

Health Legislation Amendment (Complaints) Act 2004 No 98

[2004-98]



New South Wales

Status Information

Currency of version

Repealed version for 15 December 2004 to 23 November 2005 (accessed 13 November 2024 at 12:03)

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

Provisions in force

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

Notes—

- **Repeal**

The Act was repealed by Sch 4 to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2005 No 98](#) with effect from 24.11.2005.

Authorisation

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

File last modified 24 November 2005

Health Legislation Amendment (Complaints) Act 2004 No 98



New South Wales

Contents

Long title	3
1 Name of Act	3
2 Commencement	3
3 Amendment of Health Care Complaints Act 1993 No 105	3
4 Amendment of other Acts	3
Schedule 1 Amendments to Health Care Complaints Act 1993 relating to complaints	3
Schedule 2 Amendments to Health Care Complaints Act 1993 relating to complaints resolution	23
Schedule 3 Amendments to Health Care Complaints Act 1993 relating to Director of Proceedings	31
Schedule 4 Amendment of other Acts	34

Health Legislation Amendment (Complaints) Act 2004 No 98



New South Wales

An Act to amend the *Health Care Complaints Act 1993* in relation to the procedure for dealing with complaints and the conciliation or resolution of complaints; to amend various other health Acts with respect to complaints and the reporting of unsatisfactory professional conduct; and for other purposes.

1 Name of Act

This Act is the *Health Legislation Amendment (Complaints) Act 2004*.

2 Commencement

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

3 Amendment of *Health Care Complaints Act 1993 No 105*

The *Health Care Complaints Act 1993* is amended as set out in Schedules 1-3.

4 Amendment of other Acts

Each Act specified in Schedule 4 is amended as set out in that Schedule.

Schedule 1 Amendments to *Health Care Complaints Act 1993* relating to complaints

(Section 3)

[1] Section 3

Omit the section. Insert instead:

3 Object of this Act

(1) The primary object of this Act is to establish the Health Care Complaints Commission as an independent body for the purposes of:

(a) receiving and assessing complaints under this Act relating to health services

- and health service providers in New South Wales, and
 - (b) investigating and assessing whether any such complaint is serious and if so, whether it should be prosecuted, and
 - (c) prosecuting serious complaints, and
 - (d) resolving or overseeing the resolution of complaints.
- (2) In exercising its functions under this Act, the Commission is to have as its primary object the protection of the health and safety of the public.

[2] Section 3A

Insert after section 3:

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

- (1) This section provides an outline of the Commission's role in relation to government agencies with functions in connection with the health care system.
- (2) **Health Care Complaints Commission** The Commission is an independent body with responsibility for dealing with complaints under this Act, with particular emphasis on the investigation and prosecution of serious complaints in consultation with relevant registration authorities.
- (3) **Director-General of the Department of Health** The Director-General is responsible for:
 - (a) facilitating the achievement and maintenance of adequate standards of patient care within public hospitals and in relation to other services provided by the public health system, and
 - (b) inquiring into the administration, management and services of public health organisations and arranging, as appropriate, inspection of such organisations, and
 - (c) developing and overseeing the implementation of health policy and regulation and responding to policy and regulatory issues as they emerge.
- (4) **Public health organisations conducting health services** Public health organisations have the functions set out in Chapter 2 of the *Health Services Act 1997*. They are responsible for achieving and maintaining adequate standards of patient care and services, which may include a role in resolving complaints at a local level. Their role involves liaising with the Commission and registration authorities.

(5) **Registration authorities** Registration authorities are responsible for the registration of health professionals and the management of complaints in conjunction with the Commission. The registration authorities are also responsible for protecting the public through promoting and maintaining professional standards.

(6) This section is explanatory only and does not affect any other provision of this Act, or any other Act, or any instrument made under this or any other Act.

[3] Section 4 Definitions

Omit paragraph (c) of the definition of **health service**. Insert instead:

(c) mental health services,

[4] Section 4, definition of “health service”

Insert after paragraph (k):

(k1) forensic pathology services,

[5] Section 9 How is a complaint made?

Insert “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.” after “writing.” in the note to the section.

[6] Section 13

Omit the section. Insert instead:

13 The outcomes of consultation

- (1) If either the Commission or the appropriate registration authority is of the opinion that a complaint (or any part of a complaint) should be investigated, it must be investigated.
- (2) If:
 - (a) neither the Commission nor the appropriate registration authority is of the opinion that the complaint (or part) should be investigated, but
 - (b) either is of the opinion that it should be referred to the registration authority for consideration as to whether the registration authority should take any action under the relevant health registration Act (such as performance

assessment or impairment assessment),

it must be referred to the registration authority under section 25B.

(3) If:

(a) neither the Commission nor the appropriate registration authority is of the opinion that the complaint (or part) should be investigated or referred to the registration authority, but

(b) either is of the opinion that it should be referred for conciliation and the Registrar considers that it is appropriate for conciliation,

the Commission is to refer the complaint for conciliation under Division 8.

Note—

Only the *Medical Practice Act 1992* and the *Nurses and Midwives Act 1991* contain provisions relating to performance assessment.

[7] Section 16

Omit the section. Insert instead:

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.

[8] Section 18 Can a complaint be withdrawn?

Omit “provides” from section 18 (2) (c).

Insert instead “, if substantiated, would provide”.

[9] Section 18 (2) (d)

Omit “involves”. Insert instead “, if substantiated, would involve”.

[10] Section 20 The purpose of assessment

Insert “or 25A” after “section 25”.

[11] Section 20

Omit “for investigation in accordance with section 26”.

Insert instead “in accordance with section 25B or 26”.

[12] Section 20 (2)

Insert at the end of section 20:

- (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.

[13] Section 20A

Insert after section 20:

20A Duty of Commission to review assessment of complaint

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

Note—

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

- (3) If the Commission revises its assessment of a complaint to include another person as referred to in subsection (2) (f), sections 16 and 28 apply to the giving of notice to that person as if a reference in those sections to the assessment of the complaint were a reference to the revision of the assessment under this

section.

- (4) If the Commission revises its assessment of a complaint and as a result determines that the conduct of a person previously being investigated by the Commission will no longer be investigated or that different conduct of the person will be investigated, the Commission is to give the person notice in writing that the person's conduct is no longer under investigation or that other conduct of the person is now under investigation (as appropriate).
- (5) In this section, **complaint** includes any part of a complaint.

[14] Section 21A

Insert after section 21:

21A Commission may obtain certain medical and other documents

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

[15] Section 23 Investigation of complaint

Omit "provides" from section 23 (1) (b) (iii).

Insert instead "if substantiated, would provide".

[16] Section 23 (1) (b) (iv)

Omit "involves". Insert instead "if substantiated, would involve".

[17] Section 23 (3)

Omit the subsection.

[18] Section 24

Omit the section. Insert instead:

24 Referral of complaints for conciliation or complaint resolution

- (1) The Commission must refer a complaint for conciliation under Division 8 if it is required to do so under section 13 (3) or if it decides to do so under section 20A.

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

[19] Section 25 Notification of certain complaints to the Director-General

Insert “, or specified provisions of Acts,” after “Acts” in section 25 (1).

[20] Section 25 (1)

Insert in alphabetical order of Act name:

- [Anatomy Act 1977](#)
- [Health Records and Information Privacy Act 2002](#), section 68, 69 or 70
- [Human Tissue Act 1983](#)

[21] Sections 25A and 25B

Insert after section 25:

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

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

- (a) the professional conduct of a health practitioner, or
- (b) a health service which affects the clinical management or care of an individual client.

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

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

Note—

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

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

Note—

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

[22] Section 26

Omit the section. Insert instead:

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

- (1) Following the assessment, the Commission may refer a complaint (or any part of a complaint):
 - (a) to an appropriate public health organisation if it appears that the complaint (or part) may be capable of resolution at a local level and the public health organisation consents, or
 - (b) to any person or body (other than a public health organisation or registration authority) if it appears that the complaint (or part) raises issues which require investigation by the other person or body.
- (2) However, the Commission must continue to deal with the matter the subject of the complaint (or part) if it appears to the Commission that:

- (a) the matter raises a significant issue of public health or safety, or
 - (b) the matter raises a significant question as to the appropriate care or treatment of a client by a health service provider, or
 - (c) the matter, if substantiated, would provide grounds for disciplinary action against a health practitioner.
- (3) A public health organisation to which a complaint (or part) is referred under this section may refer the complaint (or part) back to the Commission if it is unable to resolve it or the public health organisation considers that the matter is appropriate to be dealt with under Division 8 or 9.
- (4) If a complaint (or part) has been referred back to the Commission under subsection (3), the Commission must assess the complaint (or part) again in accordance with this Division.
- (5) The Commission may not refer a complaint (or part) to the Director-General under this section.

Note—

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

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

[23] Section 27 Circumstances in which Commission may discontinue dealing with complaint

Omit section 27 (1) (d). Insert instead:

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

[24] Sections 28 and 28A

Omit section 28. Insert instead:

28 Notice of action taken or decision made following assessment

- (1) The Commission must give the parties to the complaint notice in writing of the action taken or decision made by the Commission following its assessment of the complaint. The notice is to be given within 14 days after the Commission takes that action or makes that decision.

- (2) If the Commission decides to investigate a complaint against a health practitioner, the Commission must give notice in writing of the decision:
 - (a) if the health practitioner has provided the health service in respect of which the complaint is made under a contract or agreement with a person who is, or who conducts, a hospital or other health care facility, to the person, or
 - (b) if the health practitioner has provided the health service in the capacity of an employee, to the health practitioner's employer.
- (3) If the Commission decides to investigate a complaint against a health practitioner, the Commission may give notice in writing of the decision to a person who currently employs or engages the health practitioner as a health practitioner.
- (4) This section does not require the Commission to give notice of action taken or a decision made to investigate a complaint if it appears to the Commission, on reasonable grounds, that the giving of the notice will:
 - (a) prejudice the investigation of the complaint, or
 - (b) place the health or safety of a client at risk, or
 - (c) place the complainant or another person at risk of intimidation or harassment, or
 - (d) unreasonably prejudice the employment of the health practitioner in the case of a health practitioner who has provided the health service in the capacity of an employee.
- (5) Despite subsection (4), the Commission must give the notice if the Commission considers on reasonable grounds that:
 - (a) it is essential, having regard to the principles of natural justice, that the notice be given, or
 - (b) the giving of the notice is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.
- (6) If the Commission decides that subsection (4) applies to a complaint but that some form of notice could be given of the complaint without affecting the health or safety of a client or putting any person at risk of intimidation or harassment, the Commission may give such a form of notice.
- (7) On the expiration of each consecutive period of 60 days after the Commission has decided to investigate a complaint, the Commission must undertake a review of a decision not to give notice under this section (or to give notice in some other form as referred to in subsection (6)), unless notice under this

section has already been given or the Commission has discontinued dealing with the complaint.

- (8) The Commission's notice to the complainant must include:
- (a) advice that the complainant may ask the Commission to review the decision made after assessing the complaint if the decision is:
 - (i) not to investigate the complaint, or
 - (ii) to refer the complaint to the Director-General under section 25 or 25A, or
 - (iii) to refer the complaint to another person or body under section 25B or 26, or
 - (iv) to discontinue dealing with the complaint under section 27, and
 - (b) the reasons for the decision.
- (9) The Commission may review a decision made after assessing a complaint if requested to do so by the complainant, and must do so if the request is made within 28 days after the complainant is notified of the decision.

Note—

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

28A Notification of other persons following assessment

- (1) The Commission is to use its best endeavours to give notification of the outcomes of the assessment of a complaint to a client whose treatment is the subject of the complaint and who is not required to be given notice under section 28 unless the client:
- (a) is deceased, or
 - (b) is incapable of understanding the notification.
- (2) If a complaint relates to the treatment of a client at a hospital or other health care facility, the Commission is to use its best endeavours to give notification of the outcomes of the assessment of the complaint to any person recorded by the hospital or health care facility as being a contact for the client.
- (3) Without affecting the Commission's obligations under subsections (1) and (2), the Commission may, if it thinks it appropriate and it is practicable to do so, give notification of the outcomes of the assessment of a complaint to any person who is associated with a client whose treatment is the subject of the complaint (including a legal representative of the client or of the estate of the client).

- (4) The Commission may only give notification to a person under subsection (2) or (3) if the client concerned:
- (a) is deceased, or
 - (b) is incapable of understanding the notification and the client's authorised representative (as defined in section 8 of the *Health Records and Information Privacy Act 2002*) has consented to the Commission giving the notification.
- (5) On request by the Commission, a person who is, or who conducts, a hospital or health care facility is to supply the Commission with any information in its possession that is necessary for the Commission to fulfil its obligations under subsections (1) and (2). The information may be provided to the Commission despite any other Act or law.

[25] Section 30 Expert assistance

Insert after section 30 (2):

- (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.

[26] Section 30 (5)

Insert “, the Commission or the Commissioner” after “obtained”.

[27] Section 33 Powers of entry, search and seizure

Omit section 33 (a). Insert instead:

- (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,

[28] Section 33, note

Omit the note.

[29] Section 34A

Insert after section 34:

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

- (1) If the Commission is investigating a complaint and is of the opinion that a person is capable of giving information, producing documents (including medical

records) or giving evidence that would assist in the investigation, the Commission may, by notice in writing given to the person, request the person to do any one or more of the following:

- (a) to give the Commission, by writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and within such time as is reasonable, and in the manner, specified in the notice, any such information of which the person has knowledge,
 - (b) to produce to the Commission, in accordance with the notice, any such documents,
 - (c) to appear before the Commissioner or a member of staff of the Commission authorised by the Commissioner at a time and place specified in the notice that is reasonable and give any such evidence, either orally or in writing, and produce any such documents.
- (2) A person to whom a request is made under subsection (1) may comply with the request, but is not required to comply with it unless the person is:
- (a) the complainant, or
 - (b) a person against whom the complaint was made, or
 - (c) a health service provider.
- (3) Information and documents may be given or provided to the Commission in compliance with this section despite any other Act or law (but not despite a provision of Division 8 of this Part or Division 6B or 6C of Part 2 of the *Health Administration Act 1982*).
- (4) A person who is required to comply with a request under subsection (1) must not, without reasonable excuse, fail to comply with the request.

Maximum penalty: 20 penalty units.

Note—

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

[30] Section 35 Offence: obstructing an authorised person, Commission etc

Omit section 35 (d). Insert instead:

- (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,

[31] Section 37 Offence: improper disclosure of information

Omit the section.

[32] Section 37A

Insert before section 38:

37A Protection from incrimination

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

the information or answer is not admissible in evidence in those proceedings because of this section.

[33] Section 39 What action is taken after an investigation?

Omit section 39 (1) (c). Insert instead:

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

[34] Section 39 (1A)

Insert after section 39 (1):

- (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.

[35] Section 59

Omit the section. Insert instead:

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.

[36] Section 80 Functions of Commission

Omit section 80 (1) (j).

[37] Section 96 Exoneration from liability

Insert at the end of the section:

- (2) The making of a complaint, or the reporting of any matter or thing that could give rise to a complaint, to the Commission or a registration authority by any person does not, if it was done in good faith, subject the person personally to any action, liability, claim or demand.

[38] Section 99A

Insert after section 99:

99A Offence: improper disclosure of information

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

- (a) with the consent of the person to whom the information relates, or
- (b) in connection with the execution and administration of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) with other lawful excuse,

the person is guilty of an offence.

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

[39] Section 103A

Insert after section 103:

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.

[40] Schedule 4 Savings, transitional and other provisions

Omit clause 1. Insert instead:

Part 1 Preliminary

1 Regulations

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

 this Act

Health Legislation Amendment (Complaints) Act 2004

Health Registration Legislation Amendment Act 2004

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) The provisions of this Schedule are subject to any regulations made under this clause.

Part 2 Provisions consequent on the enactment of this Act

[41] Schedule 4, Parts 3 and 4

Insert at the end of the Schedule:

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.

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.

[42] Schedule 5 Special provisions relating to Walker Special Commission of Inquiry

Omit “because of the exercise by a designated person of any function with respect to a matter to which that protected action relates” from clause 6 (2).

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

Schedule 2 Amendments to *Health Care Complaints Act 1993* relating to complaints resolution

(Section 3)

[1] Long title

Omit “conciliation”. Insert instead “resolution”.

[2] Section 4 Definitions

Omit “constituted” from the definition of ***Health Conciliation Registry***.

Insert instead “established”.

[3] Section 4

Insert in alphabetical order:

Registrar means the Registrar of the Health Conciliation Registry.

[4] Section 12 Consultation between the Commission, a registration authority and the Registrar

Omit section 12 (1). Insert instead:

(1) Before determining, as a result of the assessment of a complaint, whether to investigate a complaint, to refer the complaint for conciliation, to deal with the complaint under Division 9 or to discontinue dealing with the complaint, the Commission must consult with the appropriate registration authority, subject to this section.

(1A) If it is proposed, as a result of the assessment of a complaint, to refer the complaint for conciliation, the Commission must also consult with the Registrar.

[5] Section 14 Suspension of action by registration authority

Omit “conciliation by the Health Conciliation Registry” from section 14 (1).

Insert instead “is being dealt with under Division 8 or 9”.

[6] Section 15 Provision of information to registration authorities

Insert “and will involve the Registrar in the consultation process” after “conciliation” in the note to the section.

[7] Section 20 The purpose of assessment

Insert “or dealt with under Division 9” after “conciliated”.

[8] Section 27 Circumstances in which Commission may discontinue dealing with complaint

Omit section 27 (1) (b). Insert instead:

(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,

[9] Part 2, Divisions 8 and 9

Omit Division 8 and the note to the Part. Insert instead:

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 a legal practitioner) if the assistance is provided:
 - (a) to the complainant, or
 - (b) to another party to the complaint and the Registrar or conciliator gives permission because the party would be disadvantaged without the assistance.
- (3) This section does not prevent an officer of a corporation that is a party to a complaint from representing the corporation.
- (4) Contravention of this section does not invalidate the conciliation of a complaint.

51 Confidentiality of the conciliation process

- (1) Evidence of anything said or of any admission made during the conciliation process is not admissible in any proceedings before a court, tribunal or body.
- (2) A document prepared for the purposes of, or in the course of, the conciliation process (or a copy of such a document) is not admissible in any proceedings before a court, tribunal or body.
- (3) This section does not apply to evidence or a document if the persons who attended, or were named during, the conciliation process and, in the case of a document, all persons named in the document, consent to admission of the evidence or document.
- (4) A person cannot be required (whether by subpoena or any other procedure) to produce evidence or a document that is inadmissible in evidence in proceedings before a court, tribunal or body because of this section.

52 Conclusion of the conciliation process

- (1) The conciliation process is concluded:
 - (a) if either party terminates the conciliation process at any time, or
 - (b) if the parties to the complaint reach agreement concerning the matter the subject of the complaint.
- (2) The complainant must notify the Registrar without delay if the parties reach agreement otherwise than during the conciliation process.

- (3) The conciliation process is terminated if the conciliator terminates the process after having formed the view:
 - (a) that it is unlikely that the parties will reach agreement, or
 - (b) a significant issue of public health or safety has been raised.

53 Preparation and distribution of report on conclusion of conciliation process

- (1) On the conclusion of the conciliation process, the conciliator who was involved in the process must prepare a report to the Registrar concerning the conciliation.
- (2) The report may state only:
 - (a) the outcome of the conciliation process, and
 - (b) whether or not a recommendation is made that the Commission investigate the complaint.
- (3) As soon as practicable after receipt of the report, the Registrar must give a copy of the report to the Commission, the parties to the complaint and the appropriate registration authority (if any).

54 Furnishing of other information to Registrar concerning conciliation process

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

55 Six-monthly reports to registration authorities

- (1) As soon as practicable after 1 April and 1 October in each year, the Registrar must furnish a report to each registration authority setting out the following information in relation to the complaints which have been dealt with under this Division during the previous 6 months:
 - (a) the number of complaints dealt with,
 - (b) the background of each complaint,
 - (c) the nature of the issues the subject of the conciliation process,
 - (d) any issues of a general nature arising out of each complaint relevant to the professional or educational standards of the profession concerned.
- (2) A report must not contain any information which identifies a party to a complaint.

- (3) A registration authority must not use a report furnished to it under this section except for the purpose of providing general information to health practitioners who are registered by it concerning the professional or educational standards of their profession.

56 Complaint may be referred for investigation

- (1) Despite section 20A, the Commission may investigate a complaint that has been dealt with under this Division but only if:
 - (a) the report under section 53 contains a recommendation that the Commission investigate the complaint, or
 - (b) new material concerning the matter the subject of the complaint becomes available and that material raises a matter that would cause the Commission to refer the complaint for investigation in accordance with section 23.
- (2) Before investigating the complaint, the Commission must consult with the appropriate registration authority (if any). If either the Commission or the appropriate registration authority (or both) is (or are) of the opinion that a complaint should be investigated, it must be investigated.

57 Health Conciliation Registry and conciliators to be independent in dealing with complaints

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

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

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

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

Commonwealth.

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

58A Offence of concealing a serious offence

A conciliator is not liable to be proceeded against under section 316 of the *Crimes Act 1900* in respect of any information obtained in connection with the conciliation process.

Division 9 Complaints resolution

58B Objects of Commission under this Division

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

- (a) to provide an alternate and neutral means of resolving complaints that is independent of the investigative processes of the Commission,
- (b) to facilitate the resolution of complaints, including determining the most appropriate means of resolution having regard to the nature of the complaint and the expectations of the parties to the complaint,
- (c) to provide information to health service providers and members of the public on the complaints resolution functions of the Commission under this Part.

58C Function of Commission under this Division

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

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

58D Participation in complaints resolution process to be voluntary

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

[10] Section 65 Functions

Insert after section 65 (1) (a):

(a1) without limiting paragraph (a), to monitor and review the exercise of functions by the Health Conciliation Registry,

[11] Section 80 Functions of Commission

Omit section 80 (1) (b). Insert instead:

(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,

[12] Part 6

Omit the Part. Insert instead:

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.

[13] Section 96 Exoneration from liability

Omit “the Registrar, a conciliator or a person employed in the Registry”.

Insert instead “the Registrar or a conciliator”.

[14] Section 97 Pending legal proceedings do not prevent exercise of certain functions

Omit “the Health Conciliation Registry,”.

Schedule 3 Amendments to Health Care Complaints Act 1993 relating to Director of Proceedings

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

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

[2] Section 39 What action is taken after an investigation?

Omit section 39 (1) (a) and (b). Insert instead:

- (a) refer the complaint to the Director of Proceedings,

[3] Section 75 The Commission

Insert after section 75 (2):

- (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.

[4] Section 76

Omit the section. Insert instead:

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.

[5] Part 6A

Insert after Part 6:

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,

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

90C Criteria relevant to determinations of Director of Proceedings

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

90D Independence of Director of Proceedings

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

Schedule 4 Amendment of other Acts

(Section 4)

4.1 Freedom of Information Act 1989 No 5

[1] Schedule 1 Exempt documents

Insert after clause 25:

26 Documents relating to complaints under health legislation

A document provided by the Health Care Complaints Commission to a registration authority (within the meaning of the *Health Care Complaints Act 1993*) relating to a particular complaint is an exempt document.

[2] Schedule 2 Exempt bodies and offices

Omit the matter relating to the Health Care Complaints Commission.

Insert instead:

The Health Care Complaints Commission—complaint handling, investigative, complaints resolution and reporting functions (including any functions exercised by the Health Conciliation Registry).

[3] Schedule 2

Omit “The Health Conciliation Registry—conciliation functions.”.

4.2 Health Administration Act 1982 No 135

[1] Section 14 Employees of Corporation

Omit section 14 (1) (b1).

[2] Part 2, Division 6C

Insert after Division 6B:

Division 6C Root cause analysis teams

20L Definitions

In this Division:

RCA team means a root cause analysis team appointed under section 20M.

relevant health services organisation means any area health service, a statutory health corporation prescribed by the regulations or an affiliated health organisation prescribed by the regulations.

reportable incident means an incident relating to the provision of health services by a relevant health services organisation, being an incident of a type prescribed by the regulations or set out in a document adopted by the regulations.

service means a health service, and includes any administrative or other service related to a health service.

20M Appointment of RCA teams to deal with reportable incidents

- (1) When a reportable incident involving a relevant health services organisation is reported to the chief executive officer of the organisation, the organisation is to appoint a root cause analysis team in relation to the reportable incident.
- (2) The relevant health services organisation is, subject to the regulations, to appoint such members of the RCA team as the organisation considers appropriate to undertake the functions of the RCA team in relation to the reportable incident.
- (3) The relevant health services organisation is to cause a written record to be kept of the persons appointed under this section as members of the RCA team in relation to a particular reportable incident.

20N Restrictions on RCA teams

- (1) A RCA team does not have authority to conduct an investigation relating to the competence of an individual in providing services.
- (2) A report furnished or information made available by a RCA team must not disclose:
 - (a) the name or address of an individual who is a provider or recipient of services unless the individual has consented in writing to that disclosure, or
 - (b) as far as is practicable, any other material that identifies, or may lead to the identification of, such an individual.
- (3) A RCA team is to have regard to the rules of natural justice in so far as they are relevant to the functions of a RCA team.

20O Responsibilities of RCA team in relation to reportable incident

- (1) A RCA team is to notify in writing the relevant health services organisation by which it was appointed if the RCA team is of the opinion that the reportable incident that it is considering raises matters that may involve professional

misconduct or unsatisfactory professional conduct by a person who is a visiting practitioner or employee of the organisation or may indicate that such a person is suffering from an impairment.

- (2) A RCA team may notify in writing the relevant health services organisation by which it was appointed if the RCA team is of the opinion that the reportable incident that it is considering raises matters that may involve unsatisfactory professional performance by a person who is a visiting practitioner or employee of the organisation, but not to the extent that would constitute professional misconduct or unsatisfactory professional conduct.
- (3) On completion of its consideration of a reportable incident, a RCA team must prepare a report in writing that contains the following:
 - (a) a description of the reportable incident,
 - (b) a causation statement, being a statement that indicates the reasons why the RCA team considers the reportable incident concerned occurred,
 - (c) any recommendations by the RCA team as to the need for changes or improvements in relation to a procedure or practice arising out of the incident.

20P Disclosure etc of information

A person who is or was a member of a RCA team must not make a record of, or divulge or communicate to any person, any information acquired by the person as such a member, except:

- (a) for the purpose of exercising the functions of a member, or
- (b) for the purposes of any recommendation of a RCA team, or
- (c) for the purposes of any report prepared by a RCA team under section 200 (3), or
- (d) in accordance with the regulations.

Maximum penalty: 50 penalty units.

20Q Information not to be given in evidence

- (1) A person who is or was a member of a RCA team and the relevant health services organisation for which the RCA team was appointed are neither competent nor compellable:
 - (a) to produce before any court, tribunal, board or person any document in his, her or its possession or under his, her or its control that was created by, at the request of or solely for the purpose of the RCA team, or

(b) to divulge or communicate to any court, tribunal, board or person any matter or thing that came to the notice of a member of the RCA team as such a member.

(2) Subsection (1) does not apply to a requirement made in proceedings in respect of any act or omission by a RCA team or by a member of a RCA team as a member.

20R Findings of RCA team not evidence of certain matters

A notification or report of a RCA team under section 200 is not admissible as evidence in any proceedings that a procedure or practice is or was careless or inadequate.

20S Personal liability of members etc

(1) Anything done by a RCA team, a member of a RCA team or any person acting under the direction of a RCA team, in good faith for the purposes of the exercise of the RCA team's functions, does not subject such a member or person personally to any action, liability, claim or demand.

(2) Without limiting subsection (1), a member of a RCA team has qualified privilege in proceedings for defamation in respect of:

(a) any statement made orally or in writing in the exercise of the functions of a member, or

(b) the contents of any report or other information published by the RCA team.

(3) The members of a RCA team are, and are entitled to be, indemnified by the relevant health services organisation for which the RCA team is appointed in respect of any costs incurred in defending proceedings in respect of a liability against which they are protected by this section.

20T Regulations relating to RCA teams

The regulations may make provision for or with respect to the following:

(a) the constitution and membership of RCA teams,

(b) the functions of RCA teams,

(c) the procedure of RCA teams and the manner in which they are to exercise their functions,

(d) permitting or requiring RCA teams to make specified information available to the public,

(e) permitting or requiring RCA teams to furnish reports concerning their activities

to the Minister and to relevant health services organisations,

- (f) enabling a RCA team to be appointed by a relevant health services organisation in respect of a reportable incident at another relevant health services organisation.

20U Review of Division

- (1) The Minister is to review this Division to determine whether the policy objectives of the Division remain valid and whether the terms of the Division 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 commencement of this Division.
- (3) A report on 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.

4.3 Health Services Act 1997 No 154

[1] Section 99A

Insert after section 99:

99A Duty of chief executive officer to report certain conduct of visiting practitioner

- (1) The chief executive officer of a public health organisation is to report to a registration authority any conduct of a visiting practitioner that the chief executive officer suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the health registration Act by which the registration authority is constituted.
- (2) In this section, **health registration Act** and **registration authority** have the same meanings as in the [Health Care Complaints Act 1993](#).

[2] Section 117A

Insert after section 117:

117A Duty of chief executive officer to report certain conduct of employee

- (1) The chief executive officer of a public health organisation is to report to a registration authority any conduct of an employee of the organisation that the chief executive officer suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the health

registration Act by which the registration authority is constituted.

- (2) In this section, **health registration Act** and **registration authority** have the same meanings as in the [Health Care Complaints Act 1993](#).