

# Health Care Complaints Act 1993 No 105

[1993-105]



New South Wales

## Status Information

### Currency of version

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### 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**  
[Defamation Act 2005 No 77](#) (not commenced — to commence on 1.1.2006)

### Authorisation

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# Health Care Complaints Act 1993 No 105



New South Wales

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# Health Care Complaints Act 1993 No 105



New South Wales

An Act to provide for the making, resolution, 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 Object of this Act

- (1) The primary object of this Act is to establish the Health Care Complaints Commission as an independent body for the purposes of:
  - (a) receiving and assessing complaints under this Act relating to health services and health service providers in New South Wales, and
  - (b) investigating and assessing whether any such complaint is serious and if so, whether it should be prosecuted, and
  - (c) prosecuting serious complaints, and
  - (d) resolving or overseeing the resolution of complaints.
- (2) In exercising its functions under this Act, the Commission is to have as its primary object the protection of the health and safety of the public.

### 3A Outline of role of Commission and related government agencies in health care system

- (1) This section provides an outline of the Commission's role in relation to government agencies with functions in connection with the health care system.
- (2) **Health Care Complaints Commission** The Commission is an independent body with



responsibility for dealing with complaints under this Act, with particular emphasis on the investigation and prosecution of serious complaints in consultation with relevant registration authorities.

- (3) **Director-General of the Department of Health** The Director-General is responsible for:
- (a) facilitating the achievement and maintenance of adequate standards of patient care within public hospitals and in relation to other services provided by the public health system, and
  - (b) inquiring into the administration, management and services of public health organisations and arranging, as appropriate, inspection of such organisations, and
  - (c) developing and overseeing the implementation of health policy and regulation and responding to policy and regulatory issues as they emerge.
- (4) **Public health organisations conducting health services** Public health organisations have the functions set out in Chapter 2 of the *Health Services Act 1997*. They are responsible for achieving and maintaining adequate standards of patient care and services, which may include a role in resolving complaints at a local level. Their role involves liaising with the Commission and registration authorities.
- (5) **Registration authorities** Registration authorities are responsible for the registration of health professionals and the management of complaints in conjunction with the Commission. The registration authorities are also responsible for protecting the public through promoting and maintaining professional standards.
- (6) This section is explanatory only and does not affect any other provision of this Act, or any other Act, or any instrument made under this or any other Act.

#### 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 of Proceedings** means the Director of Proceedings appointed under Part 6A.

**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 established 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*

*Dental Practice Act 2001*

*Medical Practice Act 1992*

*Nurses and Midwives Act 1991*

*Optical Dispensers Act 1963*

*Optometrists Act 2002*

*Osteopaths Act 2001*

*Pharmacy Act 1964*

*Physiotherapists Act 2001*

*Podiatrists Act 2003*

*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) mental health 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,
- (k1) forensic pathology services,
- (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.

**Registrar** means the Registrar of the Health Conciliation Registry.

**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 an Australian legal practitioner) 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.

It is an offence under section 99 to furnish information to the Commission for the purposes of this Act that is false or misleading in a material particular and under section 35 to furnish such information to the Commissioner or staff of the Commission.

## **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, a registration authority and the Registrar**

- (1) Before determining, as a result of the assessment of a complaint, whether to investigate a complaint, to refer the complaint for conciliation, to deal with the complaint under Division 9 or to discontinue dealing with the complaint, the Commission must consult with the appropriate registration authority, subject to this section.
  - (1A) If it is proposed, as a result of the assessment of a complaint, to refer the complaint for conciliation, the Commission must also consult with the Registrar.
- (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 is of the opinion that a complaint (or any part of a complaint) should be investigated, it must be investigated.
- (2) If:
  - (a) neither the Commission nor the appropriate registration authority is of the opinion that the complaint (or part) should be investigated, but
  - (b) either is of the opinion that it should be referred to the registration authority for consideration as to whether the registration authority should take any action under the relevant health registration Act (such as performance assessment or impairment assessment),it must be referred to the registration authority under section 25B.
- (3) If:
  - (a) neither the Commission nor the appropriate registration authority is of the opinion that the complaint (or part) should be investigated or referred to the registration authority, but
  - (b) either is of the opinion that it should be referred for conciliation and the Registrar considers that it is appropriate for conciliation,the Commission is to refer the complaint for conciliation under Division 8.

**Note—**

Only the [Medical Practice Act 1992](#) and the [Nurses and Midwives Act 1991](#) contain provisions relating to performance assessment.

### **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 is being dealt with under Division 8 or 9.
- (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 and will involve the Registrar in the consultation process.

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

### **16 Person against whom complaint made to be notified of complaint**

- (1) The Commission must give written notice of the making of a complaint, the nature of the complaint and the identity of the complainant to the person against whom the complaint is made. The notice must be given not later than 14 days after the Commission's assessment of the complaint under Division 4.
- (2) If the Commission has assessed the complaint, the notice is to include the notice required to be given to the person under section 28.
- (3) The Commission may give a copy of the complaint to the person against whom the complaint is made.
- (4) This section does not require the Commission to give notice under this section 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.
- (5) Despite subsection (4), the Commission must give the notice if the Commission considers on reasonable grounds that:
- (a) it is essential, having regard to the principles of natural justice, that the notice be given, or
  - (b) the giving of the notice is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.
- (6) If the Commission decides that subsection (4) applies to a complaint but that some form of notice could be given of the complaint without affecting the health or safety of a client or putting any person at risk of intimidation or harassment, the Commission may give such a form of notice.

- (7) On the expiration of each consecutive period of 60 days after the complaint is assessed, the Commission must undertake a review of a decision not to give notice under this section (or to give notice in some other form as referred to in subsection (6)) unless notice under this section has already been given or the Commission has discontinued dealing with the complaint.

#### **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, if substantiated, would provide grounds for disciplinary action against a health practitioner, or
  - (d) the matter, if substantiated, would involve 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**

- (1) The assessment of a complaint is for the purpose of deciding whether:
  - the complaint should be investigated
  - the complaint should be conciliated or dealt with under Division 9
  - the complaint should be referred to the Director-General in accordance with section



25 or 25A

- the complaint should be referred to another person or body in accordance with section 25B or 26
  - the Commission should decline to entertain the complaint.
- (2) Unless the Commission decides to decline to entertain a complaint, the Commission is, as part of its assessment of the complaint and as soon as practicable after commencing its assessment:
- (a) to identify the specific allegations comprising the complaint and the person or persons whose conduct appears to be the subject of the complaint, and
  - (b) to use its best endeavours to confirm with the complainant and with any other person who provided relevant information in relation to the complaint that the matters so identified accord with the information provided by them.

**20A Duty of Commission to review assessment of complaint**

- (1) The Commission is to keep under review its assessment of a complaint while it is dealing with the complaint.
- (2) At any time while dealing with a complaint (including during or at the end of the investigation of a complaint) and after consultation with the appropriate registration authority, the Commission may revise its assessment of the complaint and take any of the following actions:
- (a) deal with the complaint under Division 9,
  - (b) refer the complaint for conciliation,
  - (c) investigate the complaint,
  - (d) refer the complaint to the Director-General in accordance with section 25 or 25A,
  - (e) refer the complaint to another person or body in accordance with section 25B or 26,
  - (f) change the person whose conduct appears to be the subject of the complaint or include another person as a person whose conduct appears to be the subject of the complaint,
  - (g) add to, substitute, amend or delete any of the specific allegations comprising the complaint (including add an allegation arising out of an investigation of the complaint that may not be the particular object of the complaint).

**Note—**

Section 56 limits the Commission's power to investigate a matter that has been dealt with under Division 8.

- (3) If the Commission revises its assessment of a complaint to include another person as referred to in subsection (2) (f), sections 16 and 28 apply to the giving of notice to that person as if a reference in those sections to the assessment of the complaint were a reference to the revision of the assessment under this section.
- (4) If the Commission revises its assessment of a complaint and as a result determines that the conduct of a person previously being investigated by the Commission will no longer be investigated or that different conduct of the person will be investigated, the Commission is to give the person notice in writing that the person's conduct is no longer under investigation or that other conduct of the person is now under investigation (as appropriate).
- (5) In this section, **complaint** includes any part of a 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.

### **21A Commission may obtain certain medical and other documents**

- (1) For the purposes of the assessment, the Commission may exercise the powers conferred on it by section 34A in connection with the investigation of a complaint to obtain hospital and medical records and documents relating to a health practitioner's practice.
- (2) A reference in this Act to a requirement under section 34A includes a reference to such a requirement that arises under this section.

## **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) if substantiated, would provide grounds for disciplinary action against a health practitioner, or
  - (iv) if substantiated, would involve gross negligence on the part of a health practitioner.
- (2) A complaint is to be investigated in accordance with Division 5.
  - (3) (Repealed)
  - (4) The Commission may investigate a complaint despite any agreement the parties to the complaint may have reached concerning the complaint.

#### **24 Referral of complaints for conciliation or complaint resolution**

- (1) The Commission must refer a complaint for conciliation under Division 8 if it is required to do so under section 13 (3) or if it decides to do so under section 20A.
- (2) The Commission may deal with a complaint under Division 9 if the complaint is not required to be investigated, referred to a registration authority under section 25B or referred for conciliation.
- (3) The Commission may at any time during the assessment of a complaint take any action referred to in section 58C with respect to the complaint without the need for consultation with the appropriate registration authority.
- (4) However, subsection (3) does not affect the requirement in section 12 (1) for the Commission to consult with the appropriate registration authority before making a determination on how a complaint should be dealt with as a result of an assessment of the complaint.

#### **25 Notification 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 specified provisions of Acts, or any regulations made under them:
  - [Anatomy Act 1977](#)
  - [Health Administration Act 1982](#)
  - [Health Records and Information Privacy Act 2002](#), section 68, 69 or 70

- [Health Services Act 1997](#)
- [Human Tissue Act 1983](#)
- [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.

**25A Reference of complaints to be dealt with under inquiry powers of Director-General**

- (1) The Commission may, with the consent of the Director-General, refer a complaint (or part of a complaint) to the Director-General if the Commission is of the opinion that the complaint (or part) relates to a matter that could be the subject of an inquiry by the Director-General under section 71 of the [Public Health Act 1991](#) or section 123 of the [Health Services Act 1997](#).
- (2) Despite section 27 (3), the Commission must discontinue dealing with a complaint (or part) under that section that has been referred to the Director-General under this section.

- (3) However, the Commission may continue 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.

**25B Reference of complaints to be dealt with by registration authorities**

- (1) Following the assessment, the Commission may refer a complaint to the appropriate registration authority (after consultation with that authority) if it appears that the complaint (or part) should be referred to the registration authority for consideration as to whether the registration authority should take any action under the relevant health registration Act, such as performance assessment or impairment assessment.

**Note—**

Section 13 (2) requires the Commission to refer a complaint to the registration authority if either the Commission or the registration authority is of the opinion that it should be referred.

- (2) Despite section 27 (3), the Commission must discontinue dealing with a complaint (or part) under that section that has been referred to a registration authority under this section.

**Note—**

Registration authorities are required in certain circumstances under the relevant health registration Acts to deal with matters as complaints that have been dealt with under performance assessment or impairment assessment provisions. (See, for example, section 86M of the *Medical Practice Act 1992* which requires a matter arising from a performance review to be treated as a complaint if the Performance Review Panel considers the matter raises a significant issue of public health or safety.)

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

- (1) Following the assessment, the Commission may refer a complaint (or any part of a complaint):
- (a) to an appropriate public health organisation if it appears that the complaint (or part) may be capable of resolution at a local level and the public health organisation consents, or
  - (b) to any person or body (other than a public health organisation or registration authority) if it appears that the complaint (or part) 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 (or part) 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, if substantiated, would provide grounds for disciplinary action against a health practitioner.

(3) A public health organisation to which a complaint (or part) is referred under this section may refer the complaint (or part) back to the Commission if it is unable to resolve it or the public health organisation considers that the matter is appropriate to be dealt with under Division 8 or 9.

(4) If a complaint (or part) has been referred back to the Commission under subsection (3), the Commission must assess the complaint (or part) again in accordance with this Division.

(5) The Commission may not refer a complaint (or part) to the Director-General under this section.

**Note—**

The Commission may refer a complaint to the Director-General under section 25 or 25A but only with the consent of the Director-General.

(6) In this section, **public health organisation** has the same meaning as in the [Health Services Act 1997](#).

## **27 Circumstances in which Commission may discontinue dealing with 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 investigation or conciliation or the Commission dealing with it under Division 9,

(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) has been referred by the Commission to another person or body for investigation or for consideration of other action (including, for example, performance assessment or impairment assessment under a health registration Act),

(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. The notice is to be given within 14 days after the Commission takes that action or makes that decision.

(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) If the Commission decides to investigate a complaint against a health practitioner, the Commission may give notice in writing of the decision to a person who currently employs or engages the health practitioner as a health practitioner.

(4) 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.
- (5) Despite subsection (4), the Commission must give the notice if the Commission considers on reasonable grounds that:
  - (a) it is essential, having regard to the principles of natural justice, that the notice be given, or
  - (b) the giving of the notice is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.
- (6) If the Commission decides that subsection (4) applies to a complaint but that some form of notice could be given of the complaint without affecting the health or safety of a client or putting any person at risk of intimidation or harassment, the Commission may give such a form of notice.
- (7) On the expiration of each consecutive period of 60 days after the Commission has decided to investigate a complaint, the Commission must undertake a review of a decision not to give notice under this section (or to give notice in some other form as referred to in subsection (6)), unless notice under this section has already been given or the Commission has discontinued dealing with the complaint.
- (8) 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:
    - (i) not to investigate the complaint, or
    - (ii) to refer the complaint to the Director-General under section 25 or 25A, or
    - (iii) to refer the complaint to another person or body under section 25B or 26, or
    - (iv) to discontinue dealing with the complaint under section 27, and
  - (b) the reasons for the decision.
- (9) The Commission may review a decision made after assessing a complaint if requested to do so by the complainant, and must do so if the request is made within 28 days after the complainant is notified of the decision.

**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.

**28A Notification of other persons following assessment**

- (1) The Commission is to use its best endeavours to give notification of the outcomes of



the assessment of a complaint to a client whose treatment is the subject of the complaint and who is not required to be given notice under section 28 unless the client:

- (a) is deceased, or
  - (b) is incapable of understanding the notification.
- (2) If a complaint relates to the treatment of a client at a hospital or other health care facility, the Commission is to use its best endeavours to give notification of the outcomes of the assessment of the complaint to any person recorded by the hospital or health care facility as being a contact for the client.
- (3) Without affecting the Commission's obligations under subsections (1) and (2), the Commission may, if it thinks it appropriate and it is practicable to do so, give notification of the outcomes of the assessment of a complaint to any person who is associated with a client whose treatment is the subject of the complaint (including a legal representative of the client or of the estate of the client).
- (4) The Commission may only give notification to a person under subsection (2) or (3) if the client concerned:
- (a) is deceased, or
  - (b) is incapable of understanding the notification and the client's authorised representative (as defined in section 8 of the [Health Records and Information Privacy Act 2002](#)) has consented to the Commission giving the notification.
- (5) On request by the Commission, a person who is, or who conducts, a hospital or health care facility is to supply the Commission with any information in its possession that is necessary for the Commission to fulfil its obligations under subsections (1) and (2). The information may be provided to the Commission despite any other Act or law.

## 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.
- (2A) If the Commission seeks to obtain a report from a person under this section in relation to a complaint, the Commission is to provide the person with all relevant information concerning the complaint that is in the possession of the Commission.
- (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, the Commission or the Commissioner 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 if the authorised person reasonably believes it is necessary to enter those premises for the purpose of investigating 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.

### **34 Search warrant**

- (1) An authorised person may apply to an authorised officer 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 officer 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) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

#### **34A Power of Commission to obtain information, records and evidence**

- (1) If the Commission is investigating a complaint and is of the opinion that a person is capable of giving information, producing documents (including medical records) or giving evidence that would assist in the investigation, the Commission may, by notice in writing given to the person, request the person to do any one or more of the following:
- (a) to give the Commission, by writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and within such time as is reasonable, and in the manner, specified in the notice, any such information of which the person has knowledge,
- (b) to produce to the Commission, in accordance with the notice, any such documents,
- (c) to appear before the Commissioner or a member of staff of the Commission authorised by the Commissioner at a time and place specified in the notice that is reasonable and give any such evidence, either orally or in writing, and produce any such documents.
- (2) A person to whom a request is made under subsection (1) may comply with the

request, but is not required to comply with it unless the person is:

- (a) the complainant, or
- (b) a person against whom the complaint was made, or
- (c) a health service provider.

- (3) Information and documents may be given or provided to the Commission in compliance with this section despite any other Act or law (but not despite a provision of Division 8 of this Part or Division 6B or 6C of Part 2 of the *Health Administration Act 1982*).
- (4) A person who is required to comply with a request under subsection (1) must not, without reasonable excuse, fail to comply with the request.

Maximum penalty: 20 penalty units.

**Note—**

Failure of a health practitioner to comply with a request under subsection (4) may constitute unsatisfactory professional conduct under the relevant health registration Act.

**35 Offence: obstructing an authorised person, Commission etc**

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 information knowing that it is false or misleading in a material particular to an authorised person, the Commissioner or a member of staff of the Commission in connection with the exercise of their functions under this Act with respect to a complaint,

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 (Repealed)**

### **37A Protection from incrimination**

- (1) **Self-incrimination not an excuse** A person is not excused from a requirement under section 34A to give information, to answer a question or to produce a document on the ground that the information, answer or document might incriminate the person or make the person liable to a penalty.
- (2) **Information or answer not admissible if objection made** However, any information or answer given by a natural person in compliance with a requirement under section 34A is not admissible in evidence against the person in any civil or criminal proceedings (except disciplinary proceedings or proceedings for an offence under this Part) if:
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned on that occasion that the person may object to giving the information or answer on the ground that it might incriminate the person.
- (3) **Documents admissible** Any document produced by a person in compliance with a requirement under section 34A is not inadmissible in evidence against the person in any proceedings on the ground that the document might incriminate the person.
- (4) **Further information** Further information obtained as a result of a document produced or information or answer given in compliance with a requirement under section 34A is not inadmissible in any proceedings on the ground:
  - (a) that the document, information or answer had to be produced or given, or
  - (b) that the document, information or answer might incriminate the person.
- (5) The Commission, the Commissioner or a member of staff of the Commission cannot be required (whether by subpoena or any other procedure) to produce, in connection with any proceedings, a document that contains any information or answer that has been obtained as a result of a requirement under section 34A if the information or answer is not admissible in evidence in those proceedings because of this section.

### **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) refer the complaint to the Director of Proceedings,
- (b) (Repealed)
- (c) refer the complaint to the appropriate registration authority (if any) for consideration of the taking of action under the relevant health registration Act, such as the referral of the health practitioner for performance assessment or impairment assessment,
- (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.

(1A) The Commission is not required to take action under this section if it reviews its assessment of the complaint and takes action under section 20A.

(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 and Midwives 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**

#### **46 Appointment of conciliators**

- (1) On the referral of a complaint by the Commission to the Health Conciliation Registry, the Registrar must appoint a conciliator to conciliate the complaint.
- (2) The Registrar may appoint more than one conciliator to conciliate the complaint if the Registrar 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 Registrar must give written notice to the parties to the complaint of the following:

- (a) that the complaint has been referred for conciliation,
- (b) that the conciliation process is voluntary and that the consent of the parties is required,
- (c) the objects of the conciliation process,
- (d) confidentiality provisions concerning conciliation,
- (e) the effect of any agreements arising out of conciliation,
- (f) 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 Role of conciliator**

The function of a conciliator is:

- (a) to bring the parties to the complaint together for the purpose of promoting the discussion, negotiation and settlement of the complaint, and
- (b) to undertake any activity for the purpose of promoting that discussion, negotiation and settlement, and
- (c) if possible, to assist 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 Assistance to parties at conciliation**

- (1) At the conciliation of a complaint, a party to the complaint is not entitled to be legally represented.
- (2) A party to a complaint may be assisted by another person (not being an Australian legal practitioner) if the assistance is provided:
  - (a) to the complainant, or
  - (b) to another party to the complaint and the Registrar or conciliator gives permission because the party would be disadvantaged without the assistance.
- (3) This section does not prevent an officer of a corporation that is a party to a complaint

from representing the corporation.

- (4) Contravention of this section does not invalidate the conciliation of a complaint.

### **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.
- (4) A person cannot be required (whether by subpoena or any other procedure) to produce evidence or a document that is inadmissible in evidence in proceedings before a court, tribunal or body because of this section.

### **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 Registrar without delay if the parties reach agreement otherwise than during the conciliation process.
- (3) The conciliation process is terminated if the conciliator terminates the 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 conciliation process**

- (1) On the conclusion of the conciliation process, the conciliator who was involved in the process must prepare a report to the Registrar concerning the conciliation.
- (2) The report may state only:
- (a) the outcome of the conciliation process, 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 Registrar must give a copy of the report to the Commission, the parties to the complaint and the appropriate registration authority (if any).

#### **54 Furnishing of other information to Registrar concerning conciliation process**

A conciliator who was involved in a conciliation process must furnish information to the Registrar (otherwise than in a report under section 53) sufficient to enable the Registrar to comply with section 55.

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

- (1) As soon as practicable after 1 April and 1 October in each year, the Registrar must furnish a report to each registration authority setting out the following information in relation to the complaints which have been dealt with under this Division during the previous 6 months:
  - (a) the number of complaints dealt with,
  - (b) the background of each complaint,
  - (c) the nature of the issues the subject of the conciliation process,
  - (d) 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 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 Complaint may be referred for investigation**

- (1) Despite section 20A, the Commission may investigate a complaint that has been dealt with under this Division but only if:
  - (a) the report under section 53 contains a recommendation that the Commission investigate the complaint, or
  - (b) new material concerning the matter the subject of the complaint becomes available and that material raises a matter that would cause the Commission to refer the complaint for investigation in accordance with section 23.
- (2) 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 and conciliators to be independent in dealing with complaints**

A member of staff of the Commission employed in the Health Conciliation Registry or a conciliator is not subject to the direction and control of the Commissioner in relation to dealing with any particular complaint that has been referred to the Health Conciliation Registry for conciliation.

**58 Offence for conciliator or staff of Health Conciliation Registry to disclose information obtained in conciliation**

A conciliator or a member of staff of the Commission employed in the Health Conciliation Registry must not disclose information obtained during the conciliation of a complaint (including to a member of staff of the Commission that is not employed in the Registry) except in any one or more of the following circumstances:

- (a) with the consent of the parties to the complaint concerned,
- (b) in connection with the administration or execution of this Division,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

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

**58A Offence of concealing a serious offence**

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 conciliation process.

**Division 9 Complaints resolution**

**58B Objects of Commission under this Division**

The objects of the Commission under this Division are as follows:

- (a) to provide an alternate and neutral means of resolving complaints that is independent of the investigative processes of the Commission,
- (b) to facilitate the resolution of complaints, including determining the most appropriate means of resolution having regard to the nature of the complaint and the expectations of the parties to the complaint,

- (c) to provide information to health service providers and members of the public on the complaints resolution functions of the Commission under this Part.

### **58C Function of Commission under this Division**

The Commission, when dealing with a complaint under this Division, is to take appropriate measures to assist in the resolution of the complaint, including (but not limited to) any of the following measures:

- (a) providing information to the parties to the complaint,
- (b) undertaking discussions concerning the complaint with the parties to the complaint,
- (c) facilitating the direct resolution of the complaint between the parties to the complaint.

### **58D Participation in complaints resolution process to be voluntary**

Participation in the complaints resolution process under this Division by the parties to a complaint is voluntary.

## **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 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 clients, or
- (c) the matter, if substantiated, would provide 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,
  - (a1) without limiting paragraph (a), to monitor and review the exercise of functions by the Health Conciliation Registry,
- (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 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.
- (3) Subject to section 90B, the functions of the Commission are exercisable by the Commissioner. Any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Commission.
- (4) A reference in this Act to anything done or omitted by, to or in relation to the Commission includes a reference to a thing done or omitted by, to or in relation to the Commissioner or another officer of the Commission having authority in the circumstances.

#### **76 Appointment of Commissioner**

- (1) The Governor may appoint a Commissioner.
- (2) The Commissioner has and may exercise the functions conferred or imposed on the Commissioner by or under this or any other Act.

#### **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 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, in appropriate cases, to investigate them, refer them for conciliation or deal with them under Division 9 of Part 2,
  - (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) (Repealed)
- (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**

## **85 Health Conciliation Registry**

There is established a Health Conciliation Registry within the Commission.

## **86 Functions of Health Conciliation Registry**

- (1) The Health Conciliation Registry has the functions conferred or imposed on it by or under this or any other Act.
- (2) In particular, the Health Conciliation Registry has the following functions:
  - (a) to arrange for the conciliation of complaints referred to the Registry by the Commission,

- (b) to liaise with the parties to a conciliation, including conducting pre-conciliation conferences, where appropriate,
- (c) to appoint a conciliator or conciliators to conduct the conciliation of a complaint referred to the Registry by the Commission,
- (d) to facilitate the conciliation of complaints,
- (e) to provide information about the conciliation process to the public and to health professionals.

### **87 Registrar of Health Conciliation Registry**

The Commission is to appoint a member of its staff as Registrar of the Health Conciliation Registry to manage the Registry.

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

The Commission is to designate as staff of the Health Conciliation Registry such of its staff as may be necessary to enable the Registry to carry out its functions.

### **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 6A Director of Proceedings**

### **90A Director of Proceedings**

- (1) The Commission is to appoint a member of its staff to be Director of Proceedings.
- (2) The Commission may, from time to time, appoint a person to act in the office of the Director of Proceedings during the illness or absence of the Director, and the person, while so acting, has and may exercise all the functions of the Director and is taken to be the Director.

### **90B Functions of Director of Proceedings**

- (1) The following functions of the Commission are to be exercised only by the Director of Proceedings in relation to any complaint referred to the Director by the Commission:

- (a) to determine whether the complaint should be prosecuted before a disciplinary body and, if so, whether it should be prosecuted by the Commission or referred to another person or body for prosecution,
    - (a1) if the Director determines that the complaint should be prosecuted before a disciplinary body by the Commission, to prosecute the complaint before the disciplinary body,
  - (b) to intervene in any proceedings that may be taken before a disciplinary body in relation to the complaint.
- (2) In addition, the Director of Proceedings has any other functions conferred or imposed on the Director by or under this or any other Act.
- (3) The Director of Proceedings:
- (a) may at any time consult with a registration authority in relation to the exercise of any of the Director's functions, and
  - (b) must consult with the appropriate registration authority (if any) before determining whether or not a complaint should be prosecuted before a disciplinary body.
- (4) The exercise by the Director of Proceedings of any function referred to in subsection (1) is taken to be the exercise of that function by the Commission.
- (5) While holding the office of Director of Proceedings, a person is not to exercise any function of the Commission other than a function referred to in subsection (1).

**90C Criteria relevant to determinations of Director of Proceedings**

- (1) The Director of Proceedings is to take into account the following matters when making a determination as to whether or not a complaint should be prosecuted before a disciplinary body:
- (a) the protection of the health and safety of the public,
  - (b) the seriousness of the alleged conduct the subject of the complaint,
  - (c) the likelihood of proving the alleged conduct,
  - (d) any submissions made under section 40 by the health practitioner concerned.
- (2) For the purpose of enabling the Director of Proceedings to fulfil the Director's functions under this section in relation to a complaint referred to the Director, the Commission is to provide the Director with any submissions received under section 40 in relation to the complaint.

### **90D Independence of Director of Proceedings**

The Director of Proceedings is not subject to the direction and control of the Commissioner in relation to dealing with any particular complaint that has been referred by the Commission to the Director for consideration.

## **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**

- (1) A matter or thing done or omitted by a person, being the Commissioner, an officer of the Commission, the Registrar or a conciliator 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.
- (2) The making of a complaint, or the reporting of any matter or thing that could give rise to a complaint, to the Commission or a registration authority by any person does not, if it was done in good faith, 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 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.

**99A Offence: improper disclosure of information**

If a person discloses information obtained in exercising a function under this Act 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.

### **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.

### **103A Application of [Ombudsman Act 1974](#)**

- (1) The [Ombudsman Act 1974](#) makes provision in respect of the investigation of the conduct of certain public authorities including the Commission.
- (2) The Commission is not precluded by anything in this Act or by any other Act or law from providing information to the Ombudsman in connection with a preliminary inquiry under section 13AA of the [Ombudsman Act 1974](#) or an investigation under that Act.

#### **Note—**

Section 12 of the [Ombudsman Act 1974](#) enables a person to make a complaint about a wide range of conduct of a public authority relating to administrative action or inaction by the public authority. Section 13AA of that Act enables the Ombudsman to conduct preliminary inquiries into such a complaint and section 13 of that Act enables the Ombudsman to investigate such conduct whether or not a complaint has been made if it appears to the Ombudsman that the conduct may be, for example, contrary to law.

## 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.

## 105 Special provisions relating to Walker Special Commission of Inquiry

Schedule 5 has effect.

## 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.

## Schedule 4 Savings, transitional and other provisions

(Section 103)

### Part 1 Preliminary

#### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Health Legislation Amendment (Complaints) Act 2004*

*Health Registration Legislation Amendment Act 2004*

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its

publication, or

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

(4) The provisions of this Schedule are subject to any regulations made under this clause.

## **Part 2 Provisions consequent on the enactment of this Act**

### **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.

## **Part 3 Provisions consequent on enactment of [Health Legislation Amendment \(Complaints\) Act 2004](#)**

### **5 Definition**

In this Part:

**amending Act** means the [Health Legislation Amendment \(Complaints\) Act 2004](#).

### **6 Commission and Commissioner**

The person holding the office of Commissioner, or acting in that office, immediately before the substitution of section 76 by the amending Act is taken to have been appointed to hold or act in that office under section 76 as so substituted on the same terms and conditions as applied to that person's appointment before that substitution.

### **7 Health Conciliation Registry**

(1) The Health Conciliation Registry established under Part 6 (as in force immediately before its substitution by the amending Act) is abolished.

- (2) A person who was a member of staff of the Health Conciliation Registry immediately before its abolition is transferred to the staff of the Commission.
- (3) Any such transfer is taken to have been done under section 87 of the *Public Sector Employment and Management Act 2002*.

## **8 Conciliators and conciliation**

- (1) A person appointed as a conciliator under section 89 before its substitution by the amending Act and whose appointment is in force immediately before that substitution is taken to have been appointed as a conciliator under section 89 (as inserted by the amending Act).
- (2) Any complaint that was referred to the Health Conciliation Registry before the substitution of Division 8 of Part 2 by the amending Act, and the conciliation of which under that Division was not finalised before the substitution:
  - (a) is taken to have been referred to the Health Conciliation Registry in accordance with that Division as substituted, and
  - (b) is to continue to be dealt with in accordance with that Division as substituted.

## **9 Application of amendments**

- (1) An amendment made by Schedule 1 [7] or [24] to the amending Act applies only to complaints made on or after the commencement of the amendment.
- (2) Despite subclause (1), an amendment made by Schedule 1 [7] or [24] to the amending Act applies to a complaint made before the commencement of the amendment to the extent (if any) that section 20A (3) applies to the complaint.
- (3) An amendment made by Schedule 1 [6], [10]-[14], [17]-[23], [27], [29], [32], [37] or Schedule 3 to the amending Act applies to a complaint whether made before, on or after the commencement of the amendment.
- (4) Despite subclause (3):
  - (a) an amendment made by Schedule 1 [6] or [12] to the amending Act does not apply to a complaint that was assessed by the Commission under section 13 before the commencement of the amendment, and
  - (b) the amendment made by Schedule 1 [22] to the amending Act does not apply to a referral of a complaint under section 26 that took place before the commencement of the amendment, and
  - (c) the amendment made by Schedule 1 [37] to the amending Act does not affect any proceedings commenced before the commencement of the amendment, and
  - (d) an amendment made by Schedule 3 [2] or [5] to the amending Act does not apply

to a complaint in respect of which the Commission has made a determination under section 39 before the commencement of the amendment.

- (5) Despite any other provision of this clause, the power conferred by section 90B (1) (a1) on the Director of Proceedings to prosecute a complaint extends to enable the Director to continue the prosecution of a complaint that had commenced before the commencement of that paragraph.

## **Part 4 Provisions consequent on enactment of [Health Registration Legislation Amendment Act 2004](#)**

### **10 Definition**

In this Part:

**amending Act** means the [Health Registration Legislation Amendment Act 2004](#).

### **11 Pending proceedings**

- (1) An amendment made to a health registration Act by the amending Act does not apply to a complaint that was referred to a Committee or Tribunal under the health registration Act before the commencement of the amendment.
- (2) An amendment made to a health registration Act by the amending Act does not apply to a complaint if an inquiry into the complaint under the health registration Act had commenced before the commencement of the amendment.

### **12 Amendments relating to constitution of Tribunal and committees**

- (1) The amendment made to section 147 of the [Medical Practice Act 1992](#) by the amending Act does not affect the Tribunal as constituted before the commencement of the amendment to deal with a complaint if the Tribunal is still dealing with that complaint at that commencement. Accordingly, the Tribunal as so constituted may continue to deal with the complaint as if the amendment had not been made.
- (2) The amendment made to section 169 of the [Medical Practice Act 1992](#) by the amending Act does not affect any Committee that was constituted before the commencement of the amendment to deal with a complaint and is still dealing with the complaint at that commencement. Accordingly, any such Committee may continue to deal with the complaint as if the amendment had not been made.
- (3) The amendment made to section 51 of the [Nurses and Midwives Act 1991](#) by the amending Act does not affect any Committee that was constituted before the commencement of the amendment to deal with a complaint and is still dealing with the complaint at that commencement. Accordingly, any such Committee may continue to deal with the complaint as if the amendment had not been made.

### 13 Statutory declarations

Any amendment made to a health registration Act by the amending Act to remove a requirement that a statutory declaration be given in relation to a complaint applies to a complaint whether made before, on or after the commencement of the amendment.

## Schedule 5 Special provisions relating to Walker Special Commission of Inquiry

(Section 105)

### 1 Definitions

In this Schedule:

**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 to suspend or cancel (by whatever means) the registration of a health practitioner.

**HCCC** means the Health Care Complaints Commission constituted under this Act.

**impairment assessment body** means a person or body established under a health registration Act to assess whether a health practitioner is suffering from any impairment and to make recommendations accordingly (such as an Impaired Registrants Panel under the [Medical Practice Act 1992](#)).

**professional assessment body** means a person or body established under a health registration Act to assess and report on the professional performance of a health practitioner (such as a Performance Review Panel under the [Medical Practice Act 1992](#)).

**the referred complaints** means the complaints and other matters relating to Campbelltown and Camden Hospitals specified in the commission establishing the Special Commission issued on 11 December 2003, as altered or varied by the Governor from time to time.

**the Special Commission** means the Special Commission of Inquiry established under the [Special Commissions of Inquiry Act 1983](#) for the purposes of inquiring into and reporting to the Governor on the referred complaints, and includes the Commissioner of the Special Commission.

### 2 Provisions applicable to recommendations for investigation by HCCC

- (1) This clause applies in respect of a recommendation in a report of the Special Commission that a specified matter in relation to a health practitioner be investigated by the HCCC.
- (2) The HCCC is required to investigate any such matter, without delay, in accordance

with this Act and the relevant health registration Act.

- (3) If a recommendation for such an investigation is made:
- (a) the matter is taken to be a complaint duly made under this Act, and cannot be withdrawn, and
  - (b) the requirements made by this Act or the relevant health registration Act before a complaint is investigated are taken to have been duly complied with, including that:
    - (i) the complaint be verified by statutory declaration, and
    - (ii) the appropriate registration authority has been notified of the complaint, and
    - (iii) the appropriate registration authority has been consulted by the HCCC about whether the complaint should be investigated, and
    - (iv) the HCCC has assessed the complaint for the purposes of determining whether the complaint should be investigated, and
  - (c) the HCCC is required to give the health practitioner such notice of the matter as the HCCC is required under this Act to give a person against whom a complaint is made, and
  - (d) the complainant for the purposes of this Act is taken to be the Director-General of the Department of Health or the person identified in the recommendation as the complainant.

### **3 Provisions applicable to recommendations for referral by HCCC for professional or other assessment**

- (1) This clause applies in respect of a recommendation in a report of the Special Commission that a specified matter in relation to a health practitioner be referred by the HCCC under section 26 of this Act to a registration authority for assessment by an impairment assessment body or a professional assessment body.
- (2) The HCCC is required to refer any such matter, without delay, under section 26 of this Act.
- (3) If a recommendation for such a referral is made, the requirements made by this Act or the relevant health registration Act before the matter is referred for assessment by an impairment assessment body or a professional assessment body are taken to have been duly complied with.

### **4 Provision of documents and other information to relevant agencies by Special Commission**

- (1) In this clause:

**relevant agency** means the HCCC, a registration authority, an impairment assessment body or a professional assessment body.

- (2) The Special Commission is authorised to provide a relevant agency with documents or other information obtained by it in the course of its inquiries (but only if the Special Commission is satisfied that it is reasonably necessary to do so to assist the relevant agency to exercise the functions of the relevant agency).
- (3) Information may be provided under this clause despite any Act or law.

## **5 Consideration of report of, and documents or other information used by, Special Commission**

Any matter contained in a report of the Special Commission and any documents or other information taken into account by the Special Commission in making its report:

- (a) may be taken into account by the HCCC in any investigation or other action taken by the HCCC in respect of a health practitioner under this Act or the relevant health registration Act, and
- (b) may be taken into account by any registration authority in any investigation or other action taken by the registration authority in respect of a health practitioner under the relevant health registration Act, and
- (c) may be taken into account by any impairment assessment body or professional assessment body in any assessment of a health practitioner under the relevant health registration Act, and
- (d) may be taken into account by a disciplinary body in any proceedings against a health practitioner under the relevant health registration Act.

## **6 Protection of certain actions relating to Special Commission from challenge**

- (1) For the purposes of this clause, a **protected action** is any action of the HCCC, a disciplinary body, a registration authority, an impairment assessment body or a professional assessment body under this Act or a health registration Act in relation to a health practitioner, being:
  - (a) any investigation or other action that is recommended in a report of the Special Commission, or
  - (b) any prosecution or other action that is taken following the carrying out of any such recommended investigation or other action.
- (2) A protected action may not be:
  - (a) challenged, reviewed, quashed or called into question before any court of law, administrative review body or disciplinary body in any proceedings, or



(b) restrained, removed or otherwise affected by any proceedings,

because a designated person exercises a function in the circumstances or manner authorised by this Schedule or because of any act or omission of the Special Commission.

(3) Subclause (2) applies whether or not the proceedings relate to any question involving compliance or non-compliance, by a designated person, with the provisions of this Act or a health registration Act or the rules of natural justice (procedural fairness).

(4) This clause does not affect the generality of section 36 of the *Special Commissions of Inquiry Act 1983*.

(5) In this clause:

**designated person** means:

(a) the Special Commission (including the Commissioner of the Special Commission),  
or

(b) the HCCC (including the Commissioner of the HCCC), or

(c) a registration authority, an impairment assessment body or a professional assessment body (or a member of any such body), or

(d) a complainant, or

(e) any person assisting or otherwise associated with any of them.

**exercise** of functions includes the purported exercise of functions and the non-exercise or improper exercise of functions.

**proceedings** includes:

(a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and

(b) without limiting paragraph (a), proceedings for a stay of disciplinary or other proceedings, and

(c) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the *Supreme Court Act 1970*,

but does not include criminal proceedings.

## **7 Action by HCCC in anticipation of recommendation of Special Commission etc**

(1) Anything done by the HCCC, before the commencement of this Schedule, with respect to the investigation of a matter in anticipation of a recommendation of the Special

Commission is taken, for the purposes of this Schedule, to have been done after that commencement if the recommendation is contained in a report of the Special Commission.

- (2) The HCCC is not precluded from continuing to investigate or take other action with respect to a matter that the Special Commission has considered but in respect of which it has not recommended any further investigation or other action.