

# Health Care Complaints Act 1993 No 105

[1993-105]



New South Wales

## Status Information

### Currency of version

Historical version for 6 December 2002 to 26 November 2003 (accessed 6 October 2024 at 19:17)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Does not include amendments by**
  - [Dental Practice Act 2001 No 64](#) (not commenced)
  - [Optometrists Act 2002 No 30](#) (not commenced)
  - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
  - [Nurses Amendment Act 2003 No 45](#) (not commenced)
  - [Podiatrists Act 2003 No 69](#) (not commenced)
- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2003](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 20 November 2003

# Health Care Complaints Act 1993 No 105



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# Health Care Complaints Act 1993 No 105



New South Wales

An Act to provide for the making, conciliation, investigation and prosecution of health care complaints; to constitute a joint committee of members of Parliament, the Health Care Complaints Commission and the Health Conciliation Registry and to specify their functions; to amend certain Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Health Care Complaints Act 1993*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects of this Act

The objects of this Act are as follows:

- (a) to facilitate the maintenance of standards of health services in New South Wales,
- (b) to promote the rights of clients in the New South Wales health system by providing clear and easily accessible mechanisms for the resolution of complaints,
- (c) to facilitate the dissemination of information about clients' rights throughout the health system,
- (d) to provide an independent mechanism for assessing whether the prosecution of disciplinary action should be taken against health practitioners who are registered under health registration Acts.

### 4 Definitions

In this Act:

**authorised person** means an officer of the Commission who is authorised as referred to in section 31, and includes the Commissioner.

**client** means a person who uses or receives a health service, and includes a patient.

**Commission** means the Health Care Complaints Commission constituted by section 75.

**complainant** means:

- (a) the person making a complaint, except as provided by paragraph (b), or
- (b) the client on whose behalf a complaint is made if the complaint is made by a person chosen by the client as his or her representative for the purpose of making the complaint.

**complaint** means a complaint made under this Act or a complaint made under another Act that is able to be dealt with by the Commission under this Act.

**conciliator** means a person appointed to be a conciliator under section 89.

**Director-General** means the Director-General of the Department of Health.

**exercise** of a function includes the performance of a duty.

**function** includes a power, authority or duty.

**Health Conciliation Registry** means the Health Conciliation Registry constituted by section 85.

**health organisation** means a body that provides a health service (not being a health practitioner).

**health practitioner** means a natural person who provides a health service (whether or not the person is registered under a health registration Act).

**health registration Act** means any of the following Acts:

- [Chiropractors Act 2001](#)
- [Dental Technicians Registration Act 1975](#)
- [Dentists Act 1989](#)
- [Medical Practice Act 1992](#)
- [Nurses Act 1991](#)
- [Optical Dispensers Act 1963](#)
- [Optometrists Act 1930](#)
- [Osteopaths Act 2001](#)
- [Pharmacy Act 1964](#)
- [Physiotherapists Act 2001](#)



- [Podiatrists Act 1989](#)
- [Psychologists Act 2001](#).

**health service** includes the following services, whether provided as public or private services:

- (a) medical, hospital and nursing services,
- (b) dental services,
- (c) psychiatric services,
- (d) pharmaceutical services,
- (e) ambulance services,
- (f) community health services,
- (g) health education services,
- (h) welfare services necessary to implement any services referred to in paragraphs (a)–(g),
- (i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, psychologists and optical dispensers,
- (j) services provided by dietitians, masseurs, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers,
- (k) services provided in other alternative health care fields,
- (l) a service prescribed by the regulations as a health service for the purposes of this Act.

**health service provider** means a person who provides a health service (being a health practitioner or a health organisation).

**Joint Committee** means the Committee on the Health Care Complaints Commission appointed as referred to in section 64.

**officer of the Commission** means a person who is employed under section 82 (1) or whose services are made use of under section 82 (2).

**parties to a complaint** means the complainant and the person against whom the complaint is made.

**registered** includes enrolled.

**registration authority** means the person who has the function, under a health registration Act, of determining an application for registration under the Act.

## **5 Act binds the Crown**

This Act binds the Crown.

## **6 Notes in the text**

Notes and charts appearing in this Act are explanatory notes and do not form part of this Act. They are provided to assist understanding.

# **Part 2 Complaints**

## **Division 1 The right to complain**

### **7 What can a complaint be made about?**

- (1) A complaint may be made under this Act concerning:
  - (a) the professional conduct of a health practitioner, or
  - (b) a health service which affects the clinical management or care of an individual client.
- (2) A complaint may be made against a health service provider.
- (3) A complaint may be made against a health service provider even though, at the time the complaint is made, the health service provider is not qualified or entitled to provide the health service concerned.

### **8 Who may make a complaint?**

A complaint may be made by any person including, in particular, the following:

- the client concerned
- a parent or guardian of the client concerned
- a person chosen by the client concerned as his or her representative (including a lawyer) for the purpose of making the complaint
- a health service provider
- a member of Parliament
- the Director-General
- the Minister.

### **9 How is a complaint made?**

- (1) A complaint is made by lodging the complaint in writing with the Commission.

- (2) The complaint is to include particulars of the allegations on which it is founded.
- (3) It is the duty of staff of the Commission to help a person to make a complaint if the person requests assistance to do so.

**Note—**

This section does not prevent a person who wishes to make a complaint from first talking to the Commission about it. However, a complaint cannot be acted on until it is put in writing.

## **Division 2 Liaising with registration authorities**

### **10 Notifying registration authorities of complaints**

- (1) If a complaint made under this Act to the Commission is made against or directly involves a health practitioner who is or has been registered under a health registration Act, the Commission must notify the appropriate registration authority of the complaint.
- (2) The complaint is to be so notified as soon as practicable after it is made.

### **11 Complaints made to registration authorities**

When, in accordance with a health registration Act, a registration authority notifies the Commission of a complaint made under the health registration Act, the complaint is taken to have been made in accordance with this Act to the Commission.

### **12 Consultation between the Commission and a registration authority**

- (1) Before determining whether to investigate a complaint, to refer the complaint for conciliation or to discontinue dealing with the complaint, the Commission must consult with the appropriate registration authority, subject to this section.
- (2) The regulations may prescribe circumstances, such as cases of urgency, where the Commission may consult with a prescribed person on behalf of the appropriate registration authority instead of consulting with the registration authority itself and where the prescribed person may exercise the other functions of the registration authority under this Division.

### **13 The outcomes of consultation**

- (1) If either the Commission or the appropriate registration authority (or both) is (or are) of the opinion that a complaint should be investigated, it must be investigated.
- (2) If neither the Commission nor the appropriate registration authority is of the opinion that the complaint should be investigated but if either (or both) is (or are) of the opinion that it should be referred for conciliation, it must, if the parties to the complaint consent, be referred to the Health Conciliation Registry for conciliation in accordance with Division 8.

#### **14 Suspension of action by registration authority**

- (1) A registration authority must not take any action under a health registration Act concerning a complaint while it is subject to investigation by the Commission or conciliation by the Health Conciliation Registry.
- (2) This section does not limit any power of a registration authority under a health registration Act to do anything to protect the life or the physical or mental health of any person.

#### **15 Provision of information to registration authorities**

- (1) A registration authority may, at any time, request information from the Commission concerning a specified complaint that is made against or directly involves a health practitioner who is or has been registered under the health registration Act relevant to the registration authority.
- (2) The Commission must supply the information requested if it is reasonable to do so.

**Note—**

Division 2 enables the health professional registration boards and the Commission to act in collaboration with each other. The Division will allow complete information sharing between the two arms in the disciplinary system, with a decision to investigate a complaint being made only after there has been consultation between the Commission and the registration authority. Where a disagreement occurs as to the appropriate action, both bodies will retain the ability to refer the matter for investigation, thus creating an internal checking method for all decisions which may result in disciplinary action. This two-pronged system will also apply to decisions to refer complaints for conciliation.

### **Division 3 Notification and withdrawal of complaints**

#### **16 Persons to be notified of complaint**

- (1) Within 14 days after receiving a complaint (whether made under this Act or another Act), the Commission must give written notice of the making of the complaint, the nature of the complaint and the identity of the complainant to the person against whom the complaint is made.
- (2) The Commission may give a copy of the complaint to the person against whom the complaint is made.
- (3) This section does not require the Commission to give notice on receiving a complaint if it appears to the Commission, on reasonable grounds, that the giving of the notice will or is likely to:
  - (a) prejudice the investigation of the complaint, or
  - (b) place the health or safety of a client at risk, or
  - (c) place the complainant or another person at risk of intimidation or harassment.

- (4) However, the Commission must review a decision to withhold the giving of notice from time to time and must, in any event, give notice to the person against whom the complaint is made not later than 60 days after the complaint is received.

### **17 Director-General to be notified of complaint made against a health organisation**

On receiving a complaint against a health organisation, the Commission must give written notice of the making of the complaint, the nature of the complaint and the identity of the complainant to the Director-General.

### **18 Can a complaint be withdrawn?**

- (1) A complainant may withdraw the complaint at any time by notice in writing to the Commission.
- (2) On the withdrawal of a complaint, the Commission may cease to deal with it but must continue to deal with the matter the subject of the complaint if it appears to the Commission that:
- (a) the matter raises a significant issue of public health or safety, or
  - (b) the matter raises a significant question as to the appropriate care or treatment of a client by a health service provider, or
  - (c) the matter provides grounds for disciplinary action against a health practitioner, or
  - (d) the matter involves gross negligence on the part of a health practitioner.

## **Division 4 Assessment of complaints**

### **19 Initial assessment of complaints**

- (1) On its receipt by the Commission, a complaint is to be assessed.
- (2) This section does not apply to a matter that is to be investigated in accordance with section 59.

### **20 The purpose of assessment**

The assessment of a complaint is for the purpose of deciding whether:

- the complaint should be investigated
- the complaint should be conciliated
- the complaint should be referred to the Director-General in accordance with section 25
- the complaint should be referred to another person or body for investigation in accordance with section 26

- the Commission should decline to entertain the complaint.

## **21 Commission may require further information**

For the purposes of the assessment, the Commission may require the complainant to provide further particulars of the complaint within such time, not exceeding 60 days, as may be specified by the Commission.

## **22 Time for completion of assessment**

The Commission must carry out its assessment of a complaint:

- (a) within 60 days after receiving the complaint, or
- (b) if, under section 21, the Commission has required the complainant to provide further particulars of the complaint, within 60 days after the date by which the Commission specified that those particulars were to be provided.

## **23 Investigation of complaint**

(1) The Commission must investigate a complaint:

- (a) if, under section 13 (1), the appropriate registration authority is of the opinion that the complaint should be investigated, or
- (b) if, following assessment of the complaint, it appears to the Commission that the complaint:
  - (i) raises a significant issue of public health or safety, or
  - (ii) raises a significant question as to the appropriate care or treatment of a client by a health service provider, or
  - (iii) provides grounds for disciplinary action against a health practitioner, or
  - (iv) involves gross negligence on the part of a health practitioner.

(2) A complaint is to be investigated in accordance with Division 5.

(3) However, the Commission must not investigate a complaint unless the complainant verifies the complaint by statutory declaration.

(4) The Commission may investigate a complaint despite any agreement the parties to the complaint may have reached concerning the complaint.

## **24 Reference of complaint for conciliation**

(1) The Commission may refer a complaint to the Health Conciliation Registry for conciliation:

- (a) if, under section 13 (2), the appropriate registration authority is of the opinion that

the complaint should be referred for conciliation and the parties to the complaint consent, or

(b) if, following assessment of the complaint:

(i) the complaint is not required to be investigated, and

(ii) the parties to the complaint consent to the complaint being referred for conciliation.

(2) A complaint is to be conciliated in accordance with Division 8.

(3) The Commission must not refer a complaint for conciliation if the complaint has been resolved by agreement between the parties to the complaint.

## **25 Reference of certain complaints to the Director-General**

(1) Following the assessment, the Commission must notify the Director-General of the details of the complaint if it appears to the Commission that the complaint involves a possible breach of any of the following Acts or any regulations made under them:

- [Health Administration Act 1982](#)
- [Health Services Act 1997](#)
- [Mental Health Act 1990](#)
- [Nursing Homes Act 1988](#)
- [Poisons and Therapeutic Goods Act 1966](#)
- [Private Hospitals and Day Procedure Centres Act 1988](#)
- [Public Health Act 1991](#)

(2) The Commission is not required to notify the Director-General of the details of the complaint if the complaint was made by the Director-General.

(3) The Director-General must notify the Commission whether the Director-General proposes to deal with the complaint and, if the Director-General does so, of the outcome of the Director-General's dealing with the complaint.

(4) This section does not prevent the Commission from dealing with a complaint (or any part of a complaint) in so far as it concerns:

(a) the professional conduct of a health practitioner, or

(b) a health service which affects the clinical management or care of an individual client.

**Note—**

The Director-General, under the Minister, is primarily responsible for the enforcement of the Acts listed in section 25. Accordingly, complaints arising under those Acts are to be referred to the Department of Health for possible action. Accountability will be maintained through obligations imposed on the Director-General to notify the Commission of the outcome.

However, the section ensures that the Commission may continue to pursue questions that are not dealt with by the Director-General as well as questions that concern the professional conduct of health practitioners and the clinical management or care of individual clients.

**26 Reference of complaint to another person or body for investigation**

- (1) Following the assessment, the Commission may refer a complaint (or any part of a complaint) to another person or body if, during the assessment, it appears that the complaint raises issues which require investigation by the other person or body.
- (2) However, the Commission must continue to deal with the matter the subject of the complaint if it appears to the Commission that:
  - (a) the matter raises a significant issue of public health or safety, or
  - (b) the matter raises a significant question as to the appropriate care or treatment of a client by a health service provider, or
  - (c) the matter provides grounds for disciplinary action against a health practitioner.

**27 In what circumstances can the Commission discontinue dealing with a complaint?**

- (1) Following the assessment, the Commission may discontinue dealing with a complaint (or any part of a complaint) for any one or more of the following reasons:
  - (a) the complaint (or part) is frivolous, vexatious or not made in good faith,
  - (b) the subject-matter of the complaint (or part) is trivial or does not warrant conciliation or investigation,
  - (c) the subject-matter of the complaint (or part) has been or is under investigation by some other competent person or body or has been or is the subject of legal proceedings,
  - (d) the complaint (or part) raises issues which require investigation by another person or body,
  - (e) there is or was, in relation to the matter complained of, a satisfactory alternative means of dealing with the matter by the complainant and the complainant does not have a sufficient reason for not pursuing that alternative means,
  - (f) the complaint (or part) relates to a matter which occurred more than 5 years before the complaint was made and the complainant does not have a sufficient reason for having delayed the making of the complaint,



- (g) the complainant has failed, without sufficient reason, to provide further particulars of the complaint (or part) within the time specified by the Commission,
  - (h) the complaint (or part) concerns a matter that falls within the responsibility of the Commonwealth.
- (2) This section does not exhaust the circumstances in which the Commission may discontinue dealing with a complaint (or part).
  - (3) The Commission must not discontinue dealing with a complaint (or part) under this section if it appears to the Commission that the complaint (or part) raises a significant issue of public health or safety.
  - (4) If the Commission discontinues dealing with a complaint (or part) under this section, the complaint (or part) is terminated.

## **28 Notice of action taken or decision made following assessment**

- (1) The Commission must give the parties to the complaint notice in writing of the action taken or decision made by the Commission following its assessment of the complaint.
- (2) If the Commission decides to investigate a complaint against a health practitioner, the Commission must give notice in writing of the decision:
  - (a) if the health practitioner has provided the health service in respect of which the complaint is made under a contract or agreement with a person who is, or who conducts, a hospital or other health care facility, to the person, or
  - (b) if the health practitioner has provided the health service in the capacity of an employee, to the health practitioner's employer.
- (3) This section does not require the Commission to give notice of action taken or a decision made to investigate a complaint if it appears to the Commission, on reasonable grounds, that the giving of the notice will:
  - (a) prejudice the investigation of the complaint, or
  - (b) place the health or safety of a client at risk, or
  - (c) place the complainant or another person at risk of intimidation or harassment, or
  - (d) unreasonably prejudice the employment of the health practitioner in the case of a health practitioner who has provided the health service in the capacity of an employee.
- (4) If the Commission has decided to investigate a complaint, it must review a decision to withhold the giving of notice from time to time and must, in any event, give notice to the health practitioner against whom the complaint is made not later than 60 days after the initial decision not to give notice was made. This subsection does not apply if

the decision to withhold the notice was made on the ground set out in subsection (3) (d).

(5) The Commission's notice to the complainant must include:

(a) advice that the complainant may ask the Commission to review the decision made after assessing the complaint if the decision is:

- not to investigate the complaint
- to refer the complaint to the Director-General under section 25
- to refer the complaint to another person or body under section 26
- to discontinue dealing with the complaint under section 27, and

(b) the reasons for the decision.

(6) The Commission must review a decision made after assessing a complaint if asked to do so by the complainant.

**Note—**

A complainant also has the right under section 41 (3) to request a review of a decision made by the Commission under section 39 at the end of its investigation of a complaint.

## **Division 5 Investigation of complaints**

**Note—**

The bulk of Commission investigations under this Division will deal with matters arising under health registration Acts relating to health practitioners. The Commission will investigate with a view to moving to prosecution of the complaint before the appropriate professional board, committee or tribunal. The Commission will also use its powers under this Division for other matters referred to it, such as a matter which is referred for investigation under section 59, or where the Commission is operating in conjunction with the Department of Health under general health legislation.

### **29 The purpose of investigation**

- (1) The investigation of a complaint by the Commission is for the purpose of obtaining information concerning the matter complained of and to determine what action should be taken in respect of the complaint.
- (2) The investigation of a complaint is to be conducted as expeditiously as the proper investigation of the complaint permits. Expedition is particularly appropriate if the complainant or the person on whose behalf the complaint is made is seriously ill.

### **30 Expert assistance**

- (1) In investigating a complaint, the Commission may obtain a report from a person (including a person registered under a health registration Act) who, in the opinion of the Commission, is sufficiently qualified or experienced to give expert advice on the matter the subject of the complaint.

- (2) The Commission may not obtain a report from a person who has a financial connection with the health practitioner against whom the complaint is made.
- (3) The person giving the report must include in it, or annex to it, a statement in the following form, completed as appropriate:

I *have/do not have* a personal, financial or professional connection with the person against whom the complaint is made. Particulars of the connection are as follows:

.....  
.....  
.....  
Dated this        day of        19    .  
Signature.....

- (4) Such a report may be used in disciplinary or related proceedings under a health registration Act but may not be admitted or used in any other proceedings before a court, tribunal or body, except with the consent of the person giving the report, the complainant and the person against whom the complaint is made.
- (5) A person from whom such a report is obtained may not be compelled to produce the report or to give evidence in relation to the report or its contents in any such other proceedings.
- (6) In this section, **report** includes a copy, reproduction and duplicate of the report or any part of the report, copy, reproduction or duplicate.

**31 Authorisation of persons to carry out investigations**

- (1) The Commission may authorise an officer of the Commission, in writing, to exercise the functions under section 33.
- (2) The Commission must provide an authorised person with a certificate of authority in the form set out in Schedule 1.
- (3) An authorised person in exercising in any place a function conferred on the authorised person under section 33 must, if so requested by a person apparently in charge of the place, produce the certificate to the person.

**32 Functions to be exercised only with consent or under search warrant**

An authorised person may not enter any premises and exercise a function under section 33 except with the consent of the owner or occupier of the premises or under the authority of a search warrant.

**33 Powers of entry, search and seizure**

An authorised person may, for the purpose of investigating a complaint, do any one or

more of the following:

- (a) at any reasonable time, enter and inspect any premises which the authorised person reasonably believes are used by the person against whom the complaint is made in connection with the matter with which the complaint is concerned,
- (b) examine, seize, retain or remove any equipment that the authorised person reasonably believes is, has been or may be used in connection with that matter,
- (c) require the production of and inspect any stocks of any substance or drugs in or about those premises,
- (d) require any person within those premises to produce any records in the possession or under the control of that person relating to that matter,
- (e) take copies of, or extracts or notes from, any such records,
- (f) remove any such records, with the consent of the owner of the records, for a maximum period of 24 hours for the purpose of taking copies of, or notes from, those records,
- (g) require any person at those premises to answer questions or otherwise furnish information in relation to that matter,
- (h) require the owner or occupier of those premises to provide the authorised person with such assistance and facilities as is or are reasonably necessary to enable the authorised person to exercise the functions of an authorised person under this section.

**Note—**

Under section 35, a person must not, without reasonable excuse, refuse or fail to comply with a requirement made, or to answer a question asked, under the authority of section 33. This, however, does not take away the protection given by the law where a person's response may be, or tend to be, self-incriminating.

**34 Search warrant**

- (1) An authorised person may apply to an authorised justice for a search warrant if the person has reasonable grounds for believing that entry to premises is necessary for the purpose of investigating a complaint that, if substantiated, may provide grounds for:
  - (a) the suspension or disqualification (by deregistration or cancellation of enrolment) of the person against whom the complaint is made, or
  - (b) the criminal prosecution of that person, or
  - (c) the taking of other disciplinary action against that person.
- (2) An authorised person may not apply for a search warrant to search premises for the purpose of investigating a complaint against a health practitioner who is or was, at the

relevant time, registered under a health registration Act (or whose registration is or was suspended) unless the authorised person or the Commission has caused the President or Chairperson of the appropriate registration authority to be notified of the application.

- (3) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised person named in the search warrant to enter the premises and to exercise there the functions of an authorised person under section 33.
- (4) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (5) In this section, **authorised justice** has the same meaning as in the *Search Warrants Act 1985*.

### **35 Offence: obstructing an authorised person**

A person who:

- (a) prevents an authorised person from exercising a function under section 33, or
- (b) hinders or obstructs an authorised person in the exercise of such a function, or
- (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of an authorised person asked in accordance with section 33, or
- (d) furnishes an authorised person, in connection with the exercise of the authorised person's functions, with information knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 20 penalty units.

### **36 Offence: impersonating an authorised person**

A person who impersonates or falsely represents that he or she is an authorised person is guilty of an offence.

Maximum penalty: 20 penalty units.

### **37 Offence: improper disclosure of information**

If a person discloses information obtained in exercising a function under this Division and the disclosure is not made:

- (a) with the consent of the person to whom the information relates, or
- (b) in connection with the execution and administration of this Act, or

(c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or

(d) with other lawful excuse,

the person is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

### **38 Notification of findings of investigation to appropriate registration authority**

(1) The Commission must notify the appropriate registration authority (if any) of the findings of an investigation.

(2) If the Commission is required to consult with the registration authority under section 39 (2), the notification may be given at the time of consultation.

## **Division 6 Outcomes of investigations into health practitioners**

### **39 What action is taken after an investigation?**

(1) At the end of the investigation of a complaint against a health practitioner, the Commission must do one or more of the following:

(a) prosecute the complaint as a complainant before a disciplinary body,

(b) intervene in any proceedings that may be taken before a disciplinary body,

(c) refer the complaint to the appropriate registration authority (if any) with a recommendation as to any disciplinary action the Commission considers appropriate in respect of the complaint,

(d) make comments to the health practitioner on the matter the subject of the complaint,

(e) terminate the matter,

(f) refer the matter the subject of the complaint to the Director of Public Prosecutions.

(2) The Commission must consult with the appropriate registration authority before deciding what action to take.

(3) In this section, **disciplinary body** means a person or body (including a professional standards committee) established under a health registration Act that has the power to discipline a health practitioner or suspend or cancel (by whatever means) the registration of a health practitioner.

### **40 Opportunity for persons investigated to make submissions**

(1) If, at the end of the investigation of a complaint against a health practitioner, the

Commission proposes to do any of the things referred to in section 39 (1) (a), (b), (c) or (d), it must first inform the health practitioner of the substance of the grounds for its proposed action and give the health practitioner an opportunity to make submissions.

- (2) Any such submission must be made in writing within 28 days after the health practitioner is so informed.
- (3) The Commission is not required by this section to inform a health practitioner of the substance of the grounds for its proposed action if:
  - (a) the grounds relate to the sufficiency of the physical or mental capacity of the practitioner to practise as a health practitioner under the impairment provisions of a health registration Act, and
  - (b) the practitioner has been notified by the appropriate registration authority of action to be taken pursuant to those provisions.

**Note—**

Section 40 (3) will ensure that registration authorities can act to deal with impaired practitioners pursuant to any powers they may have under their respective health registration Acts, without awaiting advice from the Commission. The [Medical Practice Act 1992](#) and the [Nurses Act 1991](#) contain such provisions.

#### **41 Notification of results of investigations and review of decisions**

- (1) After the Commission has complied with section 39 and any requirement under section 40, it must notify the parties to the complaint and the appropriate registration authority, in writing, of the results of the investigation, the action taken under section 39 and the reasons for taking that action and include advice that the complainant may ask the Commission to review the decision made under section 39.
- (2) The Commission may, at its discretion, also provide the same information to:
  - (a) an appropriate professional or similar association, if there is no appropriate registration authority, or
  - (b) any person or body it could have referred the matter to under section 26 if it is of the view that the matter requires investigation by that person or body.
- (3) The Commission must review a decision made under section 39 if asked to do so by the complainant.

### **Division 7 Outcomes of investigations into health organisations**

#### **42 What action is taken at the end of an investigation?**

- (1) At the end of the investigation of a complaint against a health organisation, the Commission must:

- (a) terminate the matter, or
  - (b) make recommendations or comments to the health organisation on the matter the subject of the complaint, or
  - (c) refer the matter the subject of the complaint to the Director of Public Prosecutions.
- (2) If the Commission makes recommendations or comments, it must prepare a report on the matter for the Director-General.
- (3) The report must include:
- (a) the reasons for its conclusions, and
  - (b) the reasons for any action recommended to be taken.

#### **43 Opportunity for health organisation investigated to make submissions**

- (1) If, at the end of the investigation of a complaint against a health organisation, the Commission proposes to make recommendations or comments to the health organisation on the matter the subject of the complaint, it must first inform the health organisation of the substance of the grounds for its proposed action and give the health organisation an opportunity to make submissions.
- (2) Any such submission must be made in writing within 28 days after the health organisation is so informed.

#### **44 Implementation of report**

- (1) The Commission may request the Director-General to notify it of any action taken or proposed as a consequence of its report under section 42 (2).
- (2) If the Commission is not satisfied that sufficient steps have been taken within a reasonable time as a consequence of its report to the Director-General, it may, after consultation with the Director-General, make a report to the Minister.
- (3) If the Commission is not satisfied that sufficient steps have been taken within a reasonable time as a consequence of its report to the Minister, it may make a special report on the matter to the Presiding Officer of each House of Parliament.
- (4) Section 63 (subsection (1) excepted) applies to a special report under this section in the same way as it applies to a special report under section 63.

#### **45 Notification of results of investigation**

- (1) After the Commission has complied with any requirement under section 43, it must notify the parties to the complaint, in writing, of the results of the investigation.
- (2) The Commission may, at its discretion, also provide the results of its investigation to



any person or body it could have referred the matter to under section 26.

- (3) Nothing in this section authorises the release of a report prepared under section 42 (2) otherwise than as provided by section 44, unless the report is released by the Director-General or the Minister.

## **Division 8 Conciliation of complaints**

### **46 Appointment of conciliators**

- (1) On the referral of a complaint by the Commission to the Health Conciliation Registry, the Registry must appoint a conciliator to conciliate the complaint.
- (2) The Registry may appoint 2 conciliators to conciliate the complaint if the Registry thinks it is desirable to do so.

### **47 Notification of arrangements for conciliation**

Within 14 days after the referral of a complaint by the Commission to the Health Conciliation Registry, the Registry must give written notice to the parties to the complaint of the following:

- that the complaint has been referred for conciliation
- the details of the arrangements made concerning the conciliation process
- the objects of the conciliation process
- confidentiality provisions concerning conciliation
- the effect of any agreements arising out of conciliation
- the reasons why conciliation is considered to be appropriate.

### **48 Conciliation to be voluntary**

Participation in the conciliation process by the parties to a complaint is voluntary.

### **49 What is the role of a conciliator?**

The function of a conciliator is to conciliate the complaint:

- (a) by bringing the parties to the complaint together for the purpose of promoting the discussion, negotiation and settlement of the complaint, and
- (b) by undertaking any activity for the purpose of promoting that discussion, negotiation and settlement, and
- (c) if possible, by assisting the parties to the complaint to reach agreement.

**Note—**

A conciliator has no power to impose a decision on the parties, to make a determination or to award compensation.

#### **50 Are the parties entitled to be represented?**

- (1) At the conciliation of a complaint, a party to the complaint is not entitled to be legally represented.
- (2) At the conciliation of a complaint, a party to the complaint is not entitled to be represented by an agent, except as provided by this section.
- (3) The Health Conciliation Registry may permit a party to a complaint to be represented by an agent if it appears to the Registry that:
  - (a) an agent should be permitted to facilitate conciliation, and
  - (b) the agent proposed has sufficient knowledge of the matter the subject of the complaint to enable the agent to represent the party effectively.
- (4) The Registry's permission may be given subject to conditions. The entitlement of an agent to represent a party is subject to compliance by the agent with any such conditions.
- (5) A member of staff of the Commission may not act as an agent for a party at the conciliation of a complaint.
- (6) This section does not prevent an officer of a corporation which is a party to a complaint from representing the corporation.
- (7) Contravention of this section (subsection (5) excepted) does not invalidate the conciliation of a complaint.

#### **Note—**

Section 50 creates a presumption that a conciliation will proceed with only the parties to the complaint and the conciliator present, without legal or other advisers.

Section 50 (3), however, creates an exception, and provides the Registrar with a discretion to admit an adviser to the conciliation process. This is designed to ensure that parties who may otherwise be disadvantaged are catered for. For example, persons of non-English speaking backgrounds may require the assistance of an interpreter, or frail or disabled individuals may benefit from the assistance of a carer or guardian.

#### **51 Confidentiality of the conciliation process**

- (1) Evidence of anything said or of any admission made during the conciliation process is not admissible in any proceedings before a court, tribunal or body.
- (2) A document prepared for the purposes of, or in the course of, the conciliation process (or a copy of such a document) is not admissible in any proceedings before a court, tribunal or body.

- (3) This section does not apply to evidence or a document if the persons who attended, or were named during, the conciliation process and, in the case of a document, all persons named in the document, consent to admission of the evidence or document.

**Note—**

This section will ensure that any information created specifically for the purpose of the conciliation process will be privileged, and will be unable to be used for any purpose other than the conciliation. Source documents, however, and documents which have not been created for the purposes of conciliation will not be subject to this limitation and may continue to be used in any legal proceedings.

**52 Conclusion of the conciliation process**

- (1) The conciliation process is concluded:
  - (a) if either party terminates the conciliation process at any time, or
  - (b) if the parties to the complaint reach agreement concerning the matter the subject of the complaint.
- (2) The complainant must notify the Health Conciliation Registry without delay if the parties reach agreement otherwise than during the conciliation process.
- (3) The conciliation process is terminated if the conciliator terminates the conciliation process after having formed the view:
  - (a) that it is unlikely that the parties will reach agreement, or
  - (b) a significant issue of public health or safety has been raised.

**53 Preparation and distribution of report on conclusion of the conciliation process**

- (1) On the conclusion of the conciliation process, the conciliator (or conciliators) must prepare a report to the Health Conciliation Registry concerning the conciliation.
- (2) The report may state only:
  - (a) whether the conciliation process was terminated after reaching agreement or without reaching agreement, and
  - (b) whether or not a recommendation is made that the Commission investigate the complaint.
- (3) As soon as practicable after receipt of the report, the Registry must give a copy of the report to the parties to the complaint, the Commission and the appropriate registration authority (if any).

**54 Furnishing of other information to the Health Conciliation Registry concerning conciliation**

A conciliator must furnish information to the Health Conciliation Registry, otherwise than

in a report under section 53, sufficient to enable the Registry to comply with section 55.

### **55 Six-monthly reports to registration authorities**

- (1) As soon as practicable after 1 April and 1 September in each year, the Health Conciliation Registry must furnish a report to each registration authority setting out the following information in relation to the complaints which have been conciliated during the previous 6 months concerning health practitioners who are or have been registered by the registration authority:
  - the number of complaints conciliated
  - the background of each complaint
  - the nature of the issues conciliated
  - any issues of a general nature arising out of each complaint relevant to the professional or educational standards of the profession concerned.
- (2) A report must not contain any information which identifies or is capable of identifying a party to a complaint.
- (3) A registration authority must not use a report furnished to it under this section except for the purpose of providing general information to health practitioners who are registered by it concerning the professional or educational standards of their profession.

### **56 Can a conciliated complaint be investigated?**

- (1) The Commission may investigate a complaint that has been subject to conciliation.
- (2) A complaint that has been subject to conciliation may only be investigated:
  - (a) if the conciliator's report contains a recommendation that the Commission investigate the complaint, or
  - (b) if new material concerning the matter the subject of the complaint becomes available and that material raises a matter which would cause the Commission to refer the complaint for investigation in accordance with section 23.
- (3) Before investigating the complaint, the Commission must consult with the appropriate registration authority (if any). If either the Commission or the appropriate registration authority (or both) is (or are) of the opinion that a complaint should be investigated, it must be investigated.

### **57 Health Conciliation Registry to deal only with complaints referred by the Commission**

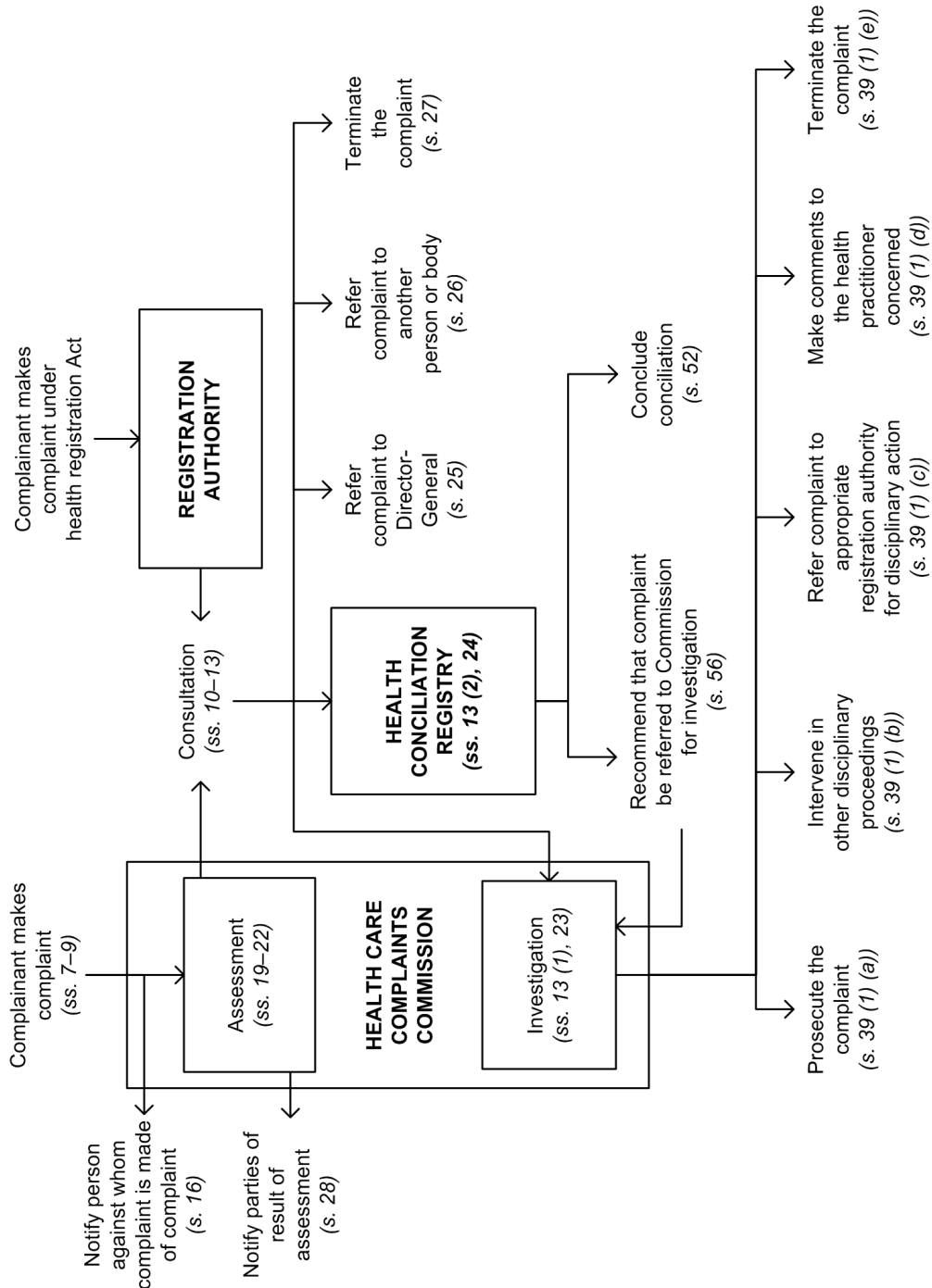
The Health Conciliation Registry has no power to receive or conciliate complaints which may come to it otherwise than on the referral of the Commission. Accordingly, the

Registry must refer any such complaints to the Commission.

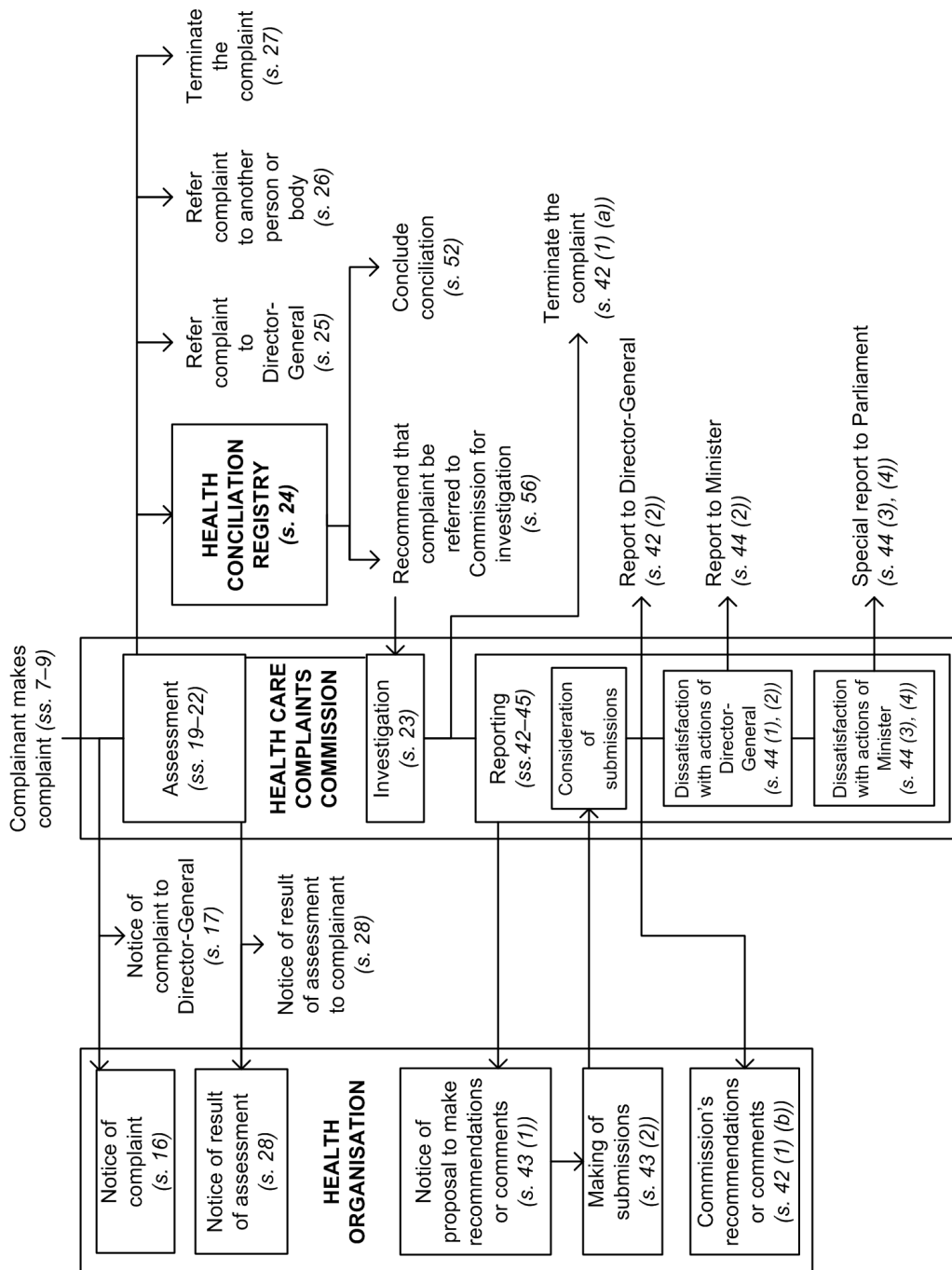
**58 Offence of concealing a serious offence**

The Registrar, a member of staff of the Health Conciliation Registry or a conciliator is not liable to be proceeded against under section 316 of the *Crimes Act 1900* in respect of any information obtained in connection with the administration or execution of this Act.

**Complaints against registered health practitioners**



**Complaints against health organisations**



**Part 3 Other investigations by the Commission**

**59 Investigation of health services**

The Commission may, in accordance with this Part, investigate the delivery of health services by a health service provider directly affecting the clinical management or care of clients which may not be the particular object of a complaint but which arises out of a complaint or out of more than one complaint, if it:

- (a) raises a significant issue of public health or safety, or
- (b) raises a significant question as to the appropriate care or treatment of clients, or
- (c) provides grounds for disciplinary action against a health practitioner.

#### **60 Director-General to be notified of proposed investigation**

An investigation under this Part may not be carried out by the Commission unless:

- (a) the Commission has notified the Director-General that it proposes to carry out the investigation and requests the Director-General to provide it with a report on the matter, and
- (b) the Director-General:
  - (i) fails to provide the report within 30 days after receiving the Commission's request (or such longer period as the Commission may allow), or
  - (ii) provides a report to the Commission which, in the opinion of the Commission, is not satisfactory.

#### **61 Application of investigative powers for the purposes of this Part**

Division 5 of Part 2 applies to an investigation under this Part in the same way as it applies to the investigation of a complaint under that Division.

#### **62 Report to Director-General and Minister following investigation**

- (1) The Commission must prepare a report of an investigation carried out under this Part and give copies of the report to the Director-General and the Minister.
- (2) The Commission may request the Director-General and the Minister to notify it of any action taken or proposed as a consequence of a recommendation made by the Commission in the report.

#### **63 Special report to Parliament**

- (1) If the Commission is not satisfied that sufficient steps have been taken within a reasonable time concerning a recommendation in the report under section 62, the Commission may make a special report on the matter to the Presiding Officer of each House of Parliament.
- (2) A copy of a report furnished to the Presiding Officer of a House of Parliament under this section is to be laid before that House before the end of the next sitting day of that House after it is received by the Presiding Officer.
- (3) The Commission may include in a report a recommendation that the report be made public immediately.

- (4) If a report includes a recommendation by the Commission that the report be made public immediately, a Presiding Officer of a House of Parliament must make it public whether or not that House is in session and whether or not the report has been laid before that House.
- (5) If such a report is made public by that Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
- (6) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.
- (7) References in this section to a Presiding Officer are references to the President of the Legislative Council or the Speaker of the Legislative Assembly.
- (8) If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council.
- (9) If there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

## **Part 4 Parliamentary Joint Committee**

### **64 Constitution of Joint Committee**

As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Health Care Complaints Commission, is to be appointed.

### **65 Functions**

- (1) The functions of the Joint Committee are as follows:
  - (a) to monitor and to review the exercise by the Commission of the Commission's functions under this or any other Act,
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of the Commission's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
  - (c) to examine each annual and other report made by the Commission, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
  - (d) to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Commission,



- (e) to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee:
  - (a) to re-investigate a particular complaint, or
  - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or
  - (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission, or of any other person, in relation to a particular investigation or complaint.
- (3) The functions of the Joint Committee may be exercised in respect of matters occurring before or after the commencement of this section.

#### **66 Power to veto proposed appointment of Commissioner**

- (1) The Minister is to refer a proposal to appoint a person as the Commissioner of the Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.

#### **67 Membership**

- (1) The Joint Committee is to consist of 7 members, of whom:
  - (a) 3 are to be members of, and appointed by, the Legislative Council, and
  - (b) 4 are to be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.
- (3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

## **68 Vacancies**

- (1) A member of the Joint Committee ceases to hold office:
  - (a) when the Legislative Assembly is dissolved or expires by the effluxion of time, or
  - (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or
  - (c) if a member ceases to be a member of the Legislative Council or Legislative Assembly, or
  - (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or
  - (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
  - (f) if the member is discharged from office by the House of Parliament to which the member belongs.
- (2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House.

## **69 Chairman and Vice-Chairman**

- (1) There is to be a Chairman and a Vice-Chairman of the Joint Committee, who are to be elected by and from the members of the Joint Committee.
- (2) A member of the Joint Committee ceases to hold office as Chairman or Vice-Chairman of the Joint Committee if:
  - (a) the member ceases to be a member of the Committee, or
  - (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
  - (c) the member is discharged from office by the Committee.
- (3) At any time when the Chairman is absent from New South Wales or is, for any reason, unable to perform the duties of Chairman or there is a vacancy in that office, the Vice-Chairman may exercise the functions of the Chairman under this Act or under the [Parliamentary Evidence Act 1901](#).

## **70 Procedure**

- (1) The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.
- (2) The Clerk of the Legislative Assembly is to call the first meeting of the Joint

Committee in each Parliament in such manner as the Clerk thinks fit.

- (3) At a meeting of the Joint Committee, 4 members constitute a quorum, but the Committee must meet as a joint committee at all times.
- (4) The Chairman or, in the absence of the Chairman, the Vice-Chairman (or, in the absence of both the Chairman and the Vice-Chairman, a member of the Joint Committee elected to chair the meeting by the members present) is to preside at a meeting of the Joint Committee.
- (5) The Vice-Chairman or other member presiding at a meeting of the Joint Committee has, in relation to the meeting, all the functions of the Chairman.
- (6) The Chairman, Vice-Chairman or other member presiding at a meeting of the Joint Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) A question arising at a meeting of the Joint Committee is to be determined by a majority of the votes of the members present and voting.
- (8) The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.
- (9) The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

#### **70A Reporting when Parliament not in session**

- (1) If a House of Parliament is not sitting when the Joint Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.
- (2) The report:
  - (a) on presentation and for all purposes is taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk, and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

#### **71 Evidence**

- (1) The Joint Committee has power to send for persons, papers and records.
- (2) The Joint Committee must take all evidence in public subject to section 72.

- (3) If the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.
- (4) The production of documents to the Joint Committee is to be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

## **72 Confidentiality**

- (1) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced to, the Joint Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or the person producing the document must:
  - (a) take the evidence in private, or
  - (b) direct that the document, or the part of the document, be treated as confidential.
- (2) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to the proposed appointment of a person as the Commissioner of the Commission, the Committee must (despite any other provision of this section):
  - (a) take the evidence in private, or
  - (b) direct that the document, or the part of the document, be treated as confidential.
- (3) Despite any other provision of this section except subsection (9), the Joint Committee must not, and a person (including a member of the Committee) must not, disclose any evidence or the contents of a document or that part of a document to which subsection (2) applies.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (4) Despite any other provision of this section except subsection (9), the Joint Committee (including a member of the Committee) must not, and any person assisting the Committee or present during the deliberations of the Committee must not, except in accordance with section 66 (3), disclose whether or not the Joint Committee or any member of the Joint Committee has vetoed, or proposes to veto, the proposed appointment of a person as Commissioner.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (5) If a direction under subsection (1) applies to a document or part of a document produced to the Joint Committee:

- (a) the contents of the document or part are, for the purposes of this section, to be regarded as evidence given by the person producing the document or part and taken by the Committee in private, and
- (b) the person producing the document or part is, for the purposes of this section, to be regarded as a witness.

(6) If, at the request of a witness, evidence is taken by the Joint Committee in private:

- (a) the Committee must not, without the consent in writing of the witness, and
- (b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subsection (8), disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

(7) If evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subsection (8), disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

(8) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chairman, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (6).

(9) Nothing in this section prohibits:

- (a) the disclosure or publication of evidence that has already been lawfully published, or
- (b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Joint Committee.

(10) This section has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.

(11) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section:

- (a) sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act, and

- (b) Division 5 of Part 3 of, and Schedule 2 to, the *Defamation Act 1974* apply to and in relation to that evidence as if it were taken by the Committee in public.

### **73 Application of certain Acts**

For the purposes of the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes:

- (a) the Joint Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the Joint Committee is to be regarded as having originated in the Legislative Assembly.

### **74 Validity of certain acts or proceedings**

Any act or proceeding of the Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee, or
- (b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

## **Part 5 Health Care Complaints Commission**

### **75 Constitution of the Commission**

- (1) There is constituted by this section a body corporate with the corporate name of the Health Care Complaints Commission.
- (2) The Commission is a statutory body representing the Crown.

### **76 Membership of the Commission**

The Commission consists of a Commissioner appointed by the Governor.

### **77 The Commissioner**

- (1) The employment of the Commissioner is subject to Part 2A of the *Public Sector Management Act 1988*, but is not subject to Part 2 of that Act.

**Note—**

Part 2A of the *Public Sector Management Act 1988*, in section 42F, provides for term appointments of not more than 5 years.

- (2) A person may hold office as Commissioner for terms totalling not more than 10 years.
- (3) The Commissioner may be removed from office under section 42Q of the *Public Sector*

*Management Act 1988* only for incapacity, incompetence or misbehaviour.

### **78 Veto of proposed appointment as Commissioner**

- (1) A person is not to be appointed as the Commissioner of the Commission until:
  - (a) a proposal that the person be appointed has been referred to the Joint Committee under section 66, and
  - (b) either the period that the Joint Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this section and section 66, **appointment** includes re-appointment.

### **79 Acting Commissioner**

- (1) The Minister may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner (or during a vacancy in the office of Commissioner) and the person, while so acting, has all the functions of the Commissioner and is taken to be the Commissioner.
- (2) The Minister may, at any time, remove a person from office as acting Commissioner.
- (3) An acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

### **80 Functions of the Commission**

- (1) The Commission has the following functions:
  - (a) to receive and deal under this Act with the following complaints:
    - complaints relating to the professional conduct of health practitioners
    - complaints concerning the clinical management or care of individual clients by health service providers
    - complaints referred to it by a registration authority under a health registration Act,
  - (b) to assess those complaints and to refer them for conciliation or investigation in appropriate cases,
  - (c) to make complaints concerning the professional conduct of health practitioners and to prosecute those complaints before the appropriate bodies, including registration authorities, professional standards committees and tribunals,

- (d) to report on any action the Commission considers ought to be taken following the investigation of a complaint if the complaint is found to be justified in whole or part,
  - (e) to monitor, identify and advise the Minister on trends in complaints,
  - (f) to publish and distribute information concerning the means available for the making of complaints and the way in which complaints may be made and dealt with,
  - (g) to provide information to health service providers and professional and educational bodies concerning complaints, including trends in complaints,
  - (h) to consult with groups with an interest in the provision of health services, including professional associations, health service provider groups, relevant community organisations and private and institutional health care providers, on the complaints process and the dissemination of information concerning the complaints process,
  - (i) to develop, after such consultation with clients, health service providers and persons who, in the Commission's opinion, have an appropriate interest, a code of practice to provide guidance on the way in which the Commission intends to carry out some or all of its functions,
  - (j) to investigate the frequency, type and nature of allegations made in legal proceedings of malpractice by health practitioners.
- (2) The Commission also has such other functions as are conferred or imposed on it by or under this or any other Act.
- (3) A code of practice developed by the Commission under subsection (1) (i) has no effect unless it is incorporated in, or adopted by, the regulations.
- (4) The Commission may exercise its functions even though:
- (a) the Commission has not developed a code of practice in relation to those functions, or
  - (b) a code of practice has been developed but has not been incorporated in, or adopted by, the regulations.

## **81 Ministerial control**

The Commission is subject to the control and direction of the Minister, except in respect of the following:

- the assessment of a complaint
- the investigation of a complaint



- the prosecution of disciplinary action against a person
- the terms of any recommendation of the Commission
- the contents of a report of the Commission, including the annual report.

## **82 Staff of the Commission**

- (1) Such staff as may be necessary to enable the Commission to exercise its functions may be employed under Part 2 of the [Public Sector Management Act 1988](#).
- (2) The Commission may arrange for the use of the services of any staff or facilities of a public authority.
- (3) In this section:

**public authority** means any of the following:

- (a) a Government department,
- (b) a statutory body representing the Crown,
- (c) a public health organisation within the meaning of the [Health Services Act 1997](#),
- (d) any other public or local authority (including any State owned corporation) constituted by or under any Act.

## **83 Financial year**

The financial year of the Commission is the year commencing on 1 July.

## **84 Delegation of functions**

The Commission may delegate its functions, other than its power of delegation, to any officer of the Commission.

# **Part 6 Health Conciliation Registry and conciliators**

## **85 Health Conciliation Registry**

- (1) There is constituted by this section a body corporate with the corporate name of the Health Conciliation Registry.
- (2) The Registry is a statutory body representing the Crown.

## **86 Membership of the Health Conciliation Registry**

The Health Conciliation Registry consists of a Registrar employed by the Health Administration Corporation under section 14 of the [Health Administration Act 1982](#).

### **87 Functions of the Health Conciliation Registry**

The Health Conciliation Registry has the functions conferred or imposed on it by or under this or any other Act.

### **88 Staff of the Health Conciliation Registry**

Such staff as may be necessary to enable the Health Conciliation Registry to exercise its functions may be employed by the Health Administration Corporation under section 14 of the [Health Administration Act 1982](#).

### **89 Conciliators**

- (1) The Minister may appoint one or more suitably qualified persons to be conciliators for the purposes of this Act.
- (2) A conciliator may be appointed on a full-time or part-time basis.
- (3) Schedule 2 has effect with respect to the conciliators.

### **90 Functions of conciliators**

A conciliator has the functions conferred or imposed on a conciliator by or under this or any other Act.

## **Part 7 Miscellaneous**

### **91 Recommendations to have regard to available resources**

A recommendation made by the Commission in relation to a matter investigated under this Act must be made in such a way that to give effect to it:

- (a) would not be beyond the resources appropriated by Parliament for the delivery of health services, or
- (b) would not be inconsistent with the way in which those resources have been allocated by the Minister and the Director-General in accordance with government policy.

### **92 General standards of clinical practice**

Nothing in this Act gives the Commission power to determine or recommend general standards of clinical practice.

**Note—**

While sections 91 and 92 limit the scope of a recommendation that the Commission may make, they do not limit other comment by the Commission.

### **93 Inconsistency between this Act and health registration Acts**

This Act prevails over a health registration Act to the extent of any inconsistency between them.

#### **94 Consultation between Commission and Director-General**

- (1) The Director-General must, if requested to do so by the Commission, consult with the Commission with respect to matters arising under the administration of this Act.
- (2) The Commission must, if requested to do so by the Director-General, consult with the Director-General with respect to matters arising under the administration of this Act.

#### **95 Annual report**

- (1) The Commission must include in its annual report for a year:
  - (a) in relation to complaints generally:
    - the number and type of complaints made to it during the year
    - the sources of those complaints
    - the number and type of complaints assessed by the Commission during the year
    - the number and type of complaints referred for conciliation during the year
    - the results of conciliations
    - the number and type of complaints investigated by the Commission during the year
    - the results of investigations
    - a summary of the results of prosecutions completed during the year arising from complaints
    - the number and details of complaints not finally dealt with at the end of the year
    - the time intervals involved in the complaints process, and
  - (b) the number and type of complaints referred to the Director-General during the year and the outcomes of those complaints, as far as they are known.
- (2) The Commission may include in its annual report for a year:
  - (a) such information relating to complaints (other than that required to be included under subsection (1)) as the Commission thinks fit, and
  - (b) any report made to the Minister under section 44 (2), and
  - (c) any notification and request made to the Director-General under section 60.
- (3) Matters included in the annual report:

- (a) are to be reported, as far as practicable, according to professional groupings, and
- (b) must not identify individual clients or persons against whom complaints have been made or who have been subject to investigation under this Act, unless their names or identities have already lawfully been made public.

#### **96 Exoneration from liability**

A matter or thing done or omitted by a person, being the Commissioner, an officer of the Commission, the Registrar, a conciliator or a person employed in the Registry does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject the person personally to any action, liability, claim or demand.

#### **97 Pending legal proceedings do not prevent exercise of certain functions**

The Commission, the Commissioner, the Health Conciliation Registry, the Registrar and a conciliator are not prevented from exercising any function concerning a matter merely because legal proceedings relating to the matter have been commenced.

#### **98 Offence: intimidation or bribery of complainants**

- (1) A person who, by threat, intimidation or inducement, persuades or attempts to persuade another person:
  - (a) not to make a complaint to the Commission or a registration authority or not to continue with a complaint made to the Commission or a registration authority, or
  - (b) not to have discussions with, or take part in proceedings before, the Commission or a registration authority concerning a complaint or a matter that could become the subject of a complaint,is guilty of an offence.
- (2) A person who refuses to employ or dismisses another person, subjects another person to any detriment, or harasses another person, because the other person:
  - (a) intends to make a complaint, has made a complaint, or has had a complaint made on his or her behalf or otherwise concerning him or her, to the Commission or a registration authority, or
  - (b) intends to take part, is taking part, or has taken part in any discussions with, or proceedings before, the Commission or a registration authority concerning a complaint or a matter which could become the subject of a complaint,is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months.

**99 Offence: furnishing false or misleading information to the Commission**

A person who furnishes the Commission with information for the purposes of this Act knowing that it is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 20 penalty units.

**100 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**101 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units.

**102 Amendment of Acts**

Each Act specified in Schedule 3 is amended in the manner set out in that Schedule.

**103 Savings, transitional and other provisions**

Schedule 4 has effect.

**104 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.

**Schedule 1 Certificate of authority**

(Section 31 (2))

HEALTH CARE COMPLAINTS ACT 1993  
*(Section 31 (2))*  
HEALTH CARE COMPLAINTS COMMISSION  
**CERTIFICATE OF AUTHORITY**

Valid until .....

No.....

This is to certify that:

.....(*insert name of person being authorised*)  
(*photograph of person*)  
a specimen of whose signature appears below

.....(*specimen of signature*)

is authorised under section 31 (2) of the [Health Care Complaints Act 1993](#) to exercise the functions set out in section 33 of that Act. The terms of section 33 are reproduced on the back of this certificate.

Dated this        day of        19        .

.....Commissioner, Health Care Complaints Commission.

## Schedule 2 Provisions concerning conciliators

(Section 89 (3))

### 1 Term of office

Subject to this Schedule, a conciliator holds office for such period (not exceeding 5 years) as is specified in the conciliator's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### 2 Remuneration

(1) A full-time conciliator is entitled to be paid:

- (a) remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#), and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the conciliator.

(2) A part-time conciliator is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the conciliator.

### 3 Vacancy in office

(1) The office of a conciliator becomes vacant if the conciliator:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the [Public Sector Management Act 1988](#), or

- (e) in the case of a full-time conciliator—is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a conciliator from office for misbehaviour, incompetence or incapacity.

#### **4 Effect of certain other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a conciliator.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time conciliator or from accepting and retaining any remuneration payable to the person under this Act as a part-time conciliator.

### **Schedule 3 Amendment of Acts**

(Section 102)

#### **Coroners Act 1980 No 27**

At the end of Division 1 of Part 4, insert:

##### **23B Malpractice by health practitioner**

A coroner is required to notify the Health Care Complaints Commission constituted under the *Health Care Complaints Act 1993* of any evidence given in an inquest of malpractice by a person who is a health practitioner within the meaning of that Act.

## Optometrists Act 1930 No 20

### Section 15B:

After section 15A, insert:

#### **15B Notification of complaints to, and their investigation by, the Health Care Complaints Commission**

- (1) The board must notify the Health Care Complaints Commission of any complaint made to it concerning the practice of optometry by a registered optometrist. The complaint is to be notified as soon as practicable after the complaint is made.
- (2) The board may, instead of making inquiry under section 15, refer the matter that would otherwise be the subject of inquiry for investigation by the Health Care Complaints Commission under the *Health Care Complaints Act 1993*.
- (3) Such an investigation by the Health Care Complaints Commission is taken, for the purposes of this Act, to be an inquiry made by the board but does not prevent the board from making any further or additional inquiry.

## Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

### Schedule 2 (Public officers)

At the end of Part 1, insert:

Full-time conciliator (under the *Health Care Complaints Act 1993*).

## Schedule 4 Savings, transitional and other provisions

(Section 103)

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Schedule or from a later date.
- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or



(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of publication.

**2 Complaints made before the commencement of this Act**

A complaint made to the Complaints Unit of the Department of Health or a registration authority before the commencement of Part 2 may continue to be dealt with and disposed of as if this Act had not been enacted, except as provided by clause 3.

**3 Power to discontinue dealing with complaints**

The Director of the Complaints Unit of the Department of Health has the same functions in relation to a complaint referred to in clause 2 (or any part of such a complaint) as the Commission has under section 27.

**4 Complaints concerning past conduct**

This Act extends to enable a complaint to be made under this Act in respect of an act or omission that occurred before the commencement of Part 2 but only if the complaint could have been made under a law in force before that commencement.