

# Health Care Complaints Act 1993 No 105

[1993-105]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Health Legislation Amendment Bill \(No 2\) 2018](#)

### 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 and principle of administration of 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 the exercise of functions under this Act the protection of the health and safety of the public must be the paramount consideration.

### 3A Outline of role and principles 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 professional councils.
- (3) **Health Secretary** The Health Secretary 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 professional councils.
- (5) **Registration authorities** Registration authorities are responsible for the registration of health professionals.
- (5A) **Professional councils** Professional councils are responsible for the management of complaints in conjunction with the Commission and protecting the public through promoting and maintaining professional standards.
- (5B) **Principles** The Commission and other government agencies with functions in connection with health care complaints under this Act are, in carrying out those functions, to have regard to the following principles:
- (a) the Commission and those government agencies are to be accountable to the New South Wales community,
  - (b) the decision-making processes are to be open, clear and understandable for clients and health service providers,
  - (c) an acceptable balance is to be maintained between protecting the rights and interests of clients and health service providers,
  - (d) the processes of the Commission and those government agencies are to be effective in protecting the public from harm,
  - (e) the Commission and those government agencies are to strive to improve the efficiency of the administration of those functions so as to benefit the New South

Wales community,

(f) the Commission and those government agencies are to be flexible and responsive as the health care system evolves and changes.

(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:

**associated complaint** means a complaint made or referred to the Commission in respect of a health practitioner who is, or a health organisation that is, the subject of another complaint being assessed or investigated by the Commission or being prosecuted by the Commission before a disciplinary body, and includes:

- (a) a complaint made at any time prior to the completion of the assessment, investigation or prosecution of that other complaint, and
- (b) a complaint that has been discontinued or terminated.

**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.

**disciplinary action** includes the making of an order or the issue of a statement under section 41A.

**disciplinary body** means a person or body (including a professional standards committee) established under the [Health Practitioner Regulation National Law \(NSW\)](#) that has the power to discipline a health practitioner or to suspend or cancel (by whatever

means) the registration of a health practitioner.

**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 the Health Practitioner Regulation National Law).

**Health Practitioner Regulation National Law** means:

- (a) the Health Practitioner Regulation National Law:
  - (i) as in force from time to time, set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland, and
  - (ii) as it applies (including with any modifications) as a law of New South Wales or another State or Territory, or
- (b) the law of another State or Territory that substantially corresponds to the law referred to in paragraph (a).

**Health Secretary** means the Secretary of the Ministry of Health.

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

- (a) medical, hospital, nursing and midwifery 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 in connection with Aboriginal and Torres Strait Islander health

practices and medical radiation practices,

- (j) Chinese medicine, chiropractic, occupational therapy, optometry, osteopathy, physiotherapy, podiatry and psychology services,
- (j1) optical dispensing, dietitian, massage therapy, naturopathy, acupuncture, speech therapy, audiology and audiometry services,
- (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.

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

**professional council** means, in relation to a health practitioner in a health profession for which a Council is established under section 41B of the [Health Practitioner Regulation National Law \(NSW\)](#), the Council for that health profession.

**registered** includes enrolled.

**registered health practitioner** has the same meaning as in the [Health Practitioner Regulation National Law \(NSW\)](#).

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

**registration authority** means, in relation to a health practitioner in a health profession for which a National Board (within the meaning of the [Health Practitioner Regulation National Law \(NSW\)](#)) is provided—that National Board.

**student** has the same meaning as in the [Health Practitioner Regulation National Law \(NSW\)](#).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this 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 (including any alleged breach by the health practitioner of Division 1 or 3 of Part 7 of the *Public Health Act 2010* or of a code of conduct prescribed under section 100 of that Act), or
  - (b) a health service which affects, or is likely to affect, 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?**

- (1) 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 Health Secretary
  - the Minister.
- (2) The Commissioner may make a complaint under this Act, but only if it appears to the Commissioner that the matter that is the subject of the complaint:
  - (a) raises a significant issue of public health or safety, or

- (b) raises a significant question regarding a health service that affects, or is likely to affect, the clinical management or care of an individual client, or
- (c) if substantiated, would:
  - (i) provide grounds for disciplinary action against a health practitioner, or
  - (ii) be found to involve gross negligence on the part of a health practitioner, or
  - (iii) result in the health practitioner being found guilty of an offence under Division 1 or 3 of Part 7 of the *Public Health Act 2010*.

(3) The provisions of this Part apply to the making of a complaint by the Commissioner, subject to any modifications prescribed by the regulations.

## **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 and professional councils**

### **10 Notifying professional councils 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 a registered health practitioner, the Commission must notify the appropriate professional council of the complaint.
- (2) The complaint is to be so notified as soon as practicable after it is made.

### **11 Complaints made to professional councils**

If, in accordance with the *Health Practitioner Regulation National Law (NSW)*, a professional council notifies the Commission of a complaint made under that Law, the complaint is taken to have been made in accordance with this Act to the Commission.

## **12 Consultation between the Commission, a professional council 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 professional council (if any), 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 professional council instead of consulting with the professional council itself and where the prescribed person may exercise the other functions of the professional council under this Division.
- (3) Consultation under this section is to include consultation about any associated complaint, to the extent the Commission and the appropriate professional council or the Registrar consider the associated complaint to be relevant.

## **13 The outcomes of consultation**

- (1) If either the Commission or the appropriate professional council 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 professional council 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 professional council for consideration as to whether the professional council should take any action under the *Health Practitioner Regulation National Law (NSW)* (such as performance assessment or impairment assessment),it must be referred to the professional council under section 25B.
- (2A) If either the Commission or the appropriate professional council is of the opinion that an associated complaint that has been discontinued or terminated and to which regard was given during consultation:
  - (a) should be reopened or investigated—the complaint must be reopened and investigated in accordance with Division 5, or
  - (b) should be referred to the appropriate professional council for consideration as to whether the professional council should take any action under the *Health*

*Practitioner Regulation National Law (NSW)*—the complaint must be so referred, as if it had not been discontinued or terminated.

(3) If:

- (a) neither the Commission nor the appropriate professional council is of the opinion that the complaint (or part) should be investigated or referred to the professional council, 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.

#### **14 Suspension of action by professional council**

- (1) A professional council must not take any action under the *Health Practitioner Regulation National Law (NSW)* 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 professional council under the *Health Practitioner Regulation National Law (NSW)* to do anything to protect the life or the physical or mental health of any person.

#### **15 Provision of information to professional councils**

- (1) A professional council for a particular health profession 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 in that health profession.
- (2) The Commission must supply the information requested if it is reasonable to do so.

##### **Note—**

Division 2 enables the professional councils 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 relevant professional council. 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.

#### **16A Employer to be notified of complaint against employee**

- (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 a person who currently employs or engages the health practitioner concerned as a health practitioner if the Commission considers on reasonable grounds that the giving of the notice is necessary:
  - (a) to assess the matter effectively, or

(b) to protect the health or safety of the public or a member of the public.

(2) 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:

(a) place the complainant or another person at risk of intimidation or harassment, or

(b) unreasonably prejudice the employment or engagement of the health practitioner.

### **17 Health Secretary 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 Health Secretary.

### **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, or

(e) the matter, if substantiated, would result in the health practitioner being found guilty of an offence under Division 1 or 3 of Part 7 of the *Public Health Act 2010*.

## **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 Health Secretary 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 professional council, 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 Health Secretary 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 Power of Commission to obtain information, records and evidence**

- (1) If the Commission is assessing 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 assessment, the Commission may, by written notice given to the person, require the person to do any one or more of the following:
  - (a) to give the Commission, in writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation), and within the reasonable time and in the way 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) 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*).

- (3) A person who is subject to a requirement under subsection (1) must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty: 20 penalty units.

## **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.

### **22A Associated complaints to be taken into account**

- (1) In assessing, and reviewing its assessment of, a complaint relating to a health practitioner or a health organisation, the Commission is to have regard to any of the following matters, to the extent the Commission reasonably considers the matter to be relevant to the complaint:
- (a) any associated complaint,
- (b) if the complaint relates to a health practitioner:
- (i) any decision made in respect of the practitioner by an adjudication body within the meaning of the *Health Practitioner Regulation National Law (NSW)*, and
- (ii) any previous finding, determination, recommendation or decision made in respect of the practitioner by a committee, tribunal or panel under a repealed Act.
- (2) In this section, **repealed Act** means any of the following Acts:
- (a) *Chiropractors Act 2001*,
- (b) *Dental Practice Act 2001*,
- (c) *Dental Technicians Registration Act 1975*,
- (d) *Medical Practice Act 1992*,
- (e) *Nurses and Midwives Act 1991*,
- (f) *Optometrists Act 2002*,

- (g) *Osteopaths Act 2001*,
- (h) *Pharmacy Practice Act 2006*,
- (i) *Physiotherapists Act 2001*,
- (j) *Podiatrists Act 2003*,
- (k) *Psychologists Act 2001*.

### **23 Investigation of complaint**

- (1) The Commission must investigate a complaint:
  - (a) if, under section 13 (1), the appropriate professional council 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, or
    - (v) if substantiated, would result in the health practitioner being found guilty of an offence under Division 1 or 3 of Part 7 of the *Public Health Act 2010*.
- (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 professional council 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 professional council.
- (4) However, subsection (3) does not affect the requirement in section 12 (1) for the Commission to consult with the appropriate professional council 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 Health Secretary**

- (1) Following the assessment, the Commission must notify the Health Secretary 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*
  - *Assisted Reproductive Technology Act 2007*
  - *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 2007*
  - *Poisons and Therapeutic Goods Act 1966*
  - *Private Health Facilities Act 2007*
  - *Public Health Act 2010*
- (2) The Commission is not required to notify the Health Secretary of the details of the complaint if the complaint was made by the Health Secretary.
- (3) The Health Secretary must notify the Commission whether the Health Secretary proposes to deal with the complaint and, if the Health Secretary does so, of the outcome of the Health Secretary'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, or is likely to affect, the clinical management or care of an individual client.

**Note—**

The Health Secretary, under the Minister, is primarily responsible for the enforcement of the Acts listed in section 25 (other than Division 3 of Part 7 of the *Public Health Act 2010*). 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 Health Secretary 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 Health Secretary 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 Health Secretary**

- (1) The Commission may, with the consent of the Health Secretary, refer a complaint (or part of a complaint) to the Health Secretary 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 Health Secretary under section 106 of the *Public Health Act 2010* 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 Health Secretary 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, or is likely to affect, the clinical management or care of an individual client.

**25B Reference of complaints to be dealt with by professional councils**

- (1) Following the assessment, the Commission may refer a complaint to the appropriate professional council (after consultation with that council) if it appears that the complaint (or part) should be referred to the professional council for consideration as to whether the professional council should take any action under the *Health Practitioner Regulation National Law (NSW)*, such as performance assessment or impairment assessment.

**Note—**

Section 13 (2) requires the Commission to refer a complaint to the professional council if either the Commission or the professional council 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 professional council under this section.



## 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 professional council) 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 Health Secretary under this section.

**Note—**

The Commission may refer a complaint to the Health Secretary under section 25 or 25A but only with the consent of the Health Secretary.

- (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 the *Health Practitioner Regulation National Law (NSW)*),
  - (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 parties to the complaint 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 Health Secretary 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.

- (6) This section does not require the Commission to give notice of the outcomes of the assessment of 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.
- (7) Despite subsection (6), 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.
- (8) If the Commission decides that subsection (6) 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 that form of notice.
- (9) 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 (8)), unless notice under this section has already been given or the Commission has discontinued dealing with the complaint.

## Division 5 Investigation of complaints

### Note—

The bulk of Commission investigations under this Division will deal with matters arising under the [Health Practitioner Regulation National Law \(NSW\)](#) relating to health practitioners. The Commission will also use its powers under this Division for matters relating to non-registered health practitioners and 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) (Repealed)

**29A Conduct of investigations**

- (1) Without affecting the generality of section 92A, 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.
- (2) Before investigating a complaint, the Commission is to consider conducting a concurrent investigation into any associated complaint (other than one that has been discontinued or terminated and not reopened).
- (3) In investigating a complaint, the Commission is to have regard to any associated complaint that is not being investigated concurrently, to the extent the Commission considers the associated complaint to be relevant.

**30 Expert assistance**

- (1) In investigating a complaint, the Commission may obtain a report from a person (including a registered health practitioner) 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:

Signature.....

- (4) Such a report may be used in disciplinary or related proceedings under the [Health Practitioner Regulation National Law \(NSW\)](#) 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**

- (1) 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,
  - (c1) if authorised to do so under a search warrant, seize 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,
  - (f1) if authorised to do so under a search warrant, remove any such records for the purposes 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.
- (2) If an authorised person removes any records under the authority of a search warrant for the purposes of taking copies of, or notes from, those records, the authorised person must return the records to the owner of the records as soon as practicable.

### **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, a registered health practitioner or a student (or whose registration is or was suspended) unless the authorised person or the Commission has caused the President or Chairperson of the appropriate professional council 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, require 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) (Repealed)

(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 subject to a requirement under subsection (1) must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty: 20 penalty units.

#### **Note—**

Failure of a health practitioner to comply with a requirement under subsection (4) may constitute unsatisfactory professional conduct under the *Health Practitioner Regulation National Law (NSW)*.

### **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 21A or 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 21A or 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 21A or 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 21A or

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 21A or 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 professional council**

- (1) The Commission must notify the appropriate professional council (if any) of the findings of an investigation.
- (2) If the Commission is required to consult with the professional council 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 professional council (if any) for consideration of the taking of action under the *Health Practitioner Regulation National Law (NSW)*, 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,
  - (g) take action under section 41A.
- (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 professional council before

deciding what action to take.

(3) (Repealed)

#### **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), (c), (d) or (g), 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 the *Health Practitioner Regulation National Law (NSW)*, and
  - (b) the practitioner has been notified by the appropriate professional council of action to be taken pursuant to those provisions.

#### **Note—**

Section 40 (3) will ensure that professional councils can act to deal with impaired practitioners pursuant to any powers they may have under the *Health Practitioner Regulation National Law (NSW)*, without awaiting advice from the Commission.

#### **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 professional council, 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 professional council, 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, or
  - (c) any person to whom it could have given notice under section 28A of its assessment of the complaint, or

(d) any other person or body that is, in the Commission's opinion, a relevant person or body.

(3) The Commission must review a decision made under section 39 if asked to do so by the complainant.

## **Division 6A Action against non-registered health practitioners**

### **41AA Interim prohibition orders**

(1) The Commission may, during any investigation of a complaint against a non-registered health practitioner, make an order (an ***interim prohibition order***) in respect of the non-registered health practitioner.

(2) The Commission may make an interim prohibition order only if:

(a) it has a reasonable belief that the health practitioner has breached a code of conduct for non-registered health practitioners, and

(b) it is of the opinion that:

(i) the health practitioner poses a serious risk to the health or safety of members of the public, and

(ii) the making of an interim prohibition order is necessary to protect the health or safety of members of the public.

(3) An interim prohibition order may do one or both of the following:

(a) prohibit the health practitioner from providing health services or specified health services,

(b) place such conditions as the Commission thinks appropriate on the provision of health services or specified health services by the health practitioner.

(4) An interim prohibition order remains in force for a period of 8 weeks or such shorter period as may be specified in the order.

(5) The Commission must notify the health practitioner of its decision to make an interim prohibition order and provide the health practitioner with a written statement of the decision that sets out the grounds on which the decision was made as soon as practicable after the decision is made.

(6) In this section, ***code of conduct for non-registered health practitioners*** means a code of conduct prescribed by regulations under section 100 of the [Public Health Act 2010](#).

#### **41A Prohibition orders and public statements**

- (1) The Commission may take action under this section if:
  - (a) it has complied with Division 6 with respect to an investigation of a complaint against a health practitioner, and
  - (b) it finds that the health practitioner has breached a code of conduct for non-registered health practitioners or has been convicted of a relevant offence, and
  - (c) it is of the opinion that the health practitioner poses a risk to the health or safety of members of the public.
- (2) The action that the Commission may take under this section is either or both of the following:
  - (a) make an order (a **prohibition order**) that does any one or more of the following:
    - (i) prohibits the health practitioner from providing health services or specified health services for the period specified in the order or permanently,
    - (ii) places such conditions as the Commission thinks appropriate on the provision of health services or specified health services by the health practitioner for the period specified in the order or permanently,

**Note—**

Section 102 (3) of the [Public Health Act 2010](#) provides that it is an offence for a person to provide a health service in contravention of a prohibition order.

- (b) cause a public statement to be issued in a manner determined by the Commission identifying and giving warnings or information about the health practitioner and health services provided by the health practitioner.
- (3) If the Commission is aware that a person in respect of whom it is proposing to make a prohibition order is a registered health practitioner, the Commission is, before making the prohibition order, to notify the relevant professional council of the proposed order and give that council an opportunity to make a submission.
- (4) The Commission may revoke or revise a statement under subsection (2) (b).
- (5) In this section:

**code of conduct for non-registered health practitioners** means a code of conduct prescribed by regulations under section 100 of the [Public Health Act 2010](#).

**relevant offence** means:

- (a) an offence under Part 7 of the [Public Health Act 2010](#), or

- (b) an offence under the *Fair Trading Act 1987* or the *Competition and Consumer Act 2010* of the Commonwealth that relates to the provision of health services.

**41B Commission to provide details of its decision to make prohibition order**

- (1) If the Commission makes any of the following decisions in respect of a health practitioner under section 41A, it must provide the health practitioner with a written statement of the decision as soon as practicable after the decision is made:
  - (a) a decision that the health practitioner has breached a code of conduct for non-registered health practitioners,
  - (b) a decision to make a prohibition order in respect of the health practitioner,
  - (c) a decision to issue, revoke or revise a public statement about the health practitioner under section 41A.
- (2) The statement of a decision must:
  - (a) set out any findings on material questions of fact, and
  - (b) refer to any evidence or other material on which the findings were based, and
  - (c) give the reasons for the decision.
- (3) The Commission, subject to subsections (4) and (5):
  - (a) must provide a statement of the decision to the complainant, and
  - (b) must provide a statement of the decision to any professional body or association that the Commission considers to be relevant to the health practitioner or to the area of practice to which the complaint relates, and
  - (c) may make a statement of the decision publicly available.
- (4) The Commission may remove from a statement of a decision that is provided to a person or body, or made publicly available, under subsection (3), any material that it considers to be confidential information.
- (5) When confidential material is not included in the statement of a decision the statement should indicate that such material has been removed.
- (6) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.
- (7) In this section:  
**confidential information** means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared, and
- (b) relates to the personal or business affairs of a person, other than the person to whom the Commission is required to provide the written statement of the decision, and
- (c) is information:
  - (i) that was supplied in confidence, or
  - (ii) the publication of which would reveal a trade secret, or
  - (iii) that was provided in compliance with a duty imposed by or under an Act, or
  - (iv) the provision of which by the Commission would be in breach of an Act or law.

#### **41C Administrative review by Civil and Administrative Tribunal**

- (1) A health practitioner may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the following decisions under section 41AA or 41A:
  - (a) a decision that the health practitioner has breached a code of conduct for non-registered health practitioners,
  - (b) a decision to make an interim prohibition order or a prohibition order in respect of the health practitioner,
  - (c) a decision to issue, revoke or revise a public statement about the health practitioner.
- (2) An application under this section is to be made within 28 days after the day on which the health practitioner is provided with the statement of the decision.

#### **41D Commission to provide registration authorities and professional councils with details of interim prohibition orders and prohibition orders**

If the Commission makes an interim prohibition order under section 41AA or a prohibition order under section 41A in respect of a health practitioner, it is to provide a copy of the statement of the decision in respect of that order to each registration authority and professional council.

#### **41E Register of orders**

The Commission is to:

- (a) keep a register containing copies of all prohibition orders and interim prohibition orders in force under this Division, and



- (b) cause the contents of the register to be made available for inspection free of charge by the public on the Commission's website.

## **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 Health Secretary.
- (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 Health Secretary 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 Health Secretary, it may, after consultation with the Health Secretary, 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:
- (a) any person or body it could have referred the matter to under section 26, or
  - (b) any person to whom it could have given notice under section 28A of its assessment of the complaint, or
  - (c) any other person or body that is, in the Commission's opinion, a relevant person or body.
- (2A) The Commission may, at its discretion, also give a copy of a report prepared under section 42 (2) on the matter the subject of the complaint to the complainant.
- (3) Nothing in this section authorises the release of a report prepared under section 42 (2) otherwise than as provided by subsection (2A) or section 44, unless the report is released by the Health Secretary or the Minister.
- (4) In this section, **results of an investigation** includes any action taken under section 42 and the reasons for taking that action.

### **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 professional council (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 professional councils**

- (1) As soon as practicable after 1 April and 1 October in each year, the Registrar must furnish a report to each professional council 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 professional council must not use a report furnished to it under this section except for the purpose of providing general information to health practitioners 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 professional council (if any). If either the Commission or the appropriate professional council (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 Health Secretary 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 Health Secretary that it proposes to carry out the investigation and requests the Health Secretary to provide it with a report on the matter, and
- (b) the Health Secretary:
  - (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 Health Secretary 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 Health Secretary and the Minister.

- (2) The Commission may request the Health Secretary 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 Chair and Deputy Chair**

- (1) There is to be a Chair and a Deputy Chair 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 Chair or Deputy Chair 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 Chair is absent from New South Wales or is, for any reason, unable to perform the duties of Chair or there is a vacancy in that office, the Deputy Chair may exercise the functions of the Chair 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 Chair or, in the absence of the Chair, the Deputy Chair (or, in the absence of both the Chair and the Deputy Chair, 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 Deputy Chair or other member presiding at a meeting of the Joint Committee has, in relation to the meeting, all the functions of the Chair.
- (6) The Chair, Deputy Chair 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 Chair, 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, 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.

**Note—**

The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Joint Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

### **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.
- (3) Schedule 1A contains provisions relating to the Commissioner.

### **77 (Repealed)**

### **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 a health service that affects, or is likely to affect, the clinical management or care of individual clients
    - complaints referred to it by a professional council under the *Health Practitioner Regulation National Law (NSW)*,
  - (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 professional councils, 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.
- (5) Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Commission to exercise its functions.

**Note—**

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Commission makes use of) may be referred to as officers or employees, or members of staff, of the Commission. Section 47A of the [Constitution Act 1902](#) precludes the Commission from employing staff.

## **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 (Repealed)**

**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.
- (2A) Without limiting subsection (2), the Director of Proceedings may exercise any other functions conferred or imposed on the Commission by another Act and delegated to the Director under section 84.
- (3) The Director of Proceedings:
  - (a) may at any time consult with a professional council in relation to the exercise of any of the Director's functions, and

(b) must consult with the appropriate professional council (if any) before determining whether or not a complaint should be prosecuted before a disciplinary body.

(3A) If the Director determines that a complaint should not be prosecuted before a disciplinary body, the Director may refer the complaint back to the Commission for action to be taken under section 39 (1) (c)-(g).

(3B) The Director may refer a complaint back to the Commission for further investigation under Division 5 of Part 2 if the Director:

(a) is unable to determine whether the complaint should be prosecuted before a disciplinary body, or

(b) is of the opinion that further evidence is required to enable the Director to prosecute the complaint before the disciplinary body.

(3C) If a complaint has been referred to the Commission for further investigation under subsection (3B), sections 39 (2) and 40 apply in relation to the complaint only if the Commission, at the end of the further investigation of the complaint, proposes to take any of the following action:

(a) 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,

(b) 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).

(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) or (2A).

### **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.

- (1A) When determining whether a complaint should be prosecuted by the Commission before a disciplinary body, the Director of Proceedings is to consider making a determination with respect to any associated complaint that has been referred to the Director of Proceedings (other than an associated complaint that is a complaint that has been discontinued or terminated and not reopened) so that the complaints are prosecuted concurrently.
- (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.

#### **90CA Notice of determination**

The Director of Proceedings may give notice of the Director's determination as to whether or not a complaint should be prosecuted before a disciplinary body to the following persons:

- (a) the parties to the complaint,
- (b) the appropriate professional council (if any),
- (c) any other person or body whom the Commission could notify under section 45 of the results of an investigation of 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.

#### **90E Delegation of functions**

- (1) The Director of Proceedings may delegate the Director's functions with respect to a particular complaint, other than this power of delegation, to any officer of the Commission.
- (2) An officer of the Commission to whom functions are delegated under subsection (1) is not, in the exercise of the functions, subject to the direction and control of the Commissioner.

### **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 Health Secretary 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.

## **92A Expedition of certain matters**

The Commission is to assess, investigate and, if appropriate, prosecute as quickly as practicable matters referred to it following action under section 149C of the *Health Practitioner Regulation National Law (NSW)* by a professional council.

## **93 Inconsistency between this Act and the *Health Practitioner Regulation National Law (NSW)***

This Act prevails over the *Health Practitioner Regulation National Law (NSW)* to the extent of any inconsistency between them.

## **94 Consultation between Commission and Health Secretary**

- (1) The Health Secretary 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 Health Secretary, consult with the Health Secretary with respect to matters arising under the administration of this Act.

## **94A Warnings about unsafe treatments or services**

- (1) If, during an investigation, the Commission is of the view that issuing a public statement about a particular treatment or health service is necessary to protect public health or safety and that any further delay in issuing the statement poses a risk to an individual or to public health or safety, the Commission may cause a public statement to be issued in a manner determined by the Commission identifying and giving warnings or information about the treatment or health service.
- (1A) If, following an investigation, the Commission is of the view that a particular treatment or health service poses a risk to public health or safety, the Commission may cause a public statement to be issued in a manner determined by the Commission identifying and giving warnings or information about the treatment or health service.

- (2) The Commission may revoke or revise a statement under this section.

**94B Publication of information about decisions and de-registered practitioners**

- (1) The Commission must make publicly available a statement of a decision of a tribunal if the statement is provided to it under the *Health Practitioner Regulation National Law (NSW)* and is in respect of a complaint that has been proved or admitted in whole or in part unless the tribunal has ordered otherwise.
- (2) The Commission may disseminate a statement of a decision of a professional council or registration authority provided to it under the Health Practitioner Regulation National Law as it sees fit unless the professional council or registration authority has ordered otherwise.
- (3) The Commission must make publicly available information required to be provided to it about a person whose registration as a registered health practitioner is cancelled or suspended as a result of disciplinary proceedings.
- (4) For the purposes of this section, a person's registration as a registered health practitioner is cancelled if any of the following happen as a result of an action, decision, determination or order of a professional council, registration authority, tribunal or court:
- (a) the person's registration is cancelled,
  - (b) the person is de-registered,
  - (c) the person's name is removed from, or struck off, a register or a roll,
  - (d) the person's practising certificate is cancelled.

**94C Protection from liability for certain publications**

- (1) A publication in good faith under section 41A, 41B, 94A or 94B does not subject a protected person to any liability (including liability in defamation).
- (2) In this section:

***protected person*** means:

- (a) the Commission or the Civil and Administrative Tribunal or a member of the Commission or Tribunal, or
- (b) a professional council or assessment committee established under the *Health Practitioner Regulation National Law (NSW)* or a member of any such council or committee, or
- (c) the proprietor, editor or publisher of a newspaper, or

- (d) the proprietor or broadcaster of a radio or television station or the producer of a radio or television show, or
- (e) an internet service provider or internet content host, or
- (f) a member of staff of or a person acting at the direction of any person or entity referred to in this definition, or
- (g) any person, or person belonging to a class of persons, prescribed by the regulations for the purposes of this section.

## **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 Health Secretary 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 Health Secretary 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 professional council 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 professional council or not to continue with a complaint made to the Commission or a professional council, or
  - (b) not to have discussions with, or take part in proceedings before, the Commission or a professional council 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 professional council, or

(b) intends to take part, is taking part, or has taken part in any discussions with, or proceedings before, the Commission or a professional council 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**

- (1) 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.

(2) A person may not be compelled in any legal proceedings to give evidence about, or produce documents containing, any information obtained in exercising a function under this Act.

(3) Subsection (2) does not apply to the following proceedings:

- (a) proceedings under the *Royal Commissions Act 1923*,
- (b) proceedings before the Independent Commission Against Corruption,
- (c) proceedings under Part 3 of the *Special Commissions of Inquiry Act 1983*,
- (d) an inquiry under the *Ombudsman Act 1974*.

**99B Disclosure of information to certain persons or bodies**

(1) The Commission or a member of staff of the Commission may, at the Commission's discretion, disclose information obtained in exercising a function under this Act to any

of the following:

- (a) the Minister,
  - (b) any court, tribunal or other person acting judicially,
  - (c) any person or body regulating health service providers in Australia,
  - (d) any officer of, or Australian legal practitioner instructed by, any of the following:
    - (i) any authority regulating health service providers in Australia,
    - (ii) the Commonwealth or a State or Territory,
    - (iii) an authority of the Commonwealth or of a State or Territory,
  - (e) any investigative or prosecuting authority established by or under legislation,
  - (f) a police officer if the Commission suspects on reasonable grounds that the information relates to an offence that may have been committed,
  - (g) an investigator carrying out an investigation, examination or audit in relation to a health service provider,
  - (h) a health service provider that is the subject of an investigation under this Act,
  - (i) a client of a health service provider that has been the subject of an investigation under this Act, but only to the extent the information relates to that client.
- (2) The Commission may exercise its discretion under subsection (1) to disclose, or authorise a member of the Commission's staff to disclose, information only if:
- (a) the Commission considers the public interest in disclosing the information outweighs the public interest in protecting the confidentiality of the information and the privacy of any person to whom the information relates, and
  - (b) the Commission has had due regard to the principle set out in section 3 (2).

### **100 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

### **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 (Repealed)**

**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 (Repealed)**

**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:

(*photograph of person*) .....(*insert name of person being authorised*)  
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:

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

## Schedule 1A Provisions relating to Commissioner

(Section 76 (3))

### 1 Term of office

- (1) The Commissioner holds office for such term, not exceeding 5 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person is not eligible to be appointed for more than 2 terms of office as Commissioner (whether or not consecutive terms).

### 2 Full-time office

The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

### 3 Employment and remuneration

- (1) The employment of the Commissioner is (subject to this Schedule) to be governed by a contract of employment between the Commissioner and the Minister.
- (2) The following provisions of or made under the [Government Sector Employment Act 2013](#) relating to the employment of Public Service senior executives apply to the Commissioner (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister):
  - (a) provisions relating to the band in which an executive is to be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.

#### **4 Vacancy in office**

- (1) The office of Commissioner becomes vacant if the holder:
  - (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) 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
  - (e) becomes a mentally incapacitated person, or
  - (f) 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, or
  - (g) is removed from office under clause 5.
- (2) If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **5 Removal from office**

- (1) The Governor may remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.
- (2) The Commissioner cannot be removed from office under Part 6 of the [Government Sector Employment Act 2013](#).

#### **6 Commissioner not Public Service employee**

The office of Commissioner is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office (except as provided by clause 3).

### **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 6 of the *Government Sector Employment Act 2013*, 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) The office of a conciliator is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office.

(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 (Repealed)**

### **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*

*Health Legislation Amendment (Unregistered Health Practitioners) Act 2006* (but only to the extent that it amends this Act)

*Medical Practice Amendment Act 2008* (but only to the extent that it amends this Act)

*Health Legislation Amendment Act 2009* (but only to the extent that it amends this Act)

(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.

## **Part 5 Provisions consequent on enactment of [Health Legislation Amendment \(Unregistered Health Practitioners\) Act 2006](#)**

### **14 Definition**

In this Part:

**amending Act** means the [Health Legislation Amendment \(Unregistered Health Practitioners\) Act 2006](#).

### **15 Prohibition orders**

The Commission may make a prohibition order or cause a public statement to be issued under section 41A with respect to either or both of the following:

- (a) conduct or any other matter or thing that occurred before, or partly before and partly after, that section was inserted by the amending Act,
- (b) a complaint that has been made but not fully dealt with before that section was inserted by the amending Act.

### **16 Warnings about unsafe treatments or services**

Section 94A, as inserted by the amending Act, extends to an investigation that is completed before the commencement of that section.

### **17 Decisions of boards and tribunals**

Section 94B (1), as inserted by the amending Act, applies only in respect of a statement of a decision that is given after the commencement of that subsection.

## **Part 6 Provision consequent on enactment of [Private Health Facilities Act 2007](#)**

### **18 Offences under repealed Acts**

The Commission must notify the Director-General under section 25 of the details of a complaint that involves a possible breach of the [Private Hospitals and Day Procedure Centres Act 1988](#) or the [Nursing Homes Act 1988](#) or the regulations made under those Acts if the conduct alleged to constitute the breach occurred before the repeal of the relevant Act.

## **Part 7 Provisions consequent on enactment of [Medical Practice](#)**

## **Amendment Act 2008**

### **19 Definition**

In this Part:

**amending Act** means the *Medical Practice Amendment Act 2008*.

### **20 Associated complaints**

An amendment made by the amending Act in relation to associated complaints extends to associated complaints made or referred before the commencement of the amendment.

### **21 Concurrent investigation of associated complaints**

Section 29A extends to the investigation of a complaint made or referred to the Commission before the commencement of that section.

## **Part 8 Provision consequent on enactment of Health Practitioner Regulation Amendment Act 2010**

### **22 Complaints to registration authorities**

A reference in sections 10 (1) and 34 (2) to the Health Practitioner Regulation National Law includes a reference to a repealed Act within the meaning of section 22A.

## **Part 9 Provision consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2015**

### **23 Notification of certain complaints relating to breach of Assisted Reproductive Technology Act 2007**

The amendment made to section 25 by the *Statute Law (Miscellaneous Provisions) Act 2015* extends to any complaint made before 8 July 2015 (except for any complaint that the Commission is no longer dealing with on that day).

## **Part 10 Provision consequent on enactment of Health Practitioner Regulation Amendment Act 2017**

### **24 Paramedics**

Division 6A of Part 2 of this Act continues to apply to a registered paramedic as if the paramedic were not registered but only in respect of a complaint made against the paramedic before the paramedic became a registered paramedic.

## **Schedule 5 (Repealed)**