

Queensland



HEALTH RIGHTS COMMISSION ACT 1991

**Reprinted as in force on 23 December 1994
(includes amendments up to Act No. 68 of 1994)**

Reprint No. 2

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Information about this reprint

This Act is reprinted as at 23 December 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (Pt 4, Div 2)
- use standard punctuation consistent with current legislative drafting practice (s 27)

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A Table of previous reprints is included in the Endnotes.

Also see Endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including editorial changes made in earlier reprints.**

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HEALTH RIGHTS COMMISSION ACT 1991

[as amended by all amendments that commenced on or before 23 December 1994]

An Act to provide for independent review and conciliation with respect to services provided by health service providers to health service users and for improvements to those services

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Health Rights Commission Act 1991*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Definitions

3.(1) In this Act—

“**action**” includes further action.

“**authorised person**” means—

- (a) the Commissioner; or
- (b) a person authorised by the Commissioner under section 24.

“**Commission**” means the Health Rights Commission established under section 7.

“**Commissioner**” means the Health Rights Commissioner appointed under section 9.

“**complainant**” means a person who makes a health service complaint.

“conciliation” means the process of conciliation under Part 6.

“conciliator” means a person appointed as a conciliator under section 75.

“Council” means the Health Rights Advisory Council established under section 40.

“detriment” includes—

- (a) personal injury or prejudice to safety; and
- (b) property damage or loss; and
- (c) intimidation or harassment; and
- (d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; and
- (e) threats of detriment; and
- (f) financial loss from detriment.

“Health Complaints Unit” means the Health Complaints Unit maintained within the department immediately before the commencement of this Act.

“health responsibilities” means the responsibilities of a provider in relation to the provision of a health service.

“health rights” means the rights of an individual relating to the provision of a health service.

“health service” means—

- (a) a service provided to an individual for, or purportedly for, the benefit of human health—
 - (i) including services specified in Schedule 1, Part 1; but
 - (ii) excluding services specified in Schedule 1, Part 2; or
- (b) an administrative service directly related to a health service; or
- (c) a decision or action mentioned in subsection (3).

“health service complaint” means a complaint mentioned in section 58.

“industrial organisation” means an industrial organisation within the meaning of the *Industrial Relations Act 1990*.

“inquiry” means an inquiry that the Minister has directed the

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Commissioner under section 33 to conduct.

“inquiry hearing” means an oral hearing conducted before the Commissioner for the purpose of an inquiry.

“inquiry matter” means a matter on which the Minister has directed the Commissioner to conduct an inquiry.

“investigate” includes examine, consider or take action.

“notice” means written notice.

“obstruct” includes—

- (a) assault, threaten, abuse, insult, intimidate or hinder; and
- (b) attempt to obstruct.

“possession”, in relation to a person having something in possession, means possession or control in any place—

- (a) whether for the use or benefit of the person in relation to whom the term is used or another person; and
- (b) whether or not another person has actual possession or custody.

“premises” includes any—

- (a) building; or
- (b) land or place, whether or not enclosed.

“provider” means—

- (a) a person who provides a health service; or
- (b) a registered provider.

“record” includes—

- (a) any information or document, however compiled, recorded or stored; and
- (b) a copy of a record mentioned in section 132.

“Regional Health Authority” means a Regional Health Authority established under the *Health Services Act 1991*.

“register” includes—

- (a) to enrol; and

- (b) to issue a certificate, approval, licence or other instrument granting or recognising a person's qualification as a practitioner of any health service.

“registered provider” means a person registered by a registration board.

“registration board” means a body established under an Act administered by the Minister that has the function to register, or to suspend or cancel the registration of, practitioners of any kind of health service, and includes a body specified in Schedule 2.

“reprisal” means conduct causing detriment.

“user” means an individual who uses or receives a health service.

(2) A person is not taken to be a user merely because the person has arranged a health service for another person.

(3) The Commissioner may, with the written approval of the Minister, decide to treat a decision or action of—

- (a) an officer or employee of the department; or
- (b) a member, officer or employee of a Regional Health Authority;

as if it were a health service.

(4) A decision made for the purpose of subsection (3) may be made with respect to a particular decision, action or officer or a class of decision, action or officer.

(5) For the purpose of a duty imposed by this Act on a person to take an oath or make an affidavit to verify information, the oath or affidavit the person is to take or make is an oath or affidavit that the information is true.

Objectives

4. The principal objectives of this Act are—

- (a) to provide for oversight, review and improvement of health services by establishing an accessible, independent facility that will—
 - (i) preserve and promote health rights; and
 - (ii) receive and resolve health service complaints; and

- (iii) enable users and providers to contribute to the review and improvement of health services; and
 - (iv) provide education and advice in relation to health rights and responsibilities and the resolution of complaints about health services, whether or not made under this Act; and
 - (v) assist users and providers to resolve health service complaints; and
- (b) to provide for the development of a Code of Health Rights and Responsibilities; and
 - (c) to provide for the appointment, functions and powers of a Health Rights Commissioner; and
 - (d) to provide for the establishment, functions and operation of a Health Rights Advisory Council.

Crown bound

5.(1) This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.

(2) The Crown is not liable to a penalty for a contravention of this Act.

(3) However, a servant or agent of the Crown who contravenes this Act is liable to a penalty prescribed by this Act in relation to the contravention.

Report after 2 years

6.(1) As soon as practicable after this Act has been in operation for 2 years, the Minister is to prepare and table in the Legislative Assembly a report on—

- (a) the performance of the Commission; and
- (b) the development of the Code of Health Rights and Responsibilities; and
- (c) the operation of this Act generally.

(2) The report is to contain the Minister's recommendations on issues raised in the report.

PART 2—HEALTH RIGHTS COMMISSION

Establishment of Commission

- 7.(1)** A facility called the Health Rights Commission is established.
- (2)** The Health Rights Commission is to comprise—
- (a) the Health Rights Commissioner; and
 - (b) officers of the Commission.

Application of various public sector Acts

- 8.** The Commission is—
- (a) a unit of the public sector within the meaning of the *Public Sector Management Commission Act 1990*; and
 - (b) a unit of public administration within the meaning of the *Criminal Justice Act 1989* and the *Electoral and Administrative Review Act 1989*; and
 - (c) a statutory body for the purpose of the *Financial Administration and Audit Act 1977*.

Appointment of Commissioner

9. The Governor in Council may appoint a person to be the Health Rights Commissioner.

Commissioner's functions

- 10.** The functions of the Commissioner are—
- (a) to identify and review issues arising out of health service complaints; and
 - (b) to suggest ways of improving health services and of preserving and increasing health rights; and
 - (c) to provide information, education and advice in relation to—
 - (i) health rights and responsibilities; and

- (ii) procedures for resolving health service complaints; and
- (d) to receive, assess and resolve health service complaints; and
- (e) to encourage and assist users to resolve health service complaints directly with providers; and
- (f) to assist providers to develop procedures to effectively resolve health service complaints; and
- (g) to conciliate or investigate health service complaints; and
- (h) to inquire into any matter relating to health services at the Minister's request; and
- (i) to advise and report to the Minister on any matter relating to health services or the administration of this Act; and
- (j) to provide advice to the Council; and
- (k) to provide information, advice and reports to registration boards; and
- (l) to perform functions and exercise powers conferred on the Commissioner under any Act.

Commissioner's independence

11. In performing functions of office mentioned in section 10(a) to (k), the Commissioner is to act independently, impartially and in the public interest.

Qualifications for appointment

12.(1) In the selection of a person to be appointed as Commissioner, regard is to be had to the person's knowledge, experience or demonstrated interest in relation to—

- (a) health services; and
- (b) the resolution of disputes; and
- (c) the needs of users; and
- (d) the needs of providers; and
- (e) the aspirations, values and special needs of special needs groups.

(2) In this section—

“**special needs groups**” means particular classes of persons who, because of the nature of the classes to which they belong, may suffer disadvantage in the provision of health services unless their special needs are recognised and given attention, and includes for example—

- (a) Aborigines and Torres Strait Islanders; and
- (b) persons with disabilities; and
- (c) persons who—
 - (i) can not communicate in English; or
 - (ii) have difficulty in communicating in English; or
 - (iii) have a cultural background significantly different to that which generally applies in the community.

Disqualifications from appointment

13.(1) A person who is—

- (a) a registered provider; or
- (b) a current member of a professional association of health service providers;

is not qualified to be appointed as Commissioner.

(2) For the purpose of subsection (1)(b), a professional association of health service providers does not include—

- (a) an industrial organisation; or
- (b) an association of health administrators.

Terms and conditions of appointment

14.(1) Subject to this Act, the terms and conditions of appointment of a person as Commissioner are to be determined by the Governor in Council.

(2) The *Public Service Management and Employment Act 1988* does not apply to the appointment of a person as Commissioner.

Period of appointment

15. A person may be appointed as Commissioner for up to 5 years.

Preservation of rights

16.(1) This section applies if a person who is an officer of the public service is appointed as Commissioner.

(2) The person—

- (a) retains all rights that have accrued to the person because of employment as an officer of the public service; and
- (b) is entitled to all rights that would accrue in the future to the person if the person's service as Commissioner were service as an officer of the public service.

(3) If the person has not attained 65 years at the end of the person's term of office or resignation—

- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the salary level, at that time, of an office equivalent to the one the person held before being appointed as Commissioner; and
- (b) the person's service as Commissioner is to be regarded as service in the public service for the purpose of determining the person's rights as an officer of the public service.

Vacancy in Commissioner's office

17. The office of Commissioner becomes vacant if the Commissioner—

- (a) dies; or
- (b) resigns office by signed notice given to the Minister; or
- (c) becomes a registered provider or a member of a professional association of health service providers mentioned in section 13(1)(b); or
- (d) is removed from office under section 18.

Removal or suspension of Commissioner

18.(1) The Governor in Council may remove a person from office as Commissioner if the person—

- (a) becomes bankrupt or takes advantage, as a debtor, of the laws relating to bankrupt or insolvent debtors; or
- (b) is convicted in Queensland of an indictable offence or is convicted elsewhere in respect of an act or omission that, if it happened in Queensland, would constitute an indictable offence; or
- (c) is guilty of misconduct, neglect of duty or incompetence; or
- (d) becomes mentally or physically incapable of performing satisfactorily the duties of office.

(2) For the purpose of inquiring into a matter that may warrant the removal of a person from office as Commissioner, the Governor in Council may suspend the person from office for a period of not more than 6 months.

Grant of leave to Commissioner

19. The Minister may grant leave of absence to the Commissioner on terms and conditions the Minister considers appropriate.

Acting Commissioner

20.(1) The Governor in Council may appoint a person to act as Commissioner—

- (a) during a vacancy in office; or
- (b) during a period or all periods when the Commissioner is absent from duties or from the State or is, for any reason, unable to satisfactorily perform the duties of office.

(2) Sections 14 and 16 apply in relation to the appointment of a person to act as Commissioner as they apply to the appointment of a person as Commissioner.

Crown and Commissioner

21. The Commissioner represents the Crown.

Staff and assistance

22.(1) Appointments may be made under the *Public Service Management and Employment Act 1988* of such persons to be officers of the Commission, or to perform services in the Commission, as are necessary to assist the Commissioner.

(2) The Commissioner may engage other services to the same extent as a chief executive of a department within the meaning of the *Public Service Management and Employment Act 1988*.

Commissioner's power to delegate

23. The Commissioner may delegate to a Commission officer any of the Commissioner's powers, other than those under Part 6.

Commissioner may appoint authorised persons

24.(1) The Commissioner may authorise a person mentioned in subsection (3) to exercise a power conferred by this Act on an authorised person.

(2) The authorisation may be general or specific as to—

- (a) the person or class of person who may exercise a power; or
- (b) the power or class of power that may be exercised.

(3) An authorised person is to be—

- (a) a Commission officer; or
- (b) an officer of the public service; or
- (c) a police officer; or
- (d) an officer of a public authority established under an Act administered by the Minister.

(4) Before authorising a person mentioned in subsection (3)(b), (c) or (d) to exercise a power conferred on an authorised person, the Commissioner is

to obtain the approval of—

- (a) if the person is a police officer—the Commissioner of the Police Service; or
- (b) in any other case—the chief executive of the public authority or department of which the person is an officer.

Commissioner may issue identity card

25.(1) The Commissioner may issue an identity card to an authorised person.

(2) The identity card is to—

- (a) contain a recent photograph of the authorised person; and
- (b) be in a form approved by the Commissioner.

(3) If the authorised person ceases to be an authorised person, the person is to return the card to the Commissioner as soon as practicable.

Maximum penalty for contravention of this subsection—2 penalty units.

Committees

26.(1) For the purpose of performing any of the Commissioner's functions, the Commissioner—

- (a) may establish a committee of persons the Commissioner considers appropriate; and
- (b) if directed to do so by the Minister—is to establish a committee in accordance with the Minister's direction.

(2) A member of a committee is to be paid the fees and allowances (if any) for service as a member that the Governor in Council determines.

Cooperation with interested organisations

27. The Commissioner is to—

- (a) maintain effective links with—
 - (i) providers generally; and

- (ii) organisations that have a demonstrated interest in the provision of health services; and
- (b) consult and cooperate with any public authority that has a function to protect the rights of individuals in Queensland, including for example—
 - (i) the Parliamentary Commissioner for Administrative Investigations; and
 - (ii) the Human Rights and Equal Opportunity Commission of the Commonwealth; and
 - (iii) the Anti-Discrimination Commission.

Assistance to providers

28. The Commissioner may provide advice and assistance to providers in relation to the resolution of disputes or disagreements with users.

Commissioner's general power

29. The Commissioner may do all things necessary or convenient to be done for the purpose of the Commissioner's functions.

Commissioner is the chief executive

30. The Commissioner has, in relation to the Commission, all the functions and powers of the chief executive of a department as if—

- (a) the Commission were a department within the meaning of the *Public Service Management and Employment Act 1988*; and
- (b) the Commissioner were the chief executive of the department.

Commissioner's procedures informal

31.(1) Subject to subsection (2), in performing a function and exercising a power, the Commissioner—

- (a) is to proceed with as little formality and technicality, and with as much expedition, as is practicable; and

- (b) is not bound by rules or the practice of any court or tribunal as to evidence or procedure.

(2) In performing a function and exercising a power, the Commissioner is to have regard to the rules of natural justice.

Minister's directions

32.(1) The Minister may give a written direction to the Commissioner—

- (a) to provide a report on a specified matter to the Minister; or
- (b) to establish a specified committee under section 26; or
- (c) to provide, or not provide, a report to the Council under section 42(3); or
- (d) to investigate a health service complaint under Part 7, including one made by the Minister; or
- (e) to intervene in disciplinary proceedings against a registered provider under section 130.

(2) A direction may specify a period within which, or a way in which, a direction is to be complied with.

(3) The Commissioner is to comply with a direction despite section 11.

Minister may direct inquiry

33.(1) The Minister may give the Commissioner a written direction to conduct an inquiry in relation to a matter—

- (a) consisting in a health service complaint, including one made by the Minister; or
- (b) concerning the provision of a health service; or
- (c) concerning the use of premises for the reception, care or treatment of—
 - (i) aged persons; or
 - (ii) persons with a mental or physical illness; or
 - (iii) persons with a disability; or

(iv) persons in receipt of pensions, allowances or benefits because of age, illness or disability.

(2) Before giving the direction, the Minister is to consult with the Commissioner for the purpose of determining the inquiry matter.

(3) In determining the inquiry matter, the Minister is to state the purpose of the inquiry.

(4) An inquiry matter is taken to include all matters arising directly or indirectly with respect to the matter.

(5) The direction may include terms the Minister considers appropriate for the conduct of the inquiry, including for example—

- (a) the exclusion of a power under Part 7 from being used for the purpose of the inquiry; or
- (b) the fixing of a day by which a report of the progress of the inquiry is to be provided to the Minister; or
- (c) the fixing of a day by which the inquiry is to be finished or a final report is to be given to the Minister.

(6) The Commissioner is to comply with the direction despite section 11.

Commission's budget

33A.(1) The Commissioner must prepare and give to the Minister a draft budget for the Commission for each financial year in the form and when the Minister directs.

(2) The Minister must decide the Commission's budget for the financial year.

(3) The Commissioner must authorise spending only under the budget decided by the Minister unless the Minister otherwise directs.

Annual report

34.(1) The Commissioner is to include in each annual report prepared for the Commission under section 46J of the *Financial Administration and Audit Act 1977*—

- (a) information required by the Minister; and

- (b) a report of any direction given to the Commissioner by the Minister that relates to the financial year for which the report is prepared.

(2) Subject to section 36, the Commissioner may include in an annual report information, opinion and recommendations disclosing details of—

- (a) health service complaints, inquiry matters and offences against this Act; or
- (b) the progress or results of investigations into health service complaints, inquiry matters or offences against this Act.

Special report

35.(1) The Commissioner may, at any time, give to the Minister a report providing information in relation to the activities of the Commission.

(2) Subject to section 36, the Commissioner may include in the report information, opinion and recommendations disclosing details of—

- (a) health service complaints, inquiry matters or contraventions of this Act; or
- (b) results of investigations into health service complaints, inquiry matters or contraventions of this Act.

(3) The Minister is to lay a copy of the report before the Legislative Assembly within 10 sitting days of receiving the report.

Response to adverse comment

36.(1) In an annual report or a report given to the Minister under section 35, the Commissioner is not to include comment adverse to a person or body identifiable from the report unless the person or body has been given a reasonable opportunity—

- (a) to make submissions to the Commissioner in relation to the comment; and
- (b) to give a written statement to the Commissioner in relation to the comment.

(2) If the person or body who provides a written statement under

subsection (1)(b) requests that the statement be included in the report, the Commissioner is to include the statement, or a fair summary of the statement, in the report.

PART 3—DEVELOPMENT OF CODE

Code of Health Rights and Responsibilities

37.(1) Within 3 years after the commencement of this Act, the Commissioner is to develop a Code of Health Rights and Responsibilities for the consideration of the Minister.

(2) The Commissioner is to report to the Minister on the progress of the development of the code at intervals of not more than 1 year until it is given to the Minister for consideration.

Consultation on code

38. In developing the Code of Health Rights and Responsibilities, the Commissioner is to—

- (a) consult with the Council; and
- (b) invite submissions from and consult with interested persons and bodies to the extent necessary to ensure that a wide range of views is available in the development of the code.

Content of code

39.(1) In developing the Code of Health Rights and Responsibilities, the Commissioner is to consider and make recommendations to the Minister, in relation to its content, application, enforcement and regular review.

(2) In developing the content of the code, the Commissioner—

- (a) may have regard to all matters relevant to the provision and use of health services; and
- (b) is to have regard to the principles mentioned in subsection (3).

(3) The principles to which the Commissioner is to have regard in determining the content of the code are—

- (a) that an individual should be entitled to participate effectively in decisions about the individual's health; and
- (b) that an individual should be entitled to take an active role in the individual's health care; and
- (c) that an individual should be entitled to be provided with health services in a considerate way that takes into account the individual's background, needs and wishes; and
- (d) that an individual who—
 - (i) provides a health service; or
 - (ii) provides care for another individual receiving a health service;should be given consideration and recognition for the contribution the individual makes to health care; and
- (e) that the confidentiality of information about an individual's health should be preserved; and
- (f) that an individual should be entitled to reasonable access to records concerning the individual's health; and
- (g) that an individual should be entitled to reasonable access to procedures for the redress of grievances with respect to the provision of health services.

PART 4—HEALTH RIGHTS ADVISORY COUNCIL

Establishment of Council

40. A Council called the Health Rights Advisory Council is established.

Council's functions

41. The functions of the Council are—

- (a) to advise the Minister in relation to—
 - (i) the redress of grievances relating to health services; and
 - (ii) the means of advising, educating and informing providers and users of health services; and
 - (iii) the general operation of the Commission; and
 - (iv) any matter on which the Minister requests advice; and
- (b) to advise the Commissioner in relation to the redress of health service complaints generally; and
- (c) to refer matters relating to health service complaints to the Commissioner for advice.

Commissioner to report to Council

42.(1) Subject to subsections (2) and (3), the Commissioner, if requested to do so in writing by the Council, is to report in writing to the Council on any specified matter relating to the operation of the Commission.

(2) The Commissioner may decline to provide the report and refer the request to the Minister for directions if the Commissioner considers that the disclosure of the report to the Council would be—

- (a) unlawful; or
- (b) in breach of confidence; or
- (c) contrary to the public interest; or
- (d) detrimental to conciliation; or
- (e) detrimental to the performance of the Commissioner's functions.

(3) The Minister is to consider the Council's request and—

- (a) if the Minister considers that the report should not be provided to the Council for a reason mentioned in subsection (2)(a) to (e)—the Minister is to direct the Commissioner in writing not to provide the report; and

- (b) in any other case—the Minister is to direct the Commissioner in writing to provide the report.

Council's general power

43. Subject to this Act, the Council may do all things necessary or reasonably required to be done in connection with, or incidental to, the discharge of its functions.

Membership of Council

44.(1) The Council is to consist of 6 members namely—

- (a) 2 members appointed to represent the interests of providers; and
- (b) 2 members appointed to represent the interests of users; and
- (c) 2 other members.

(2) A member of the Council is to be appointed by the Minister and holds office, subject to this Act, for the term specified in the instrument of appointment.

Public service legislation not to apply to membership

45. The *Public Service Management and Employment Act 1988* does not apply to the appointment of a person as a member of the Council and a member of the Council is not subject to that Act in the capacity of member.

Vacation of member's office

46. The office of a member of the Council becomes vacant—

- (a) if the member's term of office expires; or
- (b) if the member dies; or
- (c) if the member resigns by signed notice given to the Minister; or
- (d) if—
 - (i) the member is absent, without reasonable cause, from 3 consecutive meetings of the Council after being given

- notice of the meetings; and
- (ii) is not, within 6 weeks after the last meeting, excused by the Council for the absence; or
- (e) if the member is removed from office under section 47.

Removal of member from office

47. The Minister may remove a member of the Council from office as member for any reason the Minister considers sufficient.

President

48.(1) The Minister is to appoint 1 of the members of the Council as President of the Council.

(2) The appointment may be by the instrument by which the person appointed as President is appointed as a member or by another instrument.

Vacation of President's office

49.(1) The office of President becomes vacant if the President—

- (a) ceases to be a member of the Council; or
- (b) resigns office as President by notice given to the Minister; or
- (c) is removed from office as President under section 50.

(2) The President may resign office as President without resigning office as a member of the Council.

Removal of President from office

50. The Minister may remove a person from office as President of the Council for any reason the Minister considers sufficient.

Minister to appoint to vacancies

51. If a vacancy in the office of a member or the President happens, the

Minister is to appoint a person to the vacancy so that the Council is constituted as required by sections 44 and 48.

Council meetings

52.(1) The procedure—

- (a) for the calling of Council meetings; and
- (b) for the conduct of business at Council meetings;

subject to this Act, is to be as determined by the Council.

(2) The President of the Council or, in the absence of the President, a member chosen by the members present at the meeting to act as President, may preside at any meeting of the Council.

(3) Three members form a quorum at a meeting of the Council.

(4) A duly convened meeting of the Council at which a quorum is present is competent to transact the business of the Council and perform all its functions.

(5) The person presiding at a meeting of the Council, in the event of an equality of votes, has in addition to a deliberative vote, a second or casting vote.

(6) A decision supported by a majority of the votes of the members present and voting at a meeting of the Council is the decision of the Council.

Minister may call meeting

53.(1) The Minister may direct the Council to convene a meeting in order to consider a matter specified by the Minister.

(2) The Council is to comply with the Minister's direction.

Minutes

54. The Council is to keep written minutes of its meetings.

Dissenting opinion to be reported

55.(1) A member of the Council attending a meeting of the Council who objects to a decision made at the meeting in relation to the provision of advice to the Minister on a matter may require the member's objection, and the member's reasons for the objection, to be—

- (a) recorded in the minutes of the meeting; and
- (b) reported in writing to the Minister when the advice is provided.

(2) The Council is to comply with the requirement.

Disclosure of interests

56.(1) If a pecuniary interest of a member of the Council in a matter that is to be considered by the Council is such that it could conflict, or be seen to conflict, with the proper performance of the member's duties of office, the member is to disclose the interest to the Council.

(2) The disclosure is to be made—

- (a) as soon as practicable after the relevant facts come to the member's knowledge; and
- (b) at a meeting of the Council.

(3) A record of the disclosure is to be made in the minutes of the meeting.

(4) Unless the Council otherwise determines, the member is not—

- (a) to be present at the deliberations of the Council concerning the matter; or
- (b) to take part in the Council's decision in relation to the matter.

(5) In this section—

“pecuniary interest” means a direct or indirect pecuniary interest, but does not include an interest that a member holds in common with other members of a calling, or section of a calling, to which the member belongs.

Maximum penalty—20 penalty units.

Fees and allowances

57. A member of the Council is to be paid the fees and allowances (if any) for services as a member that the Governor in Council determines.

PART 5—COMPLAINTS**Health service complaint**

58.(1) A complaint may be made to the Commissioner—

- (a) that a provider has acted unreasonably by not providing a health service for a user; or
- (b) that a provider has acted unreasonably in the way of providing a health service for a user; or
- (c) that a provider has acted unreasonably in providing a health service for a user; or
- (d) that a provider has acted unreasonably by denying or restricting a user's access to records relating to the user in the provider's possession; or
- (e) that a provider has acted unreasonably in disclosing information in relation to a user; or
- (f) that a public or private body that provides a health service has acted unreasonably by—
 - (i) not properly investigating; or
 - (ii) not taking proper action in relation to;a complaint made to the body by a user about a provider's action of a kind mentioned in paragraphs (a) to (e).

(2) In determining for any purpose under this Act whether a provider has acted unreasonably as mentioned in subsection (1), the Commissioner is to have regard to—

- (a) the principles mentioned in section 39(3); and
- (b) the generally accepted standards of health services expected of

providers of that kind.

Who may complain

59.(1) A health service complaint may be made to the Commissioner by—

- (a) the user; or
- (b) a person mentioned in section 60 acting on behalf of the user; or
- (c) the Minister; or
- (d) if the Commissioner considers that the public interest requires that a person other than a person mentioned in paragraph (a), (b) or (c) should be permitted to make a health service complaint—that person.

(2) The Minister may make a health service complaint despite a previous health service complaint having been made in relation to the same matter by another person.

Representative complaints

60.(1) Subject to subsection (3), a health service complaint may only be made to the Commissioner by a person acting on behalf of the user if the Commissioner is satisfied that it would be difficult or impossible for the user to make the complaint personally.

(2) The person making the health service complaint on behalf of the user is to be—

- (a) a person that the Commissioner is satisfied has been chosen by the user; or
- (b) if the Commissioner is satisfied that it would be difficult or impossible for the user to choose anybody to make a complaint in the user's place—a person the Commissioner is satisfied has a sufficient interest.

(3) The Legal Friend of an assisted citizen for the purpose of the *Intellectually Disabled Citizens Act 1985* may make a health service complaint on behalf of the assisted citizen, either directly or by instructing a legal practitioner to act on behalf of the assisted citizen.

How to make a health service complaint

61. A person may make a health service complaint to the Commissioner—

- (a) orally, either in person or by any form of distance communication; or
- (b) in writing given to the Commissioner.

Oral complaints to be confirmed in writing

62.(1) If a person makes a health service complaint orally to the Commissioner, the Commissioner is to require the person to confirm the complaint in writing unless the person satisfies the Commissioner that there is good reason that the complaint need not be confirmed in writing.

(2) The Commissioner is to fix a reasonable time within which the health service complaint is to be confirmed in writing.

Complainant to reveal identity

63.(1) A person who makes a health service complaint is to provide to the Commissioner—

- (a) the person's name and address; and
- (b) other information relating to the person's identity that the Commissioner may reasonably require;

unless subsection (3) applies.

(2) The Commissioner may choose to keep information provided by a person under subsection (1) confidential if—

- (a) there are special circumstances; and
- (b) the Commissioner thinks it is in the person's interests to do so.

(3) The Commissioner may accept an anonymous health service complaint in the public interest.

Further information from complainant

64. The Commissioner may request a person who makes a health service complaint to provide more information about the complaint within a reasonable time fixed by the Commissioner.

Commissioner may require affidavit

65. The Commissioner may at any time require a health service complaint or information provided by the complainant to be verified by the complainant by oath or affidavit.

Initial receipt and consideration

66. Within 28 days of receiving a health service complaint, the Commissioner is to consider it and—

- (a) decide to accept it for assessment under section 69; or
- (b) decide under section 74 not to take action on the complaint.

Notice of initial rejection

67.(1) Within 14 days of deciding under section 66 not to take action on a health service complaint, the Commissioner is to give notice of the decision to the complainant.

- (2) The notice is to state the grounds of the decision.

Notices of decision to assess complaint

68.(1) Subject to section 133, within 14 days of deciding under section 66 to accept a complaint for assessment, the Commissioner is to give notice of the decision to the complainant and provider.

- (2) The notice is to invite submissions before the assessment is made.

Commissioner to invite submissions

68A.(1) Before assessing a health service complaint, the Commissioner must invite submissions from the complainant and the provider in the notice

given under section 68.

(2) The Commissioner may also invite submissions from the complainant and the provider in other ways the Commissioner considers appropriate.

Assessment of complaint

69.(1) On assessing a health service complaint, the Commissioner is to—

- (a) make a decision to accept the complaint for action; or
- (b) make a decision not to take action on the complaint under section 74.

(2) Before deciding to accept a health service complaint for action, the Commissioner is to be satisfied—

- (a) that all reasonable steps have been taken by the complainant to resolve the complaint with the provider; or
- (b) that a reasonable opportunity has been given to the complainant to resolve the complaint with the provider; or
- (c) that it is not practicable for steps mentioned in paragraph (a) to be taken or for the opportunity mentioned in paragraph (b) to be given.

Notice of assessment decision

70.(1) Subject to section 133, the Commissioner is to give notice of the Commissioner's decision on assessing a health service complaint under section 69 to the complainant and the provider.

(2) If the decision is to take action on the complaint, the notice is to state the action the Commissioner has decided to take under section 71.

(3) If the decision is not to take action on the complaint, the notice given to the complainant is to state the grounds of the decision.

Action on acceptance of complaint

71.(1) In accepting a health service complaint for action under section 69, the Commissioner may decide to—

- (a) conciliate the complaint under Part 6; or
- (b) investigate the complaint under Part 7; or
- (c) refer the complaint to a registration board under Part 8.

(2) Subject to subsection (3), if the Commissioner considers that a health service complaint can be resolved by conciliation, the Commissioner is to try to resolve it in that way.

(3) The Commissioner, in deciding whether or not to conciliate a complaint, is to take into account the public interest.

Time limit on assessment

72.(1) The Commissioner is to assess a health service complaint under section 69—

- (a) within 28 days of deciding under section 66 to accept the complaint for assessment; or
- (b) within a further period determined by the Commissioner under subsection (2).

(2) If the Commissioner considers—

- (a) that a health service complaint is too complex to allow the Commissioner to assess the complaint within 28 days of deciding under section 66 to accept the complaint for assessment; or
- (b) that a health service complaint can be satisfactorily resolved otherwise than under Part 6, 7 or 8;

the Commissioner may determine a further period of not more than 28 days for the purpose of subsection (1).

Information and local resolution

73.(1) In relation to every health service complaint that the Commissioner receives, the Commissioner may, at any time—

- (a) exercise powers under sections 62, 64 and 65; and
- (b) seek and obtain information the Commissioner considers appropriate; and
- (c) attempt by whatever means the Commissioner considers appropriate to resolve the complaint, including for example by requesting any person the Commissioner considers is in a position to do so to assist the resolution of the complaint.

(2) Subsection (1)(b) does not authorise the use of a power conferred by Part 7.

Decisions not to take action

74.(1) The Commissioner is to decide not to take action on a health service complaint if the Commissioner considers that the complaint—

- (a) is frivolous, vexatious or trivial; or
- (b) is misconceived or lacking in substance; or
- (c) has been adequately dealt with by the Commission or another public authority.

(2) The Commissioner is to decide not to take action on a health service complaint if the Commissioner considers that the complainant has failed, without reasonable excuse, to satisfactorily cooperate with attempts made or arranged by the Commissioner to resolve the complaint with the provider.

(3) If an issue raised in a health service complaint has already been determined by an appropriate tribunal after the tribunal has considered the matters to which the complaint relates, the Commissioner is to decide not to take action on the complaint to the extent that it attempts to reopen the issue.

(4) The Commissioner is to decide not to take action on a health service complaint if the user has commenced a civil proceeding seeking redress for the matter of the complaint and a court has begun to hear the matter.

(5) The Commissioner is to decide not to take action on a health service complaint if—

- (a) the matter of complaint arose more than 1 year before the complaint was made to the Commissioner; and
- (b) the complainant was aware of the matter of complaint more than

1 year before making the complaint to the Commissioner.

(6) The Commissioner may decide not to take action on a health service complaint if the complainant fails to comply with a request by the Commissioner—

- (a) to confirm the complaint in writing; or
- (b) to give the Commissioner more information concerning the person's identity; or
- (c) to give more information to the Commissioner within the time fixed by the Commissioner; or
- (d) to verify the complaint or any information by oath or affidavit.

(7) The Commissioner may decide not to take action on a health service complaint if the complaint has been resolved since it was made.

(8) The Commissioner may decide not to take action on a health service complaint if the complainant withdraws the complaint.

(9) The Commissioner may decide not to take action on a health service complaint if—

- (a) the complaint has been conciliated; and
- (b) the conciliator recommends that the Commissioner should not take action.

(10) In this section—

“appropriate tribunal” in relation to an issue mentioned in subsection (3), means a court, industrial tribunal, registration board or other tribunal authorised to determine the issue at law.

PART 6—CONCILIATION

Appointment of conciliator

75. The Commissioner may appoint a person to be a conciliator for the purpose of this Act.

Conciliators functions exclusive

76. Only a conciliator may perform the function of conciliation under this Part.

Conciliation to be separately performed

77. A Commission officer who is a conciliator is not to be involved in the investigation of health service complaints.

Conciliation function

78.(1) The conciliation of a health service complaint is to be performed by 1 or more conciliators assigned by the Commissioner.

(2) A conciliator's function is to encourage the settlement of the health service complaint by—

- (a) arranging negotiations between the provider and the complainant in question; and
- (b) assisting in the conduct of the negotiations; and
- (c) assisting the provider and the complainant to reach agreement; and
- (d) assisting in the resolution of the complaint in any other way.

Public interest

79.(1) Before the conciliation of a health service complaint starts, the Commissioner is to identify and inform the conciliator of any issue raised by the complaint that the Commissioner considers involves the public interest.

(2) At the start of the conciliation, the conciliator is to draw those issues to the attention of the parties.

(3) In the course of the conciliation, at times the conciliator considers appropriate, the conciliator is to draw to the attention of the parties any issues involving the public interest that the conciliator considers are raised by the health service complaint.

(4) The conciliator is to report to the Commissioner any issue involving

the public interest that the conciliator considers is raised by the health service complaint, unless the issue has already been identified by the Commissioner.

Progress reports from conciliator

80. The conciliator of a health service complaint is to give to the Commissioner any written report of the progress of the conciliation that the Commissioner may request during the conciliation.

Results report from conciliator

81.(1) At the conclusion of the conciliation of a health service complaint, the conciliator is to give a written report of the results of the conciliation to the Commissioner.

(2) If agreement is reached, the report is to include details of the agreement.

(3) If agreement is not reached, the report—

- (a)** may recommend the action the Commissioner should take under section 84(2); or
- (b)** may make no recommendation.

(4) The conciliator is to give a copy of the report to the provider and the complainant in question, if practicable on the same day as the report is given to the Commissioner.

Action on report of unsuccessful conciliation

82. On receiving a report under section 81 that agreement was not reached in the conciliation of a health service complaint, the Commissioner may—

- (a)** take action on the complaint by—
 - (i)** investigating it under Part 7; or
 - (ii)** referring it to a registration board under Part 8; or
- (b)** decide under section 74 not to take action on the health service

complaint; or

- (c) further conciliate the complaint.

Enforceable agreement

83.(1) Parties reaching agreement in the conciliation of a health service complaint may enter a contract in settlement of the complaint.

(2) The conciliator of the health service complaint is not to be a party to, or to attest, the contract.

(3) Subject to section 85, a contravention of subsection (2) does not affect the enforceability of the contract.

Commissioner may end conciliation

84.(1) If the Commissioner considers that a health service complaint that is the subject of a conciliation can not be resolved in that way, the Commissioner may end the conciliation.

(2) The Commissioner may then—

(a) take action on the health service complaint by—

(i) investigating it under Part 7; or

(ii) referring it to a registration board under Part 8; or

(b) decide under section 74 not to take action on the health service complaint.

(3) The Commissioner is to end the conciliation of a health service complaint if the Minister directs the Commissioner under section 32 to investigate the complaint or under section 33 to conduct an inquiry in relation to the complaint.

Conciliation privileged

85.(1) Anything said or admitted during conciliation—

(a) is not admissible as evidence in a proceeding before a court or tribunal; and

(b) can not be used by the Commissioner as a ground for

investigation or inquiry.

(2) For example, anything said or admitted during a conciliation of a health service complaint can not be admitted in a proceeding to enforce a contract mentioned in section 83.

Confidentiality of conciliation

86. A conciliator is not to disclose information gained during conciliation—

- (a) in any further conciliation; or
- (b) to any person appointed, employed or engaged for the purposes of this Act;

unless the disclosure is authorised under this Part.

Maximum penalty—40 penalty units.

Professional mentor

87.(1) The Commissioner is to ensure, to the extent practicable, that each conciliator is advised in the performance of the conciliator's functions by persons with knowledge or experience in the field of dispute resolution (a "**professional mentor**").

(2) A conciliator may discuss all matters arising in relation to the performance of the conciliator's functions with the conciliator's professional mentor.

(3) A professional mentor is not to be involved in the investigation of health service complaints.

(4) A conciliator's professional mentor is not to disclose information gained by the conciliator during conciliation that the conciliator has communicated to the professional mentor.

Maximum penalty for contravention of this subsection—40 penalty units.

Administrative support staff

87A.(1) The Commissioner may make arrangements for a person (the "**support person**") appointed, employed or engaged under this Act to give

administrative support to a conciliator in the performance of the conciliator's functions.

(2) A conciliator may disclose information gained during conciliation to the support person.

(3) If a conciliator discloses information gained during conciliation to a support person, the support person must not disclose the information.

Maximum penalty for subsection (3)—40 penalty units.

PART 7—INVESTIGATION

Division 1—Commissioner's investigations

Commissioner's investigations

88. The powers conferred by this Division may only be used to investigate—

- (a) a health service complaint that the Commissioner decides to investigate under section 71, 82 or 84; or
- (b) a health service complaint or other matter in relation to which the Minister has given written direction to the Commissioner under section 32 to investigate or under section 33 to conduct an inquiry.

Notice to provide information or a record

89.(1) The Commissioner may, by notice given to a person, require the person—

- (a) to give specified information within a specified reasonable period and in a specified reasonable way; or
- (b) to attend at a specified reasonable time and place, and then and there answer questions giving specified information; or
- (c) to produce, at a specified reasonable time and place, a specified record in the person's possession.

(2) The Commissioner may only give a notice to a person the Commissioner has reason to believe is able to give the information or produce the record.

(3) A notice may require the information given or record produced to be given or produced to an authorised person.

(4) A notice may require information or a record to be verified by affidavit.

(5) The information given or record produced in response to the notice is not admissible in evidence against the person in a proceeding, other than a prosecution for an offence under Division 4 involving the giving of the information or the producing of the record.

Oral information on oath

90.(1) An authorised person to whom oral information is to be given under a notice under section 89 may require the information to be verified by oath.

(2) An authorised person may administer the oath.

Retention and copying of provided record

91.(1) An authorised person may keep a record produced to an authorised person under section 89 for 60 days.

(2) While the authorised person has possession of the record, the authorised person—

- (a) may take extracts from and make copies of the record; but
- (b) is to allow the record to be inspected or copied at any reasonable time by a person who would be entitled to inspect or copy it if it were not in the authorised person's possession.

Offence not to provide

92. Subject to Division 5, a person is not to fail, without reasonable excuse, to give the information or produce the record as required by a notice under section 89.

Maximum penalty—10 penalty units.

Allowances

93. A person required to attend at any place under section 89 to give information or produce a record is entitled to be paid expenses and allowances—

- (a) that are prescribed by regulation; or
- (b) if none are prescribed by regulation—that the Commissioner determines.

Reference to another authority for investigation

94.(1) If the Commissioner considers that a matter raised by, or in the course of investigating, a health service complaint or inquiry matter should be investigated by a person or body that has a function or power under an Act of the State or the Commonwealth to investigate the matter, the Commissioner may refer the matter to the person or body for investigation.

(2) The Commissioner is not to refer the matter without first consulting the person or body.

(3) If a matter is something the Commissioner may refer to a registration board under Part 8, the Commissioner is not to refer it to the registration board under this section.

Investigation by other authority

95.(1) This section applies if the Commissioner refers a matter under section 94 to a person or body that has a function or power under an Act of the State to investigate the matter.

(2) The person or body is to perform whatever function and exercise whatever powers the person or body has to investigate the matter.

(3) The person or body may provide the Commissioner with written reports of the progress and results of the investigation that the person or body considers appropriate.

(4) The Commissioner may request the person or body at any time to

provide the Commissioner with reasonable reports of the progress and results of the investigation.

(5) The person or body is to comply with the Commissioner's request.

(6) In every case the person or body is to provide to the Commissioner a written report of the results of the investigation within 28 days of its completion.

Commissioner's powers not affected by reference

96. The Commissioner's powers to investigate a matter are not affected by the matter having been referred under section 94 to another person or body for investigation.

Division 2—Inquiry hearing

Powers

97. The powers conferred by this Division may only be exercised for the purpose of an inquiry.

Oral hearings

98.(1) The Commissioner may, by notice given to a person, summon the person to attend at an inquiry hearing at a time and place specified in the summons—

- (a) to give evidence; and
- (b) to produce a record in the person's possession specified in the notice;

in relation to the inquiry matter.

(2) The evidence given or record produced by the person at the inquiry hearing in compliance with the summons is not admissible in evidence against the person in a proceeding other than a prosecution for an offence under—

- (a) section 101 or Division 4; or

(b) Chapter 16 of the Criminal Code;
involving the giving of the evidence or the production of the record.

Failure of witness to attend

99. A person served with a summons to attend as a witness at an inquiry hearing is not, without reasonable excuse—

- (a) to fail to attend as required by the summons; or
- (b) to fail to attend from time to time in the course of the inquiry hearing as required by the Commissioner.

Maximum penalty—10 penalty units.

Refusal of witness to cooperate

100. Subject to Division 5, a person attending as a witness at an inquiry hearing is not, without reasonable excuse—

- (a) to fail to be sworn or to make an affirmation; or
- (b) to fail to answer a question that the person is required to answer by the Commissioner; or
- (c) to fail to produce a record that the person was required to produce by a summons served on the person.

Maximum penalty—10 penalty units.

Contempt of inquiry

101.(1) A person is not to—

- (a) obstruct or improperly influence an inquiry hearing or attempt to do so; or
- (b) do any other act or make any other omission that would, if the Commissioner in conducting an inquiry hearing were a court of record, constitute contempt of the court.

Maximum penalty—30 penalty units.

(2) A contravention of subsection (1) may be charged as contempt of an inquiry hearing.

Application of Criminal Code

102. An inquiry hearing is a judicial proceeding for the purpose of Chapter 16 of the Criminal Code.

Allowances

103.(1) A person summoned to attend as a witness at an inquiry hearing is entitled to be paid expenses and allowances—

- (a) that are prescribed by regulation; or
- (b) if none are prescribed by regulation—that the Commissioner determines.

(2) A regulation may prescribe expenses and allowances by reference to similar expenses and allowances payable to persons attending as a witness before a specified court.

Division 3—Premises powers

Power limitation

104. The power conferred by this Division may only be exercised for the purpose of—

- (a) obtaining information, a record or a thing that may afford evidence in relation to an inquiry matter or an offence against this Act; or
- (b) exercising the power mentioned in section 108(1)(f).

Identity card to be produced

105. An authorised person, other than a police officer in uniform, is not entitled to exercise a power under this Division in relation to a person unless

the authorised person first produces to the person the authorised person's identity card.

Police officer called in aid

106.(1) An authorised person may call on a police officer to provide aid in the exercise of powers under this Division.

(2) The police officer—

- (a) may provide the aid; and
- (b) in providing the aid is acting in the execution of the officer's duty.

(3) For the purpose of providing the aid the police officer is an authorised person.

Entry and search

107.(1) Subject to subsection (3), if the Commissioner has reasonable grounds for suspecting—

- (a) in relation to an inquiry matter mentioned in section 33(1)(c)—that there is on premises a person mentioned in that paragraph—
 - (i) who can not, practically or otherwise, exercise an absolute right of egress from the premises; and
 - (ii) whose health or safety may be at risk; or
- (b) in any case—that there is on premises a particular record or thing that may afford evidence;

an authorised person may enter the premises and exercise the powers mentioned in section 108.

(2) If an authorised person enters the premises and finds evidence consisting of the particular record or thing mentioned in subsection (1)(b), the following provisions have effect—

- (a) the authorised person may seize the evidence;
- (b) the authorised person may keep the evidence for 60 days or, if a prosecution in which the evidence is relevant is instituted within

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that period, until the completion of the prosecution and of any appeal from a decision in relation to the prosecution;

- (c) if the evidence is a record—while the authorised person has possession of the record, the authorised person may take extracts from and make copies of the record but is to allow the record to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised person's possession.

(3) An authorised person is not to enter the premises or exercise a power under subsection (1) unless—

- (a) the occupier (if any) of the premises consents to the entry or exercise of the power; or
- (b) a warrant under section 109 authorises the entry or the exercise of the power.

(4) If in the course of searching premises under subsection (1), an authorised person—

- (a) finds a thing that the authorised person believes, on reasonable grounds to be a thing (other than the particular record or thing mentioned in subsection (1)(b)) that will afford evidence in relation to an inquiry matter or an offence against this Act; and
- (b) believes, on reasonable grounds, that it is necessary to seize the record or thing to prevent its concealment, loss or destruction;

subsection (2) applies to the record or thing as evidence within the meaning of the subsection.

(5) An authorised person who seizes or damages a record or thing under this section is to give notice of particulars of the record, thing or damage.

(6) The notice is to be given to—

- (a) if a record or thing is seized—the person from whom the thing was seized; or
- (b) if damage is caused to a record or thing—the person who appears to the authorised person to be the owner.

General powers of authorised person in relation to premises

108.(1) The powers an authorised person may exercise under section 107(1) in relation to premises are as follows—

- (a) to search any part of the premises;
- (b) to inspect or examine anything on the premises;
- (c) to make inquiries on the premises;
- (d) to take extracts from, and make copies of, a record on the premises;
- (e) to take onto the premises anything the authorised person requires for the purpose of exercising a power on the premises;
- (f) if the premises are of a kind mentioned in section 107(1)(a)—to make arrangements to secure the health and safety of the person mentioned in that paragraph;
- (g) to require the occupier or any person on the premises to give to the authorised person reasonable assistance in relation to the exercise of the powers mentioned in paragraphs (a) to (f).

(2) Subject to Division 5, a person is not to fail, without reasonable excuse, to comply with a requirement made under subsection (1)(g).

Maximum penalty—20 penalty units.

(3) Information given or a record produced by a person on being required to do so by an authorised person under subsection(1)(g) is not admissible in evidence against the person in any proceedings other than a prosecution for an offence under Division 4 involving the giving of the information or production of the record.

Warrants

109.(1) An authorised person may apply to a Magistrate for a warrant under this section in relation to particular premises.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information verified by oath or affidavit, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, on the premises—

- (a) if the warrant is required for the purpose of an inquiry matter mentioned in section 33(1)(c)—a person mentioned in that paragraph—
 - (i) who can not, practically or otherwise, exercise an absolute right of egress from the premises; and
 - (ii) whose health or safety may be at risk; or
- (b) a particular record or thing that may afford evidence.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate is not to issue the warrant unless an authorised officer has given the information to the Magistrate verified by oath or affidavit as required by the Magistrate.

(4) The warrant is to specify—

- (a) that the authorised officer, with necessary and reasonable force and assistance, may—
 - (i) enter the premises; and
 - (ii) exercise the powers set out in section 108; and
 - (iii) seize evidence in accordance with section 107; and
- (b) whether the entry is authorised to be made at any time of the day or night or during specified hours; and
- (c) a day no later than 7 days after the issue of the warrant on which the warrant ceases to have effect; and
- (d) the purpose for which the warrant is issued.

Division 4—False or misleading information

Application

110. This Division applies to a person who is required to give information (the “**information**”) or produce a record (the “**record**”)—

- (a) under section 89(1), 98 or 108; or
- (b) as a witness at an inquiry hearing.

False or misleading information

111.(1) A person, in response to a requirement to give the information, is not to—

- (a) give information that the person knows is false or misleading in a material particular; or
- (b) omit from information given other information without which the information given is, to the knowledge of the person, false or misleading in a material particular.

Maximum penalty—20 penalty units.

(2) A complaint against a person for an offence under subsection (1)(a) or (b) is sufficient if it states that the information given was false or misleading to the knowledge of the person.

False or misleading record

112. A person, in response to a requirement to produce the record is not to provide a record containing information that the person knows is false or misleading in a material particular without—

- (a) indicating that the record is false or misleading and the respect in which the record is false or misleading; and
- (b) giving correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty—20 penalty units.

Division 5—Privilege**Application**

113. This Division applies to a person who is required to give information (the “**information**”) or produce a record (the “**record**”)—

- (a) under section 89(1), 98 or 108; or
- (b) as a witness at an inquiry hearing.

Witness privilege

114.(1) Subject to subsection (2), a person is not required to give the information or produce the record if the person objects on the ground of a privilege the person would be entitled to claim against giving the information or producing the record were the person a witness in a prosecution for an offence in the Supreme Court.

(2) A person may only claim, on the ground of self incrimination, privilege against giving the information or producing the record on being required to do so for the purpose of an inquiry if the ground is that the information would tend to incriminate the person of an indictable offence.

(3) The Commissioner or the person may apply to a Supreme Court Judge for a determination of the validity of a claim of privilege.

Claim of unjustifiable exercise of power

115.(1) A person is not required to give the information or produce the record if it is determined by a Supreme Court Judge that on balance the purpose for which the information was required to be given or the record produced does not justify—

- (a) the adverse affect on the financial interests of the person; or
- (b) the intrusion on the privacy of an individual by disclosure of private or confidential matters relating to the individual;

that would result from the giving of the information or the producing of the record.

(2) Application to a Supreme Court Judge for a determination mentioned in subsection (1) may be made by the person required to give the information or produce the record.

Supreme Court applications

116.(1) An application to a Supreme Court Judge under section 114 or 115—

- (a) is to be made in accordance with the rules of court or, to the extent the rules do not provide, as directed by a Supreme Court Judge; and

(b) is to be heard in chambers.

(2) The burden of proof on an application is on the person seeking to withhold the information or record.

(3) In determining an application, a Supreme Court Judge may make all orders necessary for the practical operation of this Division, including for example—

- (a) by excusing a person from giving or producing, or ordering a person to give or produce, the whole or part of the information or record; or
- (b) by amending the notice or order by which the information or record was required to be given or produced.

(4) Costs of an application are to be borne by the Commission, unless otherwise ordered by the Judge on the ground that a claim to withhold the information or record was frivolous, vexatious or lacking in substance.

Division 6—Action on investigation

Interpretation

117. In this Division—

“complainant” means a complainant in relation to a health service complaint that is the subject of an investigation.

“investigation” includes an inquiry.

“provider” means a provider who is the subject of an investigation that a report concerns.

Commissioner’s reports

118.(1) The Commissioner may at any time make a report in relation to an investigation conducted by the Commissioner for the purpose of giving it to a person or body mentioned in section 119.

(2) Subject to section 120, the report may contain information, comment, opinion and recommendations for action the Commissioner considers appropriate.

To whom reports may be given

119. The Commissioner may give a report to—

- (a) the complainant; or
- (b) the provider; or
- (c) an employer of the provider; or
- (d) if the provider is a registered provider—the registered provider’s registration board; or
- (e) a professional association of which the provider is eligible to be a member; or
- (f) the Minister; or
- (g) any person or body that has a function or power to take action on matters raised in the report.

Response to adverse comment

120.(1) Subject to section 133, the Commissioner is not to include in a report comment adverse to a person or body identifiable from the report unless the person or body has been given a reasonable opportunity—

- (a) to make submissions to the Commissioner in relation to the comment; and
- (b) to give to the Commissioner a written statement in relation to the comment.

(2) If the person or body who gives a written statement under subsection (1)(b) requests that the statement be included in the report, the Commissioner is to include the statement, or a fair summary of the statement, in the report.

PART 8—REGISTRATION BOARDS

Reference of complaint to registration board

121.(1) If, in assessing a health service complaint under section 69, the Commissioner considers—

- (a) that a health service complaint made against a registered provider is not suitable for conciliation and should be investigated; and
- (b) that the registered provider's registration board has adequate functions and powers of investigation;

the Commissioner may refer the complaint to the registration board.

(2) The Commissioner is not to refer a health service complaint to a registration board without first consulting the registration board.

(3) A consultation under subsection (2) may be in the form of a standing arrangement or be more specific.

(4) If the Commissioner refers a health service complaint to a registration board under this section, the Commissioner need take no further action on the complaint.

Duty of registration board

122.(1) A registration board to which a health service complaint is referred by the Commissioner under section 121 is to perform whatever functions and exercise whatever power it has to investigate the complaint.

(2) On investigating the complaint, the registration board is to provide the Commissioner with prompt reports of—

- (a) findings of the board; and
- (b) action taken or proposed to be taken by the board.

Reference by registration board

123.(1) If a registered provider's registration board receives a complaint against the registered provider of a kind mentioned in section 58(1)(a) to (f), it is to immediately refer the complaint to the Commissioner.

(2) A complaint referred to the Commissioner under subsection (1) is taken to be a health service complaint made to the Commissioner.

(3) The registration board is to take no further action on the complaint unless the Commissioner refers the complaint back to the board under this Act.

Information from registration board

124.(1) A registration board may provide to the Commissioner information, comment and recommendations in relation to a health service complaint and the registered provider against whom the complaint was made.

(2) The Commissioner may, at any time, make a request of a registration board to provide reasonable information in its possession in relation to a health service complaint or the registered provider against whom a health service complaint is made.

(3) The registration board is to comply with a request made to it under subsection (2).

Notice of action decision to registration board

125.(1) Within 14 days of notifying a registered provider under section 70 of a decision to take action on a health service complaint made against the provider, the Commissioner is to give written notice of the decision to the registered provider's registration board.

(2) The notice is to provide details of—

- (a) the health service complaint, unless the complaint was referred to the Commissioner by the registration board; and
- (b) the decision.

Notice of further decision to registration board

126. Within 14 days of making any further decision under this Act to conciliate or investigate a health service complaint made against a registered provider, the Commissioner is to give written notice of the decision to the registered provider's registration board.

Information to registration board

127.(1) A registered provider's registration board, may at any time, request the Commissioner for reasonable reports on the progress and results of an investigation by the Commissioner of a health service complaint made against the registered provider.

(2) The Commissioner is to comply with the request.

Report to registration board of results of investigation

128.(1) Without limiting Part 7, Division 6, at the conclusion of an investigation in relation to a registered provider, the Commissioner is to provide to the registered provider's registration board a report setting out the Commissioner's findings (if any).

(2) The report may contain—

- (a) the Commissioner's recommendations on any action the Commissioner considers the registration board should take; and
- (b) information the Commissioner considers the registration board should be given.

Report to Commissioner by registration board

129.(1) If a report given to a registration board under section 128 recommends that the board should take action set out in the report, the board is to report to the Commissioner, as requested by the Commissioner, on the progress and results of action taken by the board.

(2) If the Commissioner is dissatisfied with the time being taken by the registration board to take a particular action or to make a particular report to the Commissioner, the Commissioner may report the matter to the Minister.

Commissioner may intervene in disciplinary proceedings

130.(1) This section applies if a disciplinary proceeding is taken against a registered provider for a matter because of a health service complaint or an inquiry matter and the proceeding is before—

- (a) a registration board; or
- (b) another body that—
 - (i) is established under an Act that establishes a registration board; and
 - (ii) deals with disciplinary matters against registered providers.

(2) The Commissioner may intervene in the disciplinary proceeding at any time.

(3) On intervention, the Commissioner becomes a party to the proceeding.

PART 9—GENERAL

Obstruction

131. A person is not, without reasonable excuse, to obstruct an authorised person in the exercise of a power under this Act.

Maximum penalty—20 penalty units.

Record copy

132. A power conferred by this Act to require a person to produce a record includes the power to require the person to produce a copy of the record.

Dispensing with notice

133.(1) The Commissioner may dispense with a duty imposed on the Commissioner under this Act—

- (a) to give a notice to a provider; or
- (b) to give an opportunity to a person to make submissions on a report containing adverse comment about the person;

if the Commissioner considers this would—

- (c) put at risk the health or safety of any person; or
- (d) prejudice an investigation or inquiry.

(2) Subsection (1) does not apply in relation to the duty imposed by section 36.

Investigation despite proceedings

134. Subject to section 74, an investigation or inquiry under this Act may start or continue, and a report under this Act may be made or given, despite any proceedings before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders to the contrary.

Giving of information protected

135.(1) This section applies to a person who, honestly and on reasonable grounds, gives information or a record (the “**information**”) to the Commissioner, an authorised person or a Commission officer—

- (a) for the purpose of a health service complaint; or
- (b) in the course of an investigation or inquiry.

(2) A person is not subject to any liability for giving the information and no action, claim or demand may be taken or made of or against the person for giving the information.

(3) For example, in proceedings for defamation in relation to a publication it is a lawful excuse that the publication was made in giving the information.

(4) For example, a person—

- (a) on whom a provision of an Act imposes a duty to maintain confidentiality with respect to a matter; or
- (b) who is subject to an obligation by way of oath, rule of law or practice to maintain confidentiality with respect to a matter;

is taken not to have—

- (c) committed an offence against the Act; or
- (d) breached the oath, rule of law or practice or a law relevant to the

oath, rule of law or practice; or

- (e) rendered the person liable to disciplinary action;

merely because the person has given the information.

False or misleading information

135A.(1) A person commits an offence if the person—

- (a) makes a statement to the Commissioner with the intent that it be acted on as a health service complaint; and
- (b) in the statement, or in the course of inquiries into the statement, intentionally gives information that is false or misleading in a material particular to the Commissioner or another entity to which the complaint has been referred.

Maximum penalty—167 penalty units or 2 years imprisonment.

- (2) The offence is an indictable offence.

Reports privileged

136.(1) In proceedings for defamation in relation to a publication, it is a lawful excuse—

- (a) that the publication was made in good faith for the purpose of the preparation of a report authorised or required to be made under this Act; or
- (b) that the publication was an authorised or required publication under this Act of a report made in good faith.

(2) Subsection (1) does not affect any other defence a person may be entitled to claim under the law relating to defamation.

Evidence

137.(1) In a proceeding, a certificate purporting to be that of the Commissioner stating that a person is an authorised person in relation to a specified power is evidence of the matter stated.

- (2) An authorised person may make a certificate for the purpose of this

section.

(3) In a proceeding, a certificate purporting to be that of an authorised person stating—

- (a) that the authorised person has made or taken a specified decision, step or action; or
- (b) that a specified record is one held by or given to the authorised person;

is evidence of those matters.

(4) Judicial notice is to be taken of—

- (a) an appointment of a Commissioner or a person to act as a Commissioner, whenever made; and
- (b) a Commissioner's signature.

Preservation of confidentiality

138.(1) A person is not to record, disclose or use confidential information gained by the person through involvement in the administration of this Act, unless the person does so—

- (a) for the purpose of this Act; or
- (b) when expressly authorised under another Act; or
- (c) when authorised under a regulation.

Maximum penalty—40 penalty units.

(2) A person is not required—

- (a) to disclose confidential information to a court or tribunal; or
- (b) to produce a record containing confidential information to a court or tribunal;

unless it is necessary to do so for the purpose of this Act.

(3) A person gains information through involvement in the administration of this Act if the person gains the information—

- (a) in the course of the involvement; or
- (b) because of opportunity provided by the involvement.

(4) The following persons are taken to be involved in the administration of this Act—

- (a) the Commissioner or other authorised person;
- (b) an officer or employee of the Commission or a person engaged to perform a service for the Commission;
- (c) a member of the Council;
- (d) a member of a committee established under section 26;
- (e) a conciliator and person involved in conciliation under this Act;
- (f) a person investigating a matter under this Act.

(5) In this section—

“**confidential information**” includes—

- (a) information about the identity, occupation or whereabouts of the complainant, user or provider to which a health service complaint or inquiry matter relates or of any person who assists an investigation or inquiry; and
- (b) information disclosed by a health service complaint; and
- (c) information of personal concern to an individual; and
- (d) information that, if disclosed, may cause detriment to a person.

Unlawful reprisal

139.(1) A person is not to take, or attempt or conspire to take, a reprisal against another person because, or in the belief that, any person—

- (a) has made or may make a health service complaint; or
- (b) has provided or may provide assistance to the Commissioner, an authorised person or other person or body conducting an investigation or inquiry for the purpose of this Act.

(2) An attempt to take a reprisal includes an attempt to induce a person to take a reprisal.

(3) A contravention of subsection (1) is a taking of an unlawful reprisal.

(4) A ground mentioned in subsection (1) as the ground for a taking of

an unlawful reprisal is the unlawful ground for the reprisal.

(5) For the contravention to happen, it is sufficient if an unlawful ground is a ground of any significance for the reprisal.

(6) A person who takes an unlawful reprisal commits an offence against this Act.

Maximum penalty—167 penalty units or 2 years imprisonment.

(7) The offence is an indictable offence.

(8) In any proceedings in which it is relevant to prove that a person has taken an unlawful reprisal, it is a defence for the person to prove that despite an unlawful ground being a ground for engaging in the conduct alleged to constitute the unlawful reprisal—

- (a) the person had other just and reasonable grounds for engaging in the conduct; and
- (b) the person had taken a significant step towards engaging in the conduct before acting on the unlawful ground.

Damages entitlement for reprisal

139A.(1) Unlawful reprisal is a tort and a person who takes an unlawful reprisal is liable in damages to any person who suffers detriment as a result.

(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of an unlawful reprisal.

(3) If the claim for the damages goes to trial in the Supreme Court or a District Court, it must be decided by a Judge sitting without a jury.

Indemnity

140. The Commissioner, a Commission officer, an authorised person, or a person acting under the direction of an authorised person, are indemnified by the State against all actions, proceedings and claims in relation to—

- (a) acts done, or omitted to be done, by the person without negligence under this Act; and
- (b) acts done, or omitted to be done, by the person in good faith and without negligence for the purpose of this Act.

Proceedings for offences generally

141.(1) An offence against this Act other than an offence declared to be an indictable offence is a summary offence.

(2) A summary proceeding for the offence must start within whichever is the longer of the following—

- (a) 1 year after the commission of the offence;
- (b) 1 year after the offence comes to the knowledge of the Commissioner, but within 2 years after the commission of the offence.

Proceedings for indictable offences

141A.(1) A proceeding on a charge for an indictable offence under this Act may be taken, at the election of the prosecution—

- (a) by summary proceeding under the *Justices Act 1886*; or
- (b) on indictment.

(2) A Magistrates Court must not hear the charge summarily if—

- (a) the defendant asks the court at the start of the hearing to treat the proceeding as a committal proceeding; or
- (b) the court considers that the charge should be prosecuted on indictment.

(3) A Magistrates Court may start to hear and decide the charge summarily even if more than 1 year has passed since the offence was committed.

Change to committal proceeding during summary proceeding

141B.(1) This section applies if during a proceeding before a Magistrates Court to hear and decide a charge for an indictable offence summarily, the court decides that the charge is not one that should be decided summarily.

(2) The court must stop treating the proceeding as a proceeding to hear and decide the charge summarily and start treating it as a committal proceeding.

(3) The defendant's plea at the start of the hearing must be disregarded.

(4) The evidence already heard by the court is taken to be evidence in the committal proceedings.

(5) To remove doubt, it is declared that section 104 of the *Justices Act 1886* must be complied with for the committal proceedings.

Regulations

142.(1) The Governor in Council may make regulations for the purposes of this Act.

(2) Without limiting subsection (1), the regulations may make provision with respect to—

- (a) requiring providers of a specified class to give to the Commissioner returns of information concerning complaints about health services; and
- (b) offences against the regulations punishable by fines of no more than 10 penalty units.

Transitional

144.(1) This Act does not authorise a complaint to be made to the Commissioner about a health service provided before the commencement of this section, if—

- (a) the complaint relates to a matter arising more than 1 year before the commencement of this section; and
- (b) the complainant became aware of the matter of complaint more than 1 year before the commencement of this section.

(2) After the commencement of this section, complaints of a kind mentioned in section 58—

- (a) that were made before the commencement of this section to the Health Complaints Unit; and
- (b) that were being dealt with by the Health Complaints Unit immediately before the commencement of this section;

may be dealt with as if they were made under this Act to the Commissioner.

(3) This Act applies to complaints mentioned in subsection (2) with such modifications as to procedure as the Commissioner considers necessary to take into account that they had already been dealt with before the commencement of this section.

SCHEDULE 1

PART 1—DECLARED HEALTH SERVICES

1. Hospital, health institution or nursing home services.
2. Medical, dental, pharmaceutical, paramedical, mental health, community health, environmental health, specialised health or allied services.
3. Services provided in association with the use of premises for the care, treatment or accommodation of persons who are aged or have a physical or mental illness.
4. Laboratory services provided in support of health services.
5. Laundry, cleaning, catering or other support services provided to a hospital, health institution, nursing home or premises mentioned in item 3, if the services affect the care or treatment of patients or residents.
6. Social work, welfare, recreational or leisure services, if provided as part of a health service.
7. Ambulance services.
8. Services provided by registered providers.
9. Services provided by dietitians, audiologists, audiometrists, prosthetists, optical dispensers, radiographers, child guidance therapists, psychotherapists, therapeutic counsellors and services provided by other professional, technical and operational persons that directly contribute to the provision of a health service.
10. Services provided by practitioners of massage, naturopathy, acupuncture or in other natural or alternative health care or diagnostic fields.
11. Services provided in relation to health promotion, education and information.

SCHEDULE 1 (continued)

**PART 2—SERVICES DECLARED NOT TO BE
HEALTH SERVICES**

1. An opinion of a provider, or a decision made, for the purpose of a claim under the *Workers' Compensation Act 1990*.
2. An opinion of a provider, or a decision made, for the purpose of a notice, order, or appeal under the *Workplace Health and Safety Act 1989*.
3. Services provided by an officer of the Corrective Services Commission or of a department (other than the department in which this Act is administered), excluding services provided by an officer who—
 - (a) is a registered provider; and
 - (b) provides the services in the course of performing duties in a position for which registration as such a registered provider is a requirement.
4. Services provided by the State Emergency Service and by volunteers in emergency situations, including first aid and life support services, for example services provided by lifesavers, coastal rescue groups, teachers, teachers aides and school administrative staff.
5. Health services provided by a public authority of the Commonwealth.

SCHEDULE 2**DECLARED REGISTRATION BOARDS**

1. Chiropractors and Osteopaths Board
2. Dental Board
3. Dental Technicians and Dental Prosthetists Board
4. Medical Board
5. Nursing Council
6. Occupational Therapists Board
7. Optometrists Board
8. Pharmacy Board
9. Physiotherapists Board
10. Podiatrists Board
11. Psychologists Board
12. Speech Pathologists Board

ENDNOTES**1 Index to Endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 23 December 1994. Future amendments of the Health Rights Commission Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Table of previous reprints

Reprint No.	Amendments included	Reprint date
1	to Act No. 79 of 1993	30 May 1994

4 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of Table	Reprint No.
Table of obsolete and redundant provisions	1
Table of corrected minor errors	1

5 List of legislation

Health Rights Commission Act 1991 No. 88

date of assent 11 December 1991

Pts 1–2, 4 commenced 7 March 1992 (1992 SL No. 41)

remaining provisions commenced 1 July 1992 (1992 SL No. 98)

as amended by—

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 s 2 Sch 2 (as amended by Act No. 68 of 1992 s 3 Sch 2)

date of assent 2 July 1992

amendment 1 commenced 1 July 1992 (see s 2 Sch 2 and Act No. 68 of 1992 s 3 Sch 2)

remaining provisions commenced on date of assent

Nursing Act 1992 No. 55 s 163 Sch 2

date of assent 30 November 1992

commenced 1 November 1993 (1993 SL No. 393)

Health Legislation Amendment Act 1992 No. 66 Pts 1, 7

date of assent 7 December 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 1992 (1992 SL No. 450)

Health Legislation Amendment Act 1993 No. 79 Pts 1, 7

date of assent 17 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 14 March 1994 (1994 SL No. 84)

Whistleblowers Protection Act 1994 No. 68 s 62 Sch 4

date of assent 1 December 1994

commenced 16 December 1994 (1994 SL No. 441)

6 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
R1	=	Reprint No. 1
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Definitions

s 3 def “detriment” sub 1994 No. 68 s 62 Sch 4

Cooperation with interested organisations

s 27 amd 1993 No. 79 s 34

Minister’s directions

s 32 amd 1993 No. 79 s 35

Commission’s budget

s 33A ins 1993 No. 79 s 36

Council meetings

s 52 amd 1993 No. 79 s 37

Commissioner to invite submissions

s 68A ins 1993 No. 79 s 38

Information and local resolution

s 73 amd 1993 No. 79 s 39

Decisions not to take action

s 74 amd 1993 No. 79 s 40

Conciliation function

s 78 amd 1993 No. 79 s 41

Administrative support staff

s 87A ins 1993 No. 79 s 42

Reference by registration board

s 123 amd 1992 No. 36 s 2 Sch 2

Commissioner may intervene in disciplinary proceedings

s 130 sub 1993 No. 79 s 43

Giving of information protected

s 135 amd 1994 No. 68 s 62 Sch 4

False or misleading information

s 135A ins 1994 No. 68 s 62 Sch 4

Preservation of confidentiality

s 138 amd 1993 No. 79 s 44

Unlawful reprisal

s 139 amd 1994 No. 68 s 62 Sch 4

Damages entitlement for reprisal

s 139A ins 1994 No. 68 s 62 Sch 4

Proceedings for offences generally

s 141 sub 1994 No. 68 s 62 Sch 4

Proceedings for indictable offences

s 141A ins 1994 No. 68 s 62 Sch 4

Change to committal proceeding during summary proceeding

s 141B ins 1994 No. 68 s 62 Sch 4

Regulations

s 142 amd 1993 No. 79 s 45

Amendment of the Parliamentary Commissioner Act

s 143 om R1 (see RA s 40)

SCHEDULE 2—DECLARED REGISTRATION BOARDS

amd 1992 No. 55 s 163 Sch 2; 1992 No. 66 s 42