring positive action.[18] She observed that interim orders will only be granted if "reasonably necessary" to preserve the position of the applicant, the Court has a wide discretion to consider all the circumstances of the case, and an order should not go further than reasonably necessary to protect an applicant's current position.[19]

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16 At [20].

17 At [148]–[149].

18 At [151], citing *New Zealand Federation of Commercial Fishermen Inc v Minister of Fisheries* HC Wellington CIV-2008-485-2016, 26 September 2008 at [86] and *Taylor v Chief Executive of the Department of Corrections* [2010] NZCA 371, [2011] 1 NZLR 112.

19 Judgment under appeal, above n 1, at [153]–[154], citing *Carlton & United Breweries Ltd*, above n 2 and *Woodhouse v Auckland City Council* (1984) 1 PRNZ 6 (HC).

[13] Applying that to the facts here, the Judge held:

(a) She was satisfied that the power exists to grant mandatory injunctive relief.[20]

(b) PATHA had a position to preserve: the status quo before the Regulations were passed.[21]

(c) The claims that there was a lack of consultation and that the wrong decision-maker exercised the statutory power to make the Regulations are both arguable, as the Crown accepted, and the remaining causes of action are also not without some apparent merit.[22]

(d) The total ban appears to make negative consequences inevitable for some transgender youth and there is an argument it is discriminatory.[23] There is no evidence of a particular need to act urgently to prevent new prescriptions.[24] So, if she could grant relief until the substantive hearing, she would do so.[25]

[14] She concluded:

> [183] The orders sought by PATHA would represent an extraordinary step and would likely be ineffective. The Minister has no power to direct the Governor-General. The Court, in granting injunctive relief against the Crown in ordinary circumstances, is limited to making a declaration that the Minister should not do something. I need not decide if an order of the type sought by PATHA would ever be available. I do not think that the circumstances here are so exceptional that I can or should make an order directing the Minister to advise the Governor-General to amend or repeal the regulations. Such an order would potentially pit the Court against the Executive Council, and I do not think it is constitutional.
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> [184] I am prepared, however, to grant interim relief in a different form. That is because … the timing of the regulations coupled with the lack of notice that a ban was contemplated had the effect of taking PATHA and the whole transgender community by surprise. It

20 Judgment under appeal, above n 1, at [165].
21 At [171] and [173].
22 At [174]–[177].
23 At [178].
24 At [179].
25 At [180].

> prevented PATHA seeking interim relief under s 15 of the [JRPA]. Such relief would have been relatively unexceptional given the lack of any apparent urgency in bringing a ban into effect. As I have said, puberty blockers are reversible; they have no apparent adverse health effects in the short term.
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> [185] Standing back and looking at the overall justice of the situation, a delay in enforcement of the regulations is the best option now available. The potential for lack of enforcement is likely to be relied on only in extreme circumstances, but it is the potential for an extreme circumstance to arise that persuades me that there must be some path available for a clinician to decide to prescribe puberty blockers in the period before the judicial review can be heard.
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> **Result**
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> [186] The application for interim relief is granted.
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> [187] I make a declaration that the Crown should take no steps to enforce the Medicines (Restriction on Prescribing Gonadotropin-releasing Hormone Analogues) Amendment Regulations 2025 and the Medicines (Restriction on Prescribing Gonadotropin-releasing Hormone Analogues) Amendment Regulations (No 2) 2025 pending the judicial review being determined.

[15] The application for judicial review, and an accompanying application for permanent name suppression of PATHA's medical witnesses, are set down to be heard in the High Court at Wellington for two days from 6 May 2025. The Judge suppressed the names of the medical witnesses in the meantime; an order we observe.[26]

The appeal

[16] On 17 December 2025, PATHA applied to the High Court for leave to appeal to this Court the form of the interim orders. On 18 December 2025, the High Court declined the application.[27] The Judge stated:

> [17] I do not consider that there is any merit in the application for leave to appeal. While I accepted in my decision that there was potentially jurisdiction to make orders of the type sought by the applicant in very exceptional circumstances (and indeed, that was not disputed by the Crown), the issue is whether those orders should be made in the present case.
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> [18] The orders sought by PATHA directing the Minister to take all necessary steps to suspend the regulations pending further order of the Court would involve orders effectively compelling action by the Executive Council.

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26 At [189]–[192].

27 *Professional Association for Transgender Health Aotearoa Inc v Minister of Health* [2025] NZHC 4105 at [24].

> The application for interim relief suggested that "obvious steps" for the Minister to take would be to advise the Governor-General to amend the commencement date of the regulations, or to repeal them altogether.
>
> [19] Advice to the Governor-General as to promulgation of law is given by the Executive Council.
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> [20] The Minister can only recommend action. It is then for the Executive Council to authorise any amendment and for the Governor General to sign the amendment to bring the amendment into effect.
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> [21] Making an order of the type sought by PATHA would be an extraordinary step and only justified where a party would suffer serious, immediate and irreparable harm. Even then such an order raises constitutional issues that may be insurmountable.
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> [22] In this case, the evidence does not establish the level of imminent harm that would justify such an order, even if available.
>
> [23] I consider that no arguable error of law has been identified.

[17] On 18 December 2025, PATHA applied to this Court for special leave to appeal the High Court's judgment. On 19 December 2025, French P and Palmer J heard from counsel by teleconference. They sought clarification from the Crown as to whether the Ministry would consent to any variation of the interim order. The Solicitor-General advised that counsel were instructed not to so consent. French P and Palmer J granted leave to appeal, with reasons to follow.[28] They now record that their reasons were that the question at issue is capable of bona fide and serious argument and is of sufficient public importance to outweigh the cost and delay of an appeal.[29]

[18] The parties consented to the making by this Court of a confidentiality order in respect of certain information contained in the case on appeal. This Court made the order sought on 28 January 2026.

[19] PATHA applies for leave to adduce fresh evidence for the appeal. The Minister does not oppose the application, on the basis of agreed conditions. We grant the application accordingly.

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28 *Professional Association for Transgender Health Aotearoa Inc v Minister of Health* [2025] NZCA 696.

29 See *Greendrake v District Court of New Zealand* [2020] NZCA 122 at [6].

[20] In its notice of appeal, PATHA seeks:

(a) a declaration directing the Minister to take all necessary steps to suspend the Regulations pending further order of the High Court; or, alternatively

(b) an order suspending the Regulations pending further order of the High Court; and

(c) any other relief the Court considers just.

Law of interim orders in judicial review

[21] Section 15 of the JRPA provides:

> **15 Interim orders**
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> (1) At any time before the final determination of an application, the court may, on the application of a party, make an interim order of the kind specified in subsection (2) if, in its opinion, it is necessary to do so to preserve the position of the applicant.
>
> (2) The interim orders referred to in subsection (1) are interim orders—
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> (a) prohibiting a respondent from taking any further action that is, or would be, consequential on the exercise of the statutory power:
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> (b) prohibiting or staying any proceedings, civil or criminal, in connection with any matter to which the application relates:
>
> (c) declaring that any licence that has been revoked or suspended in the exercise of the statutory power, or that will expire by the passing of time before the final determination of the application, continues and, where necessary, that it be deemed to have continued in force.
>
> (3) However, if the Crown is a respondent,—
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> (a) the court may not make an order against the Crown under subsection (2)(a) or (b); but
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> (b) the court may, instead, make an interim order—
>
> (i) declaring that the Crown ought not to take any further action that is, or would be, consequential on the exercise of the statutory power:

(ii) declaring that the Crown ought not to institute or continue any proceedings, civil or criminal, in connection with any matter to which the application relates.

(4) An order under subsection (2) or (3) may—

(a) be made subject to such terms and conditions as the court thinks fit; and

(b) be expressed to continue in force until the application is finally determined or until such other date, or the happening of such other event, as the court may specify.

[22] The reason for the distinction between s 15(2) and s 15(3) is that, as a matter of constitutional form, the Crown is not subject to injunctions. However, in order to uphold the rule of law, the Crown is expected to, and in New Zealand does, act consistently with court declarations.

[23] The general approach to the predecessor of s 15 was set out by this Court in 1986 in *Carlton & United Breweries Ltd v Minister of Customs*,[30] and summarised by the Supreme Court in 2007 in *Minister of Fisheries v Antons Trawling Company Ltd*:[31]

> [3] Before a Court can make an interim order under s 8 of the Judicature Amendment Act 1972 it must be satisfied that the order sought is reasonably necessary to preserve the position of the applicant. If that condition is satisfied the Court has a wide discretion to consider all the circumstances of the case, including the apparent strengths or weaknesses of the applicant's claim for review, and all the repercussions, public and private, of granting interim relief.

[24] In *Taylor v Chief Executive of the Department of Corrections*, this Court held there was no jurisdictional bar to an order or declaration requiring a respondent to take positive steps, though there are strong policy reasons against them and they would be relatively rare.[32] The Court said, again in relation to the predecessor to s 15:

> [23] As these statements indicate, s 8(1) is broadly expressed. The exercise of discretion where necessary for the purpose of preserving the position of the applicant is central but it is not appropriate to limit the discretion by reading qualifications into its broad terms. Section 8(1)(c) expressly empowers a court to declare that any licence that has been revoked or suspended in the exercise of the statutory power will continue and, if necessary, be deemed to have continued in force. By definition this empowers a Court to declare that a state of affairs that previously existed and which has been revoked should

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30 *Carlton & United Breweries Ltd*, above n 2, at 430 per Cooke J.

31 *Minister of Fisheries v Antons Trawling Company Ltd*, above n 2 (footnote omitted).

32 *Taylor v Chief Executive of the Department of Corrections*, above n 18, at [26]–[27].

> resume pending the substantive hearing. Subsection (1)(c) can apply against the Crown as respondent. It gives the Court a declaratory rather than a directive power, and is not excluded by subs (2) from application to the Crown, as are subss (1)(a) and (b).

[25] It is well established that the validity of regulations can be the subject of challenge by way of judicial review. The fact the power to make regulations has been delegated by Parliament to the Governor-General in the Executive Council does not impede the Court's responsibility to ensure that such a decision has been made according to law.[33] The promulgation and validity of an Order in Council is clearly susceptible to challenge by judicial review under the JRPA.[34]

[26] The High Court has also previously held that preservation of a position can extend to restoring an applicant to a position they would have been in but for the alleged unlawfulness.[35]

Submissions

[27] Ms Casey, for PATHA, submits the Court erred in three respects:

(a) The Court was wrong to hold that mandatory orders relating to regulations already promulgated are constitutionally inappropriate or unavailable. The Court has inherent jurisdiction to supervise the lawful exercise of executive power, including the Minister's exercise of power under s 105 of the Medicines Act to advise the making of regulations, and decisions by the Executive Council. It has jurisdiction to quash regulations if they are made unlawfully and power under s 15 of the JRPA to prevent them being made or published. Mandatory interim orders, including of the Minister's exercise of the power under s 105, are unusual but well established.

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33 See, for example, *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 (CA), at 188–189 and 196.

34 *New Zealand Māori Council v Attorney-General* [1996] 3 NZLR 140 (CA) at 164.

35 W*hiskey Jacks Rotorua Ltd v Minister of Internal Affairs* HC Wellington CIV-2003-485-1901, 11 September 2003 at [40]–[41], citing *Kiwi Foundation Ltd v Attorney-General* HC Wellington CP346/97, 18 December 1997; and *Greer v Department of Corrections* [2018] NZHC 1240, [2018] 3 NZLR 571 at [22]–[26].

(b) The Court was in clear error in applying a threshold of extraordinary circumstances or irreparable harm for interim orders relating to regulations, rather than the established approach endorsed in *Carlton & United Breweries Ltd* and *Minister of Fisheries v Antons Trawling Company Ltd* .[36]

(c) The Court was wrong in misapprehending that the order made would be effective to provide the interim relief the Court determined was warranted. A prohibition on enforcement will not allow prescriptions to be made when it is clinically appropriate. The orders do not affect private prosecutions or disciplinary action by professional bodies.

[28] As an alternative to the relief it seeks, PATHA supports the Court simply suspending the Regulations pending determination of the application for judicial review. The Court has the power to make interim orders regarding an instrument under challenge under s 15(2)(c) of the JRPA, and to make final orders quashing unlawful regulations under s 16. PATHA submits there is no principled basis to restrict the Court from taking a lesser step of suspending regulations on an interim basis where that is appropriate in the interests of justice, as it can bylaws.[37] There is no constitutional objection to suspending the operation of regulations by directing that they not be implemented or enforced.[38]

[29] Mr Powell, for the Minister, submits the promulgation of a regulation is not the same as any exercise of executive power because there has been no executive power to make, alter or repeal a law since at least 1688. The Court equally has no such function, which is only carried out by Parliament. The Court's role is to interpret the scope of the empowering provision to examine whether regulations are made within it. Where the Court has not determined that, the Court cannot direct the law to be modified, repealed or replaced.[39] The Judge did not err. The Judge correctly applied

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36 Referring to *Carlton & United Breweries Ltd*, above n 2, at 430 per Cooke J and *Minister of Fisheries v Antons Trawling Company Ltd*, above n 2, at [3].

37 Referring to *Hart v Marlborough District Council* [2023] NZHC 2714 at [78]–[83].

38 *New Zealand Federation of Commercial Fishermen Inc v Minister of Fisheries*, above n 18; and *Minister of Fisheries v Antons Trawling Company Ltd,* above n 2.

39 Referring to *R v Secretary of State for Transport, ex parte Factortame Ltd (No 2)* [1991] 1 AC 603 (HL).

the test in *Carlton & United Breweries Ltd*. It would be rare and exceptional to for the Court to exercise its jurisdiction to make mandatory interim orders, which the Crown accepts exists, to suspend a regulation or make it unenforceable pending judicial review. It would be constitutionally inappropriate to direct the Minister to advise the Governor-General to amend or repeal the Regulations. The interim relief ordered in exercise of the Court's wide discretion is effective and the only form available.

Should further interim orders be made?

[30] The essential question we need to consider on appeal is whether the High Court was plainly wrong in exercising its discretion to grant the relief it did, rather than to grant the relief PATHA sought, which would have the Minister take active steps to prevent the Regulations coming into force. Alternatively, PATHA asks this Court to suspend the Regulations until the judicial review is determined.

[31] Following the Supreme Court's approach in *Minister of Fisheries v Antons Trawling Company Ltd*, the first question is whether we are satisfied that the order sought is reasonably necessary to preserve the position of the applicant.[40] The High Court was satisfied that PATHA had a position to preserve and that declaring the Crown should take no steps to enforce the Regulations would preserve that position.[41] To go further we would need to be satisfied that that relief is not effective to preserve PATHA's position.

[32] PATHA submits the relief granted is not effective because it does not necessarily inhibit private prosecutions or disciplinary action by professional bodies based on health practitioners' professional and ethical standards and the Code of Health and Disability Services Consumers' Rights (the Code). PATHA has provided evidence of threats of complaints against practitioners by anti-transgender lobby groups. But Ms Casey also submits that if this Court is persuaded there is no prospect of adverse action, and/or can provide further assurance that the relief granted is sufficient to preserve PATHA's position in that regard, further orders would not be

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40 *Minister of Fisheries v Antons Trawling Company Ltd*, above n 2, at [3].
41 Judgment under appeal, above n 1, at [171] and [173]

necessary. Mr Powell submits it is highly unlikely that disciplinary action would be taken where the High Court has directed the Regulations are not to be enforced. The risk of private prosecution, which must be approved by a Registrar or District Court judge who will act consistently with the High Court's order, is negligible.

[33] Right 4(2) of the Code states that "[e]very consumer has the right to have services provided that comply with legal … standards". Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand (the Medical Council) has also issued a statement entitled *Good Prescribing Practice*, which aims to assist doctors to maintain good prescribing practice.[42] It states that it may be used by the Health Practitioners Disciplinary Tribunal, the Medical Council and the Health and Disability Commissioner as a standard by which practitioners' conduct is measured. It advises practitioners to "[n]ever prescribe indiscriminately, excessively or recklessly" and states that "[i]t is unethical to provide any treatment that is illegal or detrimental to the health of the patient".[43]

[34] Ms Casey also points out that the Ministry's website says:[44]

> On 17 December 2025, the High Court made a declaration that the Crown should take no steps to enforce the regulations pending the result of a full judicial review.
>
> However, it's important to note that the regulations have not been set aside and are in force from 19 December 2025.
>
> The Ministry of Health, as the enforcement agency of the Medicines Act 1981, will abide by the order set out by the Court and will not pursue enforcement of the regulations. This will be upheld until the conclusion of the substantive Judicial Review.

[35] The High Court decided that the enforcement of the Regulations should be delayed, noting that they appear to make negative consequences inevitable, there is no evidence of a particular need to act urgently, and puberty blockers are reversible.[45] The Judge did not consider she could go further.[46]

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42 Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand *Good Prescribing Practice* (2024).

43 At [1].

44 Ministry of Health | Manatū Hauora "Puberty blockers" (23 December 2025) <www.health.govt.nz>.

45 Judgment under appeal, above n 1, at [178]-[179], and [185].

46 At [183].

[36] The Health and Disability Commissioner is an independent Crown entity established by the Health and Disability Commissioner Act 1994.[47] The Health Practitioners Disciplinary Tribunal is a Tribunal established by the Health Practitioners Competence Assurance Act 2003.[48] The Medical Council was established by the Medical Practitioners Act 1914 and has continued since then pursuant to subsequent Acts.[49]

[37] The evidence before us suggests the risk of action by the Medical Council or the Health and Disability Commissioner and the risk of criminal conviction is low. We appreciate, as does the Crown, that even a complaint can have negative consequences for a practitioner. But we agree with the Crown that, in light of the High Court's order preventing enforcement of the Regulations, it would be extraordinary for any of these public bodies to facilitate a complaint about the prescription of puberty blockers as unethical because it is illegal, when doing so would disregard the intent of an order of the High Court which has suspended the enforcement of the Regulations. Such a view would be an unduly narrow and technical interpretation of the rule of law. The same applies to a private prosecution. The Regulations may be "in force" but the High Court has declared that they are not to be "enforced" by the Crown. No doubt the High Court could consider similar applications for other interim orders too.

[38] In light of this Court making that clear in this judgment, the relief granted by the High Court is effective to preserve PATHA's position.

[39] Accordingly, there is no need for this Court to consider all the other circumstances of this case relevant to whether further interim relief should be granted. We make three points:

(a) First, this judgment must not be taken to comment on the merits of the substantive judicial review. The Crown conceded in the High Court that grounds of review were arguable.[50] The High Court considered the

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47 Health and Disability Commissioner Act 1994, s 8.
48 Health Practitioners Competence Assurance Act 2003, s 84.
49 Medical Practitioners Act 1914, s 3. See also Medical Practitioners Act 1995, s 122; and Health Practitioners Competence Assurance Act, sch 2.
50 Judgment under appeal, above n 1, at [174].

merits of the case were sufficiently strong to warrant interim orders and there was no challenge to that on appeal. The judicial review is still to be heard in the High Court on the basis of evidence which has yet to be filed.

(b) Second, the Crown made a submission that might be taken to suggest that different principles apply to interim relief in judicial review of the validity of regulations than of other executive decisions. This Court is not to be taken to be endorsing or otherwise commenting on submission.

(c) Third, counsel made submissions on whether the Court has the power to "suspend" regulations as part of interim relief, for example by declaring them to be of no legal effect for a temporary period of time. Counsel could locate no existing authorities on that particular point and one text describes High Court authorities on the general point of interim orders in relation to the validity of subordinate legislation as "divided".[51] This Court is not to be taken to be expressing a view on that issue either, since it does not need to be decided here.

Costs

[40] Both parties sought costs. The Crown submits costs should follow the event. PATHA submits that it should not have to pay costs because it is pursuing public interest litigation and has no particular stake in the outcome other than on the basis of the professionalism of clinicians and the needs of the communities they serve.

[41] PATHA has not succeeded in its appeal. However, it has gained further clarity and assurance from this Court as to the implications of the High Court's order, which it would not have gained otherwise. We accept it was in the public interest for the issue to be pursued. Costs will lie where they fall.

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[51] Ross Carter, Jason McHerron, and Ryan Malone *Subordinate Legislation in New Zealand* (LexisNexis, Wellington, 2013) at [12.9.3].

Result

[42] The application to adduce fresh evidence is granted.

[43] The appeal is dismissed.

[44] There is no order as to costs.

Solicitors:
DLA Piper, Wellington for Appellant
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent