



# Health Quality and Complaints Commission Act 2006

Reprinted as in force on 1 July 2009

Reprint No. 2A

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**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

# Health Quality and Complaints Commission Act 2006

## Contents

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		Page
<b>Chapter 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	11
2	Commencement . . . . .	11
3	Main objects . . . . .	11
4	Act binds all persons . . . . .	12
5	Contravention of this Act does not create civil cause of action . . . . .	12
6	Act does not affect other rights or remedies. . . . .	12
7	Dictionary . . . . .	13
8	Meaning of health service . . . . .	13
9	Meaning of provider . . . . .	13
10	Meaning of user . . . . .	13
<b>Chapter 2</b>	<b>Establishment, independence, functions and powers of commission</b>	
11	Establishment of commission. . . . .	14
12	Commission's independence . . . . .	14
13	Commission's functions—health service complaints . . . . .	14
14	Commission's functions—quality of health services. . . . .	14
15	Commission's functions—information . . . . .	15
16	Commission's other functions. . . . .	16
17	Cooperation with other entities . . . . .	16
18	Commission's powers. . . . .	17
19	Commission's procedures informal . . . . .	17
<b>Chapter 3</b>	<b>Quality of health services</b>	
20	Duty of provider . . . . .	18
21	Commission may ask provider for information . . . . .	18
22	Commission may make standards . . . . .	19

Contents

---

23	Consideration of provider’s compliance with s 20(1) . . . . .	19
24	Action by commission for contravention of s 20(1) . . . . .	20
25	Show cause notice . . . . .	21
26	Representations about show cause notice. . . . .	21
27	Ending show cause process without further action . . . . .	21
28	Finalising report under s 24(1)(b) . . . . .	22
29	Finalising report under s 24(1)(b) without giving show cause notice . . . . .	22
30	When Minister must table report . . . . .	22
<b>Chapter 4</b>	<b>Development of Code of Health Rights and Responsibilities</b>	
31	Code of Health Rights and Responsibilities . . . . .	23
32	Consultation on code . . . . .	23
33	Content of code . . . . .	23
34	Principles relating to content of code . . . . .	24
<b>Chapter 5</b>	<b>Health complaints</b>	
<b>Part 1</b>	<b>Interpretation</b>	
35	Types of health complaints . . . . .	25
36	Meaning of health quality complaint. . . . .	25
37	Meaning of health service complaint . . . . .	25
<b>Part 2</b>	<b>Making health complaints</b>	
<b>Division 1</b>	<b>Who may make health quality complaints</b>	
38	Who may complain . . . . .	27
39	Health quality complaint about matter happening before commencement . . . . .	27
<b>Division 2</b>	<b>Who may make health service complaints</b>	
40	Who may complain . . . . .	27
41	Representative health service complaint . . . . .	28
42	Health service complaint about matter happening before commencement . . . . .	29
43	Substitution of complainant . . . . .	29
44	Health service complaints about persons who are no longer registered providers . . . . .	30
<b>Division 3</b>	<b>Process for making health complaints</b>	
45	How to make a health complaint . . . . .	30
46	Oral complaints to be confirmed in writing . . . . .	30
47	Complainant to reveal identity . . . . .	31
48	Further information from complainant . . . . .	31

49	Commission may require oath or statutory declaration . . . . .	31
<b>Part 3</b>	<b>Dealing with health quality complaints</b>	
50	How commission must deal with a health quality complaint. . . . .	32
51	Dealing with quality matter as health service complaint. . . . .	32
<b>Part 4</b>	<b>Dealing with health service complaints</b>	
<b>Division 1</b>	<b>Early resolution of health service complaints</b>	
52	Early resolution. . . . .	33
<b>Division 2</b>	<b>Assessment of health service complaints</b>	
53	Commission to immediately assess each health service complaint . . . . .	34
54	Notice of decision to assess health service complaint . . . . .	35
55	Submissions about health service complaint . . . . .	35
56	Power to require information. . . . .	35
57	Consultation with registration board. . . . .	36
58	Time limit on assessment. . . . .	37
59	Decision on assessment of health service complaint. . . . .	38
60	Notice of assessment decision. . . . .	38
<b>Division 3</b>	<b>Action on acceptance of health service complaints</b>	
61	Action on acceptance of complaint about provider. . . . .	39
62	Matters about conciliation. . . . .	39
<b>Division 4</b>	<b>Decisions not to take action on health service complaints</b>	
63	When commission must decide not to take action . . . . .	40
64	When commission may decide not to take action . . . . .	41
65	Withdrawal of complaint . . . . .	42
<b>Division 5</b>	<b>When commission must refer health service complaints to registration boards</b>	
66	Referral to registration board in public interest. . . . .	42
<b>Division 6</b>	<b>Other matters</b>	
67	Commission may deal with complaint as 2 or more complaints . . . . .	43
68	Registration board may delegate function under s 57 . . . . .	45
69	Reports by certain entities . . . . .	45
70	Use of health service complaint information for quality functions. . . . .	46
71	General powers to gather information and facilitate resolution of complaints . . . . .	46
<b>Chapter 6</b>	<b>Conciliation</b>	
72	Conciliator's function exclusive. . . . .	47

Contents

---

73	Commission officer not to conciliate and investigate same health service complaint. . . . .	47
74	Conciliation function . . . . .	47
75	Public interest. . . . .	47
76	Action by commission on becoming aware of public interest issue . . . . .	48
77	Progress reports from conciliator . . . . .	49
78	Results report from conciliator . . . . .	49
79	Enforceable agreement . . . . .	50
80	Action on report of unsuccessful conciliation . . . . .	50
81	Ending conciliation by commission. . . . .	51
82	Conciliation privileged . . . . .	52
83	Confidentiality of conciliation . . . . .	53
84	Professional mentor . . . . .	53
85	Administrative support staff . . . . .	54
<b>Chapter 7</b>	<b>Investigations by commission</b>	
<b>Part 1</b>	<b>Commission's investigations</b>	
86	Commission's investigations. . . . .	54
<b>Part 2</b>	<b>Referral of matter to other entity</b>	
87	Referral to another entity . . . . .	55
88	Investigation by other entity . . . . .	56
89	Commission's powers not affected by reference . . . . .	56
<b>Part 3</b>	<b>Action on investigation</b>	
90	Definitions for pt 3. . . . .	56
91	Commission's report about investigation . . . . .	57
92	To whom report may be given . . . . .	57
<b>Part 4</b>	<b>Conciliation after investigation</b>	
93	Conciliation of investigated health service complaint. . . . .	58
<b>Chapter 8</b>	<b>Inquiries by commission</b>	
94	Commission may conduct an inquiry . . . . .	58
95	Commission must conduct inquiry if directed by Minister. . . . .	58
96	Constitution of commission for inquiry . . . . .	59
97	Who is to preside at inquiry . . . . .	59
98	Commission must be assisted by lawyer . . . . .	59
99	Procedure. . . . .	59
100	Notice of inquiry . . . . .	60

101	Inquiry to be held in public other than in special circumstances . . . . .	60
102	Suppression of name of witness . . . . .	60
103	Protection of commission members, representatives and witnesses . . . . .	61
104	Record of proceedings to be kept. . . . .	61
105	Commission's powers on inquiry . . . . .	61
106	Notice to witness . . . . .	62
107	Notice requiring information . . . . .	62
108	Inspection of records or other things . . . . .	63
109	Offences by witnesses . . . . .	63
110	Contempt of commission . . . . .	64
111	Change or absence of inquiry member . . . . .	65
112	Report by commission . . . . .	65
113	Minister must table report. . . . .	65
<b>Chapter 9</b>	<b>Monitoring, enforcement and investigations</b>	
<b>Part 1</b>	<b>Authorised persons' functions and powers generally</b>	
114	Functions of authorised person . . . . .	65
115	Powers of authorised person . . . . .	66
<b>Part 2</b>	<b>Appointment of authorised persons</b>	
116	Appointment. . . . .	66
117	Appointment conditions and limit on powers . . . . .	66
118	Issue of identity card . . . . .	67
119	Production or display of identity card . . . . .	67
120	When authorised person ceases to hold office . . . . .	68
121	Resignation . . . . .	68
122	Return of identity card . . . . .	68
<b>Part 3</b>	<b>Powers of authorised persons</b>	
<b>Division 1</b>	<b>Power to obtain information</b>	
123	Power to require information or attendance . . . . .	69
124	Offences . . . . .	69
125	Inspection of produced things . . . . .	70
<b>Division 2</b>	<b>Entry of places</b>	
126	Power to enter places. . . . .	71
<b>Division 3</b>	<b>Procedure for entry</b>	
127	Entry with consent . . . . .	72
128	Application for warrant . . . . .	73

Contents

---

129	Issue of warrant . . . . .	73
130	Application by electronic communication and duplicate warrant . . . . .	74
131	Defect in relation to a warrant. . . . .	76
132	Warrants—procedure before entry . . . . .	77
<b>Division 4</b>	<b>Powers after entry</b>	
133	General powers after entering places. . . . .	77
134	Exercise of general powers . . . . .	79
135	Failure to help authorised person. . . . .	79
<b>Division 5</b>	<b>Power to seize evidence</b>	
136	Seizing evidence at a place that may be entered without consent or warrant . . . . .	79
137	Seizing evidence at a place that may only be entered with consent or warrant . . . . .	80
138	Receipt for seized things . . . . .	81
139	Forfeiture of seized thing . . . . .	81
140	Dealing with forfeited things etc. . . . .	82
141	Access to seized things . . . . .	82
142	Return of seized things. . . . .	82
<b>Division 6</b>	<b>Compensation</b>	
143	Notice of damage . . . . .	83
144	Compensation . . . . .	83
<b>Division 7</b>	<b>General enforcement matters</b>	
145	Obstructing authorised person . . . . .	84
146	Impersonation of authorised person. . . . .	85
<b>Chapter 10</b>	<b>Matters concerning the commission</b>	
<b>Part 1</b>	<b>Membership</b>	
147	Membership of commission . . . . .	85
148	Commissioner . . . . .	85
149	Assistant commissioners . . . . .	85
150	Ineligibility for appointment as commission member . . . . .	87
151	Term and conditions of appointment . . . . .	87
152	Vacancy in commission member's office . . . . .	88
153	Removal or suspension of commission member . . . . .	88
154	Grant of leave to commission member. . . . .	88
155	Filling vacancies . . . . .	89



<b>Part 2</b>	<b>Commission business</b>	
156	Conduct of business . . . . .	89
157	Presiding at meetings . . . . .	89
158	Times and places of meetings . . . . .	89
159	Quorum for meetings . . . . .	90
160	Conduct of meetings . . . . .	90
161	Minutes . . . . .	90
162	Disclosure of interest . . . . .	91
<b>Part 3</b>	<b>Ministers powers to give directions</b>	
163	Minister may direct inquiry . . . . .	92
164	Other directions by Minister . . . . .	93
<b>Part 4</b>	<b>Other matters</b>	
165	Commission's relationship with the State . . . . .	93
166	Delegation by the commission . . . . .	93
167	Preservation of rights . . . . .	94
168	Superannuation for commission member who was previously a public service officer . . . . .	94
169	Committees . . . . .	95
170	Nomination of persons for membership of health community councils . . . . .	95
171	Application of various public sector Acts . . . . .	96
172	Annual report . . . . .	96
173	Special report . . . . .	97
<b>Chapter 11</b>	<b>Office of the Health Quality and Complaints Commission</b>	
<b>Part 1</b>	<b>Establishment</b>	
174	Establishment of office . . . . .	98
<b>Part 2</b>	<b>Office's function and powers</b>	
175	Function and powers . . . . .	98
176	Status . . . . .	99
<b>Part 3</b>	<b>Chief executive officer</b>	
177	Appointment of chief executive officer . . . . .	99
178	Conditions of appointment . . . . .	99
179	Function of chief executive . . . . .	100
180	Chief executive must act independently etc. . . . .	100
181	Delegation by chief executive . . . . .	100
182	Resignation . . . . .	100

Contents

---

183	Ending of appointment . . . . .	100
184	Acting chief executive . . . . .	101
185	Preservation of rights . . . . .	101
186	Superannuation for chief executive who was previously a public service officer. . . . .	102
<b>Part 4</b>	<b>Other staff of the office</b>	
187	Other commission staff. . . . .	102
<b>Chapter 12</b>	<b>Registration boards</b>	
188	Information from registration board . . . . .	102
189	Registration board may ask commission for information . . . . .	103
190	Commission may intervene in disciplinary proceedings. . . . .	103
<b>Chapter 13</b>	<b>Offences and proceedings</b>	
191	False or misleading statements . . . . .	104
192	False or misleading records . . . . .	104
193	Reprisal and grounds for reprisals . . . . .	104
194	Offence for taking reprisal . . . . .	105
195	Damages entitlement for reprisal . . . . .	105
196	Summary offences . . . . .	106
197	Limitation on time for starting proceedings for summary offence . . . . .	106
198	Proceedings for indictable offences . . . . .	106
199	Limitation on who may summarily hear indictable offence . . . . .	107
200	Allegations of false or misleading information or records. . . . .	107
201	Appointments and authority . . . . .	107
202	Signatures . . . . .	108
203	Other evidentiary aids . . . . .	108
<b>Chapter 14</b>	<b>Other matters</b>	
204	Verifying information. . . . .	109
205	Response to adverse comments in commission report . . . . .	109
206	Dispensing with notice or opportunity to make submissions . . . . .	109
207	Commission may give combined notice . . . . .	110
208	Failure by commission to give notice or make assessment . . . . .	110
209	Form of consultation between commission and registration board . . . . .	111
210	Commission may provide information . . . . .	111
211	Investigation etc. despite proceedings . . . . .	111
212	Giving of information protected . . . . .	111

213	Reports privileged . . . . .	112
214	Preservation of confidentiality . . . . .	112
215	Protecting officials from liability . . . . .	115
216	Review by committee of the Legislative Assembly . . . . .	115
217	Regulations . . . . .	115
<b>Chapter 15</b>	<b>Repeal and transitional provisions</b>	
<b>Part 1</b>	<b>Repeal</b>	
218	Repeal of Health Rights Commission Act 1991 . . . . .	116
<b>Part 2</b>	<b>Transitional provisions</b>	
219	Definitions for pt 2. . . . .	116
220	References to repealed Act or former commission . . . . .	116
221	Assets and liabilities etc. . . . .	116
222	Officers of former commission . . . . .	117
223	Former commission's records . . . . .	117
224	Proceedings . . . . .	117
225	Health service complaints . . . . .	118
226	Direction of Minister given under repealed Act . . . . .	118
227	Offences . . . . .	119
228	Things seized . . . . .	119
229	Former commission's annual report for 2005–2006. . . . .	119
230	Amendment of regulation by Act . . . . .	120
<b>Schedule 1</b>	<b>Health services</b> . . . . .	121
<b>Schedule 2</b>	<b>Registration boards</b> . . . . .	123
<b>Schedule 5</b>	<b>Dictionary</b> . . . . .	124
 <b>Endnotes</b>		
1	Index to endnotes . . . . .	129
2	Date to which amendments incorporated. . . . .	129
3	Key . . . . .	129
4	Table of reprints . . . . .	130
5	List of legislation. . . . .	130
6	List of annotations . . . . .	131



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# Health Quality and Complaints Commission Act 2006

[as amended by all amendments that commenced on or before 1 July 2009]

**An Act to establish the Health Quality and Complaints Commission, to improve the quality of health services and to provide for the monitoring of the quality of health services and the management of health complaints, and for other purposes**

## Chapter 1 Preliminary

### 1 Short title

This Act may be cited as the *Health Quality and Complaints Commission Act 2006*.

### 2 Commencement

- (1) This Act, other than section 240, commences on 1 July 2006.
- (2) Section 240 commences on a day to be fixed by proclamation.

### 3 Main objects

- (1) The main objects of this Act are to provide for—
  - (a) oversight and review of, and improvement in, the quality of health services; and
  - (b) independent review and management of health complaints.
- (2) The objects are to be achieved mainly by establishing the Health Quality and Complaints Commission and conferring

[s 4]

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on the commission functions and powers, including functions and powers relating to—

- (a) monitoring, reviewing and reporting on the quality of health services; and
- (b) recommending action to improve the quality of health services; and
- (c) receiving and managing complaints about health services; and
- (d) helping users and providers to resolve health service complaints; and
- (e) preserving and promoting health rights.

#### **4 Act binds all persons**

- (1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Subsection (1) does not make the State, the Commonwealth or another State liable to be prosecuted for an offence against this Act.

#### **5 Contravention of this Act does not create civil cause of action**

Subject to section 195, no provision of this Act creates a civil cause of action based on a contravention of the provision.

#### **6 Act does not affect other rights or remedies**

- (1) This Act does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists

apart from this Act has been satisfied or has not been breached.

- (3) This section does not limit section 212, 213 or 215.

## **7 Dictionary**

The dictionary in schedule 5 defines particular words used in this Act.

## **8 Meaning of *health service***

*Health service* means—

- (a) a service provided to an individual for, or purportedly for, the benefit of human health—
- (i) including a service stated in schedule 1, part 1; and
  - (ii) excluding a service stated in schedule 1, part 2; or
- (b) an administrative process or service related to a health service under paragraph (a).

## **9 Meaning of *provider***

*Provider* means a person who provides a health service or a registered provider.

## **10 Meaning of *user***

- (1) *User* means an individual who uses or receives a health service.
- (2) An individual is not a user merely because the individual arranges a health service for another individual.

[s 11]

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## **Chapter 2      Establishment, independence, functions and powers of commission**

### **11      Establishment of commission**

- (1) The Health Quality and Complaints Commission is established.
- (2) The commission—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) may sue and be sued in its corporate name.

### **12      Commission's independence**

In performing its functions the commission must act independently, impartially and in the public interest.

### **13      Commission's functions—health service complaints**

The commission has the following functions in relation to health service complaints—

- (a) receiving, assessing and managing health service complaints;
- (b) encouraging and helping users and providers to resolve health service complaints;
- (c) helping providers to develop procedures to effectively resolve health service complaints;
- (d) conciliating or investigating health service complaints.

### **14      Commission's functions—quality of health services**

The commission has the following functions in relation to health services—



- 
- (a) monitoring and reporting on providers' compliance with section 20(1);
  - (b) making standards relating to the quality of health services;
  - (c) assessing the quality of health services and processes associated with health services;
  - (d) responding to health quality complaints, including by conducting investigations and inquiries;
  - (e) promoting continuous quality improvement in health services;
  - (f) promoting the effective coordination of reviews of health services carried out by public or other bodies;
  - (g) recommending ways of improving health services;
  - (h) identifying and reviewing issues arising from health complaints;
  - (i) receiving, analysing and disseminating information about the quality of health services.

## **15 Commission's functions—information**

The commission has the following functions in relation to the provision of information—

- (a) providing information, education and advice to users, providers, the public and others relating to—
  - (i) health rights and responsibilities; and
  - (ii) procedures for resolving health service complaints;
- (b) providing information, advice and reports about health complaints to registration boards;
- (c) providing information to the public about the quality of health services, the commission standards and the commission's functions and powers.

[s 16]

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## **16 Commission's other functions**

The commission's functions also include the following—

- (a) suggesting ways of improving health services and of preserving and promoting health rights;
- (b) investigating or inquiring into matters under this Act;
- (c) advising and reporting to the Minister on matters relating to health services or the administration of this Act;
- (d) advertising for and nominating to the Minister persons the commission considers suitable for appointment as members of health community councils;
- (e) conducting research relating to its functions;
- (f) performing other functions conferred on the commission under an Act.

## **17 Cooperation with other entities**

To help the commission in performing its functions it must—

- (a) keep 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 that is relevant to, or may impact on, a function of the commission, including for example—
  - (i) the Anti-Discrimination Commission; and
  - (ii) the Commission for Children and Young People and Child Guardian; and
  - (iii) the Crime and Misconduct Commission; and
  - (iv) the Human Rights and Equal Opportunity Commission of the Commonwealth; and

- 
- (v) the information commissioner, the RTI commissioner or the privacy commissioner, under the *Right to Information Act 2009*; and
  - (vi) the ombudsman; and
  - (vii) the Privacy Commissioner of the Commonwealth; and
  - (viii) a registration board; and
  - (ix) the State Coroner.

## **18 Commission's powers**

- (1) The commission has all the powers of an individual and may, for example, do any of the following—
  - (a) enter into contracts and other arrangements;
  - (b) acquire, hold, dispose of, and deal with, property;
  - (c) appoint agents and attorneys;
  - (d) engage consultants;
  - (e) fix charges and other terms for services and other facilities it supplies;
  - (f) do anything else necessary or convenient to be done in performing its functions.
- (2) The commission also has the other powers given to it under an Act.

## **19 Commission's procedures informal**

- (1) In performing its functions or exercising its powers, the commission must—
  - (a) observe natural justice; and
  - (b) act as quickly, and with as little formality and technicality, as practicable.

[s 20]

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- (2) Subsection (1) is subject to the express provisions of this Act.

*Example—*

Under section 206 the commission is empowered to dispense with a duty to give notice or to give an entity an opportunity to make submissions in circumstances mentioned in the section.

## **Chapter 3      Quality of health services**

### **20      Duty of provider**

- (1) A provider must establish, maintain and implement reasonable processes to improve the quality of health services provided by or for the provider, including processes—
- (a) to monitor the quality of the health services; and
  - (b) to protect the health and well being of users of the health services.
- (2) If a commission standard applying to a provider states a way for complying with subsection (1), the provider complies with the subsection if the provider complies with the standard.
- (3) Subsection (2) does not limit the way the provider may comply with subsection (1).

### **21      Commission may ask provider for information**

- (1) The commission may ask a provider for reports, records or other information relating to the quality of health services provided by or for the provider.
- (2) This section does not limit the use of coercive powers under chapter 9, part 3 to obtain information from a provider relating to the quality of health services provided by or for the provider.

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## **22 Commission may make standards**

- (1) The commission may make standards about the processes a provider may adopt to comply with section 20(1).
- (2) Without limiting subsection (1), a standard may relate to any aspect of the quality of health services, including matters relating to—
  - (a) safety, clinical and cost effectiveness, patient focus, access and responsiveness, public health, facilities and governance; and
  - (b) the review of deaths in hospitals.
- (3) The commission must maintain a website setting out in an easily understandable way—
  - (a) each standard made by it and any document applied, adopted or incorporated by the standard; and
  - (b) each standard revoked by it; and
  - (c) the effective date of each standard mentioned in paragraph (a) or (b); and
  - (d) consolidations of amended standards with histories of the amendments.
- (4) The commission must have a process for reviewing each standard.
- (5) Before the commission makes or amends a standard it must consult with the persons it considers are likely to be affected by the standard and others it considers appropriate.

## **23 Consideration of provider's compliance with s 20(1)**

- (1) For deciding whether a provider is complying with section 20(1), the commission may have regard to—
  - (a) a commission standard; or
  - (b) whether the provider has been accredited for a relevant purpose by an entity the commission considers is competent to give the accreditation.

[s 24]

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- (2) Subsection (1) does not limit the matters the commission may have regard to.

## **24 Action by commission for contravention of s 20(1)**

- (1) If the commission believes a provider has contravened section 20(1) it may do any of the following—
- (a) advise the provider of the contravention and recommend ways for the provider to comply with the subsection;
  - (b) prepare a report about the contravention for the purpose of giving it to an entity mentioned in subsection (2);
  - (c) if the commission considers the contravention should be investigated or otherwise dealt with by an entity that has a function or power under another Act or a Commonwealth Act to investigate or otherwise deal with the contravention or a matter related to the contravention—refer it to the entity.
- (2) The commission may give a report prepared under subsection (1)(b) to all or any of the following—
- (a) the provider;
  - (b) an employer of the provider;
  - (c) an entity on whose behalf the provider is providing health services;
  - (d) a registration board;
  - (e) a professional association or other entity of which the provider is, or is eligible to be, a member;
  - (f) the Minister;
  - (g) the chief health officer;
  - (h) the State Coroner;
  - (i) an entity that has a function or power to take action on matters raised in the report.

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## 25 Show cause notice

- (1) The commission must not finalise a report under section 24(1)(b) relating to a contravention of section 20(1) by a provider unless the commission first gives the provider a notice (a *show cause notice*) stating the following—
  - (a) that the commission believes the provider has contravened, or is contravening, section 20(1);
  - (b) an outline of the facts and circumstances forming the basis for the commission's belief;
  - (c) that the commission is finalising a report about the contravention (the *proposed action*);
  - (d) an invitation to the provider to show within a stated period (the *show cause period*) why the proposed action should not be taken.
- (2) The show cause period must be a period ending at least 14 days after the show cause notice is given to the provider.

## 26 Representations about show cause notice

- (1) The provider may make written representations about the show cause notice to the commission in the show cause period.
- (2) The commission must consider all written representations (the *accepted representations*) made under subsection (1).

## 27 Ending show cause process without further action

If, after considering the accepted representations for the show cause notice, the commission no longer believes the provider contravened section 20(1), the commission—

- (a) must not take further action about the show cause notice; and
- (b) must, as soon as practicable, give notice to the provider that no further action is to be taken about the show cause notice.

[s 28]

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## **28 Finalising report under s 24(1)(b)**

- (1) This section applies if, after considering the accepted representations for the show cause notice, the commission —
  - (a) still believes the provider contravened section 20(1); and
  - (b) believes the proposed action is warranted.
- (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The commission may finalise a report under section 24(1)(b) about the contravention.
- (4) Subject to section 205, the report may contain information, comment, opinion and recommendations for action the commission considers appropriate.

## **29 Finalising report under s 24(1)(b) without giving show cause notice**

Despite section 25, the commission may finalise a report under section 24(1)(b) about a contravention of section 20(1) by a provider without first giving the provider a show cause notice if the commission believes—

- (a) the provider poses a serious potential risk to the life, or the physical or psychological health, safety or welfare, of users of the provider's services or another person, including the provider; and
- (b) finalising the report and acting under section 24(2) may protect the users or person.

## **30 When Minister must table report**

- (1) This section applies if the Minister is given a report under section 24(2) and, when giving the report, the commission asks the Minister to table it in the Legislative Assembly.
- (2) The Minister must table the report in the Legislative Assembly within 14 days of receiving it.



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## Chapter 4      Development of Code of Health Rights and Responsibilities

### 31      Code of Health Rights and Responsibilities

- (1) Within 2 years after the commencement of section 11, the commission must develop a Code of Health Rights and Responsibilities (the *code*) for the consideration of the Minister.
- (2) The commission must report to the Minister on the progress of the development of the code no later than 1 year after that commencement.

### 32      Consultation on code

In developing the code, the commission must—

- (a) consult with the consumer advisory committee and the clinical advisory committee established under section 169(1)(a); and
- (b) invite submissions from and consult with interested individuals and other interested entities to ensure a wide range of views is available in the development of the code.

### 33      Content of code

- (1) In developing the code the commission must consider and make recommendations to the Minister about its content and application.
- (2) In developing the content of the code, the commission—
  - (a) may have regard to all matters relevant to the provision and use of health services; and
  - (b) must have regard to the principles mentioned in section 34.

[s 34]

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### **34 Principles relating to content of code**

The principles the commission must have regard to in developing the content of the code are the following—

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

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## Chapter 5 Health complaints

### Part 1 Interpretation

#### 35 Types of *health complaints*

There are 2 types of *health complaints* namely—

- health quality complaints; and
- health service complaints.

#### 36 Meaning of *health quality complaint*

- (1) A *health quality complaint* is a complaint about any of the following—
  - (a) the quality of a health service;
  - (b) a contravention of section 20(1);
  - (c) matters relating to the provision of more than 1 health service.
- (2) A health quality complaint may be about the provision of a health service to 1 or more users.

#### 37 Meaning of *health service complaint*

- (1) A *health service complaint* is a complaint—
  - (a) that a provider acted unreasonably by not providing a health service for a user; or
  - (b) that a provider acted unreasonably in the way of providing a health service for a user; or
  - (c) that a provider acted unreasonably in providing a health service for a user; or

[s 37]

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- (d) that a provider 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 acted unreasonably in disclosing information relating to a user; or
  - (f) that a registered provider acted in a way that would provide a ground for disciplinary action against the provider under the *Health Practitioners (Professional Standards) Act 1999* or the *Nursing Act 1992*; or
  - (g) that a public or private entity that provides a health service acted unreasonably by—
    - (i) not properly investigating; or
    - (ii) not taking proper action in relation to;  
a complaint made to the entity by a user about a provider's action of a kind mentioned in paragraphs (a) to (f).
- (2) In deciding whether a provider has acted unreasonably as mentioned in subsection (1)(a) to (e) or (g), the commission must consider—
- (a) the principles mentioned in section 34; and
  - (b) any relevant commission standard; and
  - (c) the generally accepted standards of health services expected of providers of that kind; and
  - (d) anything else the commission considers relevant.

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## **Part 2                      Making health complaints**

### **Division 1                      Who may make health quality complaints**

#### **38            Who may complain**

Anyone may make a health quality complaint to the commission.

*Note—*

Division 3 states the process for making a health quality complaint.

#### **39            Health quality complaint about matter happening before commencement**

A health quality complaint may be about a matter that happened before the commencement of section 11.

### **Division 2                      Who may make health service complaints**

#### **40            Who may complain**

- (1) A health service complaint may be made to the commission by—
  - (a) the user; or
  - (b) a person who, under section 41, may make a complaint on the user's behalf; or
  - (c) the Minister; or
  - (d) if the commission considers that the public interest requires that another person should be permitted to make a health service complaint—that person.

[s 41]

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- (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.

*Note—*

Division 3 states the process for making a health service complaint.

#### **41 Representative health service complaint**

- (1) A health service complaint may only be made to the commission by a person acting on behalf of the user if the commission is satisfied that it would be difficult or impossible for the user to make the complaint personally.

*Example—*

If the user is a child, the commission may be satisfied that it would be difficult for the child to make the complaint personally having regard to the child's age or ability to understand.

- (2) The person making the health service complaint on behalf of the user must be—
- (a) a person that the commission is satisfied has been chosen by the user; or
  - (b) if the commission 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 commission is satisfied has a sufficient interest.
- (3) However, any of the following may make a health service complaint on behalf of a user who has impaired capacity for a matter within the meaning of the *Guardianship and Administration Act 2000*—
- (a) an attorney for the user under an enduring power of attorney, or advance health directive, under the *Powers of Attorney Act 1998*;
  - (b) a statutory health attorney under the *Powers of Attorney Act 1998*;
  - (c) a guardian for the user under the *Guardianship and Administration Act 2000*;

(d) the adult guardian under the *Guardianship and Administration Act 2000*.

- (4) Also, a health service complaint may be made by a person on behalf of a user, after the user's death, if the commission is satisfied the person has a sufficient interest.

#### **42 Health service complaint about matter happening before commencement**

A health service complaint may be about a matter that happened before the commencement of section 11.

*Note—*

Section 63(3) states the circumstances in which the commission must decide not to take action on a health service complaint if the matter of complaint arose more than 1 year before the complaint was made to the commission.

#### **43 Substitution of complainant**

- (1) A person may be substituted as the complainant for a health service complaint if—
- (a) the—
    - (i) commission is satisfied it would be difficult or impossible for the original complainant to continue as complainant; or
    - (ii) the original complainant dies; and
  - (b) the commission is satisfied the person has a sufficient interest.
- (2) Also, a person mentioned in section 41(3)(a) to (d) may be substituted as the complainant for a health service complaint if the original complainant has impaired capacity for a matter within the meaning of the *Guardianship and Administration Act 2000*.

[s 44]

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#### **44 Health service complaints about persons who are no longer registered providers**

- (1) This section applies if—
  - (a) the commission receives a health service complaint about a person who was a registered provider; and
  - (b) the complaint relates to the conduct or practice of the person as a registered provider; and
  - (c) the person is no longer a registered provider.
- (2) The commission must deal with the complaint as if the complaint were a health service complaint about a registered provider.
- (3) This Act applies, with any necessary changes, to the person about whom the complaint was made as if a reference to a registered provider included the person.

### **Division 3 Process for making health complaints**

#### **45 How to make a health complaint**

A person may make a health complaint to the commission—

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

#### **46 Oral complaints to be confirmed in writing**

- (1) If a person makes a health complaint orally, the commission must require the person to confirm the complaint in writing unless the commission is satisfied there is good reason not to.
- (2) The commission must fix a reasonable time within which the health complaint must be confirmed in writing and tell the person the time.



**47 Complainant to reveal identity**

- (1) A complainant must tell the commission—
  - (a) the complainant's name and address; and
  - (b) other information relating to the complainant's identity that the commission reasonably requires.
- (2) The commission may keep information provided by a complainant under subsection (1) confidential if—
  - (a) there are special circumstances; and
  - (b) the commission considers it is in the complainant's interests to do so.
- (3) Despite subsection (1), the commission may accept an anonymous health complaint in the public interest.

**48 Further information from complainant**

The commission may ask a complainant to provide more information about the health complaint within a reasonable time fixed by the commission.

**49 Commission may require oath or statutory declaration**

The commission may at any time require a health complaint or information provided by a complainant to be verified by the complainant by oath or statutory declaration.

## **Part 3**                      **Dealing with health quality complaints**

### **50**      **How commission must deal with a health quality complaint**

- (1) The commission must deal with a health quality complaint in a way that is consistent with protecting the public and improving the quality of health services.
- (2) In dealing with a health quality complaint, the commission may do any or all of the following—
  - (a) seek information from a provider, user, the complainant or anyone else;
  - (b) if the complaint is about a registered provider and the commission considers the provider may have acted in a way that would provide a ground for disciplinary action against the provider under the *Health Practitioners (Professional Standards) Act 1999* or the *Nursing Act 1992*—refer it to the provider’s registration board;
  - (c) refer the complaint to another entity that the commission considers is able to investigate or take other appropriate action about the complaint;
  - (d) investigate the complaint under chapter 7;
  - (e) inquire into the complaint under chapter 8.
- (3) However, the commission may decide not to take action about a health quality complaint if it considers no action is warranted.

### **51**      **Dealing with quality matter as health service complaint**

- (1) This section applies if the commission considers a matter raised by a health quality complaint, or raised in the course of the commission dealing with the complaint, could be dealt with as a health service complaint.

- (2) The commission may decide to deal with the matter as a health service complaint.
- (3) If the commission decides to deal with the matter as a health service complaint, the matter is taken to be a health service complaint made to the commission by the complainant under part 2, division 2 and the provisions of this Act applying to health service complaints apply.

## **Part 4                      Dealing with health service complaints**

### **Division 1                Early resolution of health service complaints**

#### **52            Early resolution**

- (1) This section applies if the commission considers there is a reasonable likelihood that it may be able to facilitate the early resolution of a health service complaint and the complainant agrees to the commission acting under this section.
- (2) The commission may, instead of immediately assessing the health service complaint under section 53, take the action it considers reasonable to facilitate the resolution of the complaint.

*Example of action the commission may take—*

The commission may arrange mediation between the complainant and the provider concerned.

- (3) This section is subject to section 66.

[s 53]

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## **Division 2                      Assessment of health service complaints**

### **53            Commission to immediately assess each health service complaint**

- (1) The commission must immediately assess a health service complaint.
- (2) However, the commission must not start the assessment until—
  - (a) the commission is satisfied the complainant is eligible to make the health service complaint; and
  - (b) if the complaint is made orally—the complainant confirms the complaint in writing or the commission is satisfied there is good reason that the complaint need not be confirmed in writing; and
  - (c) the complainant gives the commission the information required under section 47(1) or the commission decides to accept the complaint under section 47(3); and
  - (d) if the commission asks for further information about the complaint under section 48 or requires the complaint or further information to be verified by oath or statutory declaration under section 49—the complainant complies with the request or requirement.
- (3) If the commission attempts to resolve a health service complaint under section 52, it—
  - (a) is not required to start the assessment of the complaint until the earlier of the following happens—
    - (i) it is satisfied the complaint is not able to be resolved under section 52; or
    - (ii) the complaint remains unresolved 30 days after its receipt by the commission; and

- (b) if the complaint is resolved under that section, must not assess the complaint.
- (4) Also, subsection (1) is subject to section 66.

#### **54 Notice of decision to assess health service complaint**

- (1) As soon as practicable and within 14 days after starting the assessment of a health service complaint, the commission must give notice that the complaint is being assessed to—
  - (a) the complainant; and
  - (b) the provider to whom the complaint relates; and
  - (c) if the provider is a registered provider—the registered provider’s registration board.
- (2) The notice to the provider must state the nature of the health service complaint.
- (3) The notice to the registration board must be accompanied by a copy of the health service complaint.
- (4) This section is subject to section 206.

#### **55 Submissions about health service complaint**

- (1) In assessing a health service complaint, the commission may by notice given to the complainant or provider invite submissions about the complaint.
- (2) The notice must state the day, not less than 14 days after receipt of the notice, by which the submissions must be given to the commission.
- (3) If a submission is made within the time stated in the notice, the commission must consider the submission in assessing the health service complaint.

#### **56 Power to require information**

- (1) For assessing a health service complaint, the commission

[s 57]

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may, by notice given to a person, require the person to give stated information to the commission within a stated reasonable time and in a stated reasonable way.

- (2) A person required to give information under subsection (1) must give the information as required by the notice, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (3) It is a reasonable excuse for an individual not to give information that giving the information might tend to incriminate the individual.

## **57 Consultation with registration board**

- (1) If a health service complaint is about a registered provider, the commission must consult with the provider's registration board before making a decision under section 59(1) about the complaint.
- (2) The registered provider's registration board must give the commission the board's comments, if any, about the health service complaint—
  - (a) as soon as practicable and within 14 days of the commission consulting with the board; or
  - (b) within a longer period agreed to by the commission.
- (3) The commission must not make a decision under section 59(1) about the health service complaint until the first of the following happens—
  - (a) the commission receives the registration board's comments about the complaint;
  - (b) the registration board advises the commission that the board does not intend to give the commission comments about the complaint;
  - (c) the period mentioned in subsection (2) for the registration board to provide comments has ended.

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- (4) In making a decision about the action to be taken in relation to the health service complaint, the commission must consider any comments made by the registration board within the time mentioned in subsection (2).
  - (5) If the registered provider's registration board advises the commission, within the time mentioned in subsection (2), that it considers the health service complaint warrants action by the board, the commission must not decide not to take action on the complaint.

## **58 Time limit on assessment**

- (1) The commission must assess a health service complaint within—
  - (a) 60 days of starting the assessment; or
  - (b) a further period decided by the commission under subsection (3).
- (2) However, if the commission is required to consult with a registration board about the health service complaint under section 57(1), the period within which it must assess the complaint is extended by a period equal to the period during which it must not make a decision about the complaint under section 57(3).
- (3) For subsection (1)(b), the commission may decide to extend the period for assessing a health service complaint, by a period of not more than 30 days, if it considers—
  - (a) the complaint is too complex to allow the commission to assess the complaint within 60 days of starting the assessment; or
  - (b) the complaint can be satisfactorily resolved other than under chapter 6 or 7; or
  - (c) information the commission has requested from the user, provider or another person can not be reasonably provided within the time allowed under subsection (1)(a), but may be provided within the extended period.

[s 59]

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## **59 Decision on assessment of health service complaint**

- (1) On assessing a health service complaint, the commission must decide—
  - (a) to accept the complaint for action; or
  - (b) not to take action on the complaint under division 4.
- (2) Before deciding to accept a health service complaint for action, the commission must 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 or reasonable for steps mentioned in paragraph (a) to be taken or for the opportunity mentioned in paragraph (b) to be given.

## **60 Notice of assessment decision**

- (1) Subject to section 206, the commission must give notice of the commission's decision on assessing a health service complaint to the complainant and the provider as soon as practicable after making the decision.
- (2) If the decision is to take action on the health service complaint, the notice must state the action the commission has decided to take under section 61.
- (3) If the decision is not to take action on the health service complaint, the notice given to the complainant must state the reasons for the decision.



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## **Division 3                      Action on acceptance of health service complaints**

### **61            Action on acceptance of complaint about provider**

- (1) This section applies if the commission decides to accept a health service complaint about a provider for action.
- (2) The commission may do any or all of the following—
  - (a) conciliate the health service complaint under chapter 6;
  - (b) investigate the health service complaint under chapter 7;
  - (c) if the health service complaint is about a registered provider—refer the complaint to the registered provider’s registration board;
  - (d) refer the complaint to another entity that the commission considers is able to investigate or take other appropriate action about the complaint.
- (3) Subject to subsection (4) and section 62, the commission must try to resolve the health service complaint by conciliation if the commission considers it can be resolved in that way.
- (4) In deciding whether to conciliate the health service complaint, the commission must take into account the public interest.

### **62            Matters about conciliation**

- (1) If in relation to a registered provider the commission acts under section 61(2)(c), it must not act under section 61(2)(a) until the commission receives the registration board’s completion notice for the health service complaint.
- (2) Despite subsection (1), the commission may start the conciliation of the health service complaint before receiving the completion notice if—
  - (a) the provider has agreed to conciliation for the sole purpose of arranging a financial settlement or other compensation with the user; and

[s 63]

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- (b) the commission and the registration board agree that the conciliation will not compromise or interfere with the board's action in relation to the complaint.
- (3) If the commission refers the health service complaint to the registered provider's registration board under section 61(2)(c), it must, at the same time, tell the board if it intends to conciliate the complaint, or a complaint from which it was separated under section 67, after the board finishes dealing with it.

## **Division 4                      Decisions not to take action on health service complaints**

### **63            When commission must decide not to take action**

- (1) The commission must decide not to take action on a health service complaint if—
  - (a) the commission considers that the complaint—
    - (i) is frivolous, vexatious or trivial; or
    - (ii) is misconceived or lacking in substance; or
    - (iii) has been adequately dealt with by the commission or another public authority; or
  - (b) the commission considers that the complainant has failed, without reasonable excuse, to satisfactorily cooperate with attempts made or arranged by the commission to resolve the complaint with the provider.
- (2) If an issue raised in a health service complaint has already been decided by an appropriate tribunal, the commission must decide not to take action on the complaint to the extent that it attempts to reopen the issue.
- (3) The commission must decide not to take action on a health service complaint if—

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- (a) the matter of complaint arose more than 1 year before the complaint was made to the commission; and
  - (b) the person who made the complaint was aware of the matter of complaint more than 1 year before making the complaint to the commission.
- (4) However, subsection (3) does not apply to a health service complaint about a matter that the commission reasonably believes may warrant the suspension or cancellation of a registered provider's registration, enrolment or authorisation.
- (5) In this section—
- appropriate tribunal***, in relation to an issue, means—
- (a) a court; or
  - (b) an industrial tribunal; or
  - (c) a disciplinary body; or
  - (d) another tribunal authorised to decide the issue.

## **64 When commission may decide not to take action**

The commission may decide not to take action on a health service complaint if—

- (a) the complainant fails to comply with a request by the commission—
  - (i) to confirm the complaint in writing; or
  - (ii) to give the commission more information concerning the person's identity; or
  - (iii) to give more information to the commission within the time fixed by the commission under section 48; or
  - (iv) to verify the complaint or any information by oath or statutory declaration under section 49; or
- (b) the complaint has been resolved since it was made; or

[s 65]

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- (c) the user has commenced a civil proceeding seeking redress for the matter of the complaint and a court—
  - (i) has begun to hear the matter; or
  - (ii) has, under the *Uniform Civil Procedure Rules 1999*, referred the matter, or directed the registrar of the court to give written notice to the parties that the matter is to be referred by order, to an ADR process.

## **65 Withdrawal of complaint**

- (1) This section applies if a complainant withdraws a health service complaint.
- (2) The commission may decide not to take any further action about the complaint.
- (3) However, the withdrawal does not prevent the commission from doing or continuing to do any of the following—
  - (a) assessing the complaint;
  - (b) referring the complaint to another entity;
  - (c) investigating the complaint;
  - (d) conducting an inquiry relating to the complaint.

## **Division 5                      When commission must refer health service complaints to registration boards**

### **66 Referral to registration board in public interest**

- (1) This section applies if the commission—
  - (a) receives a health service complaint about a registered provider; and
  - (b) considers, on receipt of the complaint or at any time after receipt, it may be in the public interest to refer the

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complaint to the registered provider's registration board immediately; and

- (c) consults the registration board about the referral.
- (2) If the commission considers it is in the public interest to immediately refer the health service complaint to the registered provider's registration board, it must do so.
- (3) When referring the health service complaint, the commission must tell the registration board if it intends to conciliate the complaint, or a complaint from which it was separated under section 67, after the board has finished dealing with it.
- (4) The commission must not start a conciliation of the health service complaint until the registration board gives the commission a completion notice for the complaint.
- (5) Subject to section 206, the commission must, as soon as practicable and within 14 days of referring the health service complaint to the registration board, give notice of the referral to the registered provider and complainant.

## **Division 6                      Other matters**

### **67            Commission may deal with complaint as 2 or more complaints**

- (1) This section applies if—
  - (a) a health service complaint is about more than 1 provider; or  
*Example—*

The health service complaint by a person is about the treatment received for the person's broken leg from the person's local medical practitioner and also a specialist medical practitioner at a public hospital.
  - (b) a health service complaint contains more than 1 allegation about the same provider; or

[s 67]

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*Example—*

The health service complaint by a person is that in the course of an examination a physiotherapist touched the person inappropriately and failed to diagnose the person's condition correctly.

- (c) a health service complaint is about more than 1 health service event involving the same provider; or

*Example—*

The health service complaint by a person is that a week after attending a dentist in March for a filling, the filling fell out and 3 weeks after visiting the same dentist in July the same year for a check-up, urgent dental work was required to remove another tooth that was in a state of advanced decay and was not identified.

- (d) a health service complaint is a complaint that the commission otherwise reasonably believes should be dealt with as 2 or more complaints.
- (2) The commission may decide to deal with the health service complaint as if it were 2 or more complaints, including, for example, by dealing with it as—
- (a) separate complaints about more than 1 provider; or
- (b) if the complaint contains more than 1 allegation about the same provider, a separate complaint for each allegation; or
- (c) separate complaints about more than 1 health service event.
- (3) If the commission decides to deal with a health service complaint as if it were 2 or more separate complaints, the commission must deal with each separate complaint as if it had been made as a health service complaint under part 2, division 2.
- (4) In this section—

***health service event*** means each occasion when a health service is provided.

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**68 Registration board may delegate function under s 57**

- (1) A registration board may delegate a function of the board under section 57 to—
- (a) a board member; or
  - (b) a committee of the board; or
  - (c) for a registration board other than the Medical Board of Queensland or Queensland Nursing Council—
    - (i) the executive officer of the Office of Health Practitioner Registration Boards appointed under the *Health Practitioner Registration Boards (Administration) Act 1999*; or
    - (ii) with the executive officer's agreement—another member of the staff of the Office of Health Practitioner Registration Boards; or
  - (d) for the Medical Board of Queensland—
    - (i) the executive officer of the Office of the Medical Board of Queensland; or
    - (ii) with the agreement of the executive officer of the Office of the Medical Board of Queensland—another member of the staff of the Office of the Medical Board of Queensland; or
  - (e) for the Queensland Nursing Council—the executive officer appointed under the *Nursing Act 1992*.
- (2) In this section—

*function* includes a power.

*Office of the Medical Board of Queensland* means the Office of the Medical Board of Queensland established under the *Medical Board (Administration) Act 2006*.

**69 Reports by certain entities**

- (1) This section applies if the commission refers a health service complaint to an entity of the State under section 61(2)(d).

[s 70]

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- (2) The entity—
  - (a) may, on its own initiative or if asked by the commission, provide the commission with reports about the progress and results of the action taken by the entity about the complaint; and
  - (b) must, as soon as practicable and within 28 days after ceasing to deal with the complaint, give the commission a written report of the results of the action taken by the entity about the complaint.

## **70 Use of health service complaint information for quality functions**

- (1) This section applies to information obtained by the commission in relation to a health service complaint other than information gained during conciliation.
- (2) The commission may also use the information for performing its functions under section 14.

## **71 General powers to gather information and facilitate resolution of complaints**

- (1) The commission may, at any time, in relation to any health service complaint—
  - (a) seek and obtain the information the commission considers appropriate; and
  - (b) attempt, in whatever lawful way the commission considers appropriate, to resolve the complaint, including, for example, by asking any person the commission considers may assist in the resolution of the complaint to provide assistance.
- (2) Subsection (1)(b) is not limited by section 52.



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## Chapter 6 Conciliation

### 72 Conciliator's function exclusive

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

*Note—*

A conciliator is a commission officer to whom the function of conciliation has been delegated under section 166.

### 73 Commission officer not to conciliate and investigate same health service complaint

A commission officer must not be involved in both the conciliation and investigation of the same health service complaint.

### 74 Conciliation function

- (1) The conciliation of a health service complaint must be performed by 1 or more conciliators assigned by the commission.
- (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.

### 75 Public interest

- (1) Before the conciliation of a health service complaint starts, the commission must identify and inform the conciliator of

[s 76]

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any issue raised by the complaint that the commission considers involves the public interest.

- (2) At the start of the conciliation, the conciliator must draw those issues to the attention of the parties and explain to them the effect of subsections (3) to (5) and section 76(1).
- (3) In the course of the conciliation, the conciliator must draw to the attention of the parties any other issues raised by the health service complaint that the conciliator considers involve the public interest.
- (4) The conciliator must act under subsection (3) at times the conciliator considers appropriate.
- (5) The conciliator must report to the commission any issue mentioned in subsection (3).

## **76 Action by commission on becoming aware of public interest issue**

- (1) On receiving a report under section 75(5) relating to a health service complaint, or otherwise becoming aware of an issue involving the public interest relating to the complaint, the commission may do any or all of the following—
  - (a) if the complaint is about a registered provider—refer it to the registered provider’s registration board;
  - (b) refer the complaint to another entity that the commission considers is able to investigate or take other appropriate action about the complaint;
  - (c) investigate the complaint under chapter 7.
- (2) The commission must not refer the health service complaint to a registration board or another entity without first consulting the board or other entity.
- (3) If the commission refers the health service complaint to a registration board or other entity, the commission must, at the time of the referral, tell the board or entity if the commission intends to investigate the complaint or continue to conciliate the complaint after the board or entity has finished dealing with it.

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- (4) The commission must not continue the conciliation of the health service complaint until the registration board or other entity gives the commission a completion notice for the complaint.
  - (5) However, the commission may continue the conciliation of the health service complaint before receiving the completion notice if—
    - (a) the provider has agreed to conciliation for the sole purpose of arranging a financial settlement or other compensation with the user; and
    - (b) the commission and the registration board or other entity to which the complaint has been referred agree that the conciliation will not compromise or interfere with the board's or entity's actions in relation to the complaint.
  - (6) Subject to section 206, the commission must, as soon as practicable and within 14 days of referring the health service complaint to a registration board or other entity, give notice of the referral to the provider and complainant.

## **77 Progress reports from conciliator**

- (1) The commission may ask a conciliator for a written progress report about a conciliation during the conciliation.
- (2) The conciliator must comply with the request.

## **78 Results report from conciliator**

- (1) At the conclusion of the conciliation of a health service complaint, the conciliator must give a written report of the results of the conciliation to the commission.
- (2) If agreement is reached, the report must include details of the agreement.
- (3) If agreement is not reached, the report may—
  - (a) recommend the action the commission should take under section 80(1); or

[s 79]

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- (b) make no recommendation.
- (4) The conciliator must give a copy of the report to the provider and the complainant.
- (5) If practicable, the copies must be given to the provider and complainant on the same day as the report is given to the commission.

## **79 Enforceable agreement**

- (1) Parties reaching agreement in the conciliation of a health service complaint may enter into a contract in settlement of the complaint.
- (2) The conciliator of the health service complaint must not be a party to, or attest to, the contract.

## **80 Action on report of unsuccessful conciliation**

- (1) On receiving a report under section 78 that agreement was not reached in the conciliation of a health service complaint, the commission may—
  - (a) take action on the complaint by doing any or all of the following—
    - (i) if the complaint is about a registered provider—refer it to the registered provider’s registration board;
    - (ii) refer the complaint to another entity that the commission considers is able to investigate or take other appropriate action about the complaint;
    - (iii) investigate the complaint under chapter 7; or
  - (b) decide under section 63 or 64 not to take action on the complaint; or
  - (c) further conciliate the complaint.
- (2) The commission must not refer the health service complaint to a registration board or another entity without first consulting the registration board or other entity.

- (3) If the commission refers the health service complaint to a registration board or other entity, the commission must, at the time of the referral, tell the board or entity if the commission intends to investigate the complaint after the board or entity has finished dealing with it.
- (4) Subject to section 206, the commission must, as soon as practicable and within 14 days of referring the health service complaint to a registration board or other entity, give notice of the referral to the provider and complainant.

## **81 Ending conciliation by commission**

- (1) The commission may end the conciliation of a health service complaint if the commission considers that the complaint can not be resolved in that way.
- (2) The commission must end the conciliation of a health service complaint if the Minister directs the commission under section 164(1)(c) to investigate the complaint or under section 163 to conduct an inquiry in relation to the complaint.
- (3) If the commission ends the conciliation of a health service complaint, it may—
  - (a) take action on the complaint by doing any or all of the following—
    - (i) if the complaint is about a registered provider—refer it to the registered provider’s registration board;
    - (ii) refer the complaint to another entity that the commission considers is able to investigate or take other appropriate action about the complaint;
    - (iii) investigate the complaint under chapter 7; or
  - (b) decide under section 63 or 64 not to take action on the complaint.
- (4) The commission must not refer the health service complaint to a registration board or another entity without first consulting the registration board or other entity.

[s 82]

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- (5) If the commission refers the health service complaint to a registration board or other entity, the commission must, at the same time, tell the board or entity if the commission intends to investigate the complaint after the board or entity has finished dealing with it.
- (6) Subject to section 206, the commission must, as soon as practicable and within 14 days of referring the health service complaint to a registration board or other entity, give notice of the referral to the provider and complainant.

## **82 Conciliation privileged**

- (1) This section applies to—
  - (a) anything said or admitted during a conciliation (the *information*); or
  - (b) a document, or a copy of a document, prepared for, or in the course of, a conciliation.
- (2) The information, document or copy—
  - (a) is not admissible as evidence in a proceeding before a court, tribunal or disciplinary body; and
  - (b) can not be used by the commission as a ground for an investigation or inquiry or as evidence in an investigation or inquiry.
- (3) 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 79.
- (4) Subsection (2) does not apply to—
  - (a) the information, if the parties to the conciliation and all persons named in the information consent to its admission; or
  - (b) the document or copy, if the person who prepared the document, and all persons named in the document, consent to its admission.

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### 83 Confidentiality of conciliation

- (1) A conciliator must not disclose information gained during conciliation—
  - (a) in any further conciliation; or
  - (b) to the commission, a commission member, a commission officer or a person engaged by the commission;

unless the disclosure is authorised under this chapter.

Maximum penalty—40 penalty units.

- (2) Subsection (1)(b) does not apply to the discussion by a conciliator of matters arising in relation to the performance of the conciliator's functions with a commission member or a commission officer.

### 84 Professional mentor

- (1) The commission must 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 conciliator's professional mentor must not be involved in the investigation of the health service complaint the conciliator is conciliating.
- (4) A conciliator's professional mentor must not disclose information gained by the conciliator during conciliation that the conciliator has communicated to the professional mentor.

Maximum penalty for subsection (4)—40 penalty units.

[s 85]

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## **85 Administrative support staff**

- (1) The commission may make arrangements for a commission officer 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 commission officer.
- (3) If a conciliator discloses information gained during conciliation to a commission officer, the officer must not disclose the information.

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

# **Chapter 7 Investigations by commission**

## **Part 1 Commission's investigations**

### **86 Commission's investigations**

The commission may investigate the following—

- (a) a health service complaint that the commission decides to investigate under section 61, 76, 80 or 81;
- (b) a health quality complaint the commission decides to investigate;
- (c) the quality of a health service;
- (d) systemic issues relating to the quality of health services;
- (e) the death of a person that is a reportable death under the *Coroners Act 2003* if the commission considers the quality of a health service, or systemic issues relating to





[s 88]

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## **88 Investigation by other entity**

- (1) This section applies if the commission refers a matter under section 87 to an entity that has a function or power under an Act to investigate or take other appropriate action about the matter.
- (2) The commission may ask the entity to provide the commission with reports of the progress and results of any investigation or other action taken by the entity about the matter.
- (3) The entity may provide the commission with reports of the progress and results of any investigation or other action taken by the entity about the matter.

## **89 Commission's powers not affected by reference**

The commission's powers to investigate a matter are not affected by the matter having been referred under section 87 to another entity.

# **Part 3 Action on investigation**

## **90 Definitions for pt 3**

In this part—

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

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

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## **91 Commission's report about investigation**

- (1) The commission may at any time prepare a report about an investigation conducted by the commission for the purpose of giving it to an entity mentioned in section 92.
- (2) If the commission intends to recommend in the report that a registration board or other entity take particular action about a matter dealt with in the report, it must consult the board or other entity about the recommendation before finalising the report.
- (3) Subject to section 205, the report may contain information, comment, opinion and recommendations for action the commission considers appropriate.

## **92 To whom report may be given**

The commission may give the report to any or all of the following—

- (a) the complainant;
- (b) the provider;
- (c) an employer of the provider;
- (d) an entity on whose behalf the provider is providing health services;
- (e) a registration board;
- (f) a professional association or other entity of which the provider is, or is eligible to be, a member;
- (g) the Minister;
- (h) the State Coroner, or another coroner investigating a death to which the report is relevant;
- (i) an entity that has a function or power to take action on matters raised in the report.

[s 93]

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## **Part 4                      Conciliation after investigation**

### **93            Conciliation of investigated health service complaint**

- (1) This section applies if the commission considers that a health service complaint that has been investigated under this chapter should be conciliated.
- (2) The commission may conciliate the health service complaint under chapter 6.

## **Chapter 8            Inquiries by commission**

### **94            Commission may conduct an inquiry**

- (1) The commission may conduct an inquiry relating to any of the following matters if it considers it is in the public interest to do so—
  - (a) a health complaint;
  - (b) the quality of a health service;
  - (c) systemic issues relating to the quality of health services;
  - (d) another matter relevant to the commission’s functions.
- (2) For conducting the inquiry the commission may also inquire into matters arising directly or indirectly from the matter being inquired into.

### **95            Commission must conduct inquiry if directed by Minister**

- (1) The commission must conduct an inquiry relating to a matter mentioned in section 94(1)(a) to (c) if directed to do so by the Minister under section 163.
- (2) For conducting the inquiry the commission may also inquire into matters arising directly or indirectly from the matter being inquired into.

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**96 Constitution of commission for inquiry**

- (1) For conducting an inquiry, the commission must be constituted by at least 3 commission members decided by the commission (each an *inquiry member*).
- (2) The commission may appoint a commission member to act as an inquiry member, including as the presiding member—
  - (a) during a vacancy in the inquiry member's office as a commission member; or
  - (b) during any period, or during all periods, when the inquiry member is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

**97 Who is to preside at inquiry**

- (1) If the commissioner is an inquiry member, the commissioner is to preside at the inquiry (the *presiding member*).
- (2) Otherwise, the inquiry member appointed by the commission for the purpose is to preside at an inquiry (also the *presiding member*).

**98 Commission must be assisted by lawyer**

At an inquiry, the commission must be assisted by a lawyer of at least 5 years standing.

**99 Procedure**

- (1) When conducting an inquiry, the commission must—
  - (a) observe natural justice; and
  - (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.
- (2) In conducting the inquiry, the commission—
  - (a) is not bound by the rules of evidence; and

[s 100]

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- (b) may inform itself in any way it considers appropriate, including by holding hearings; and
  - (c) may decide the procedures to be followed for the inquiry.
- (3) However, the commission must comply with this chapter and any procedural rules prescribed under a regulation.

### **100 Notice of inquiry**

- (1) The commission must give at least 14 days notice of the time and place of an inquiry to any person the commission reasonably believes should be given the opportunity to appear at the inquiry.
- (2) The commission may also give public notice of the inquiry in any way it wishes.

### **101 Inquiry to be held in public other than in special circumstances**

- (1) An inquiry must be held in public.
- (2) However, the commission may, of its own initiative or on the application of a person appearing before or represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private.
- (3) The commission may give a direction under subsection (2) only if it is satisfied that it is appropriate to do so in the special circumstances of the case.
- (4) If the commission acts under subsection (2) it may give directions about the persons who may be present.

### **102 Suppression of name of witness**

The commission may, by order, suppress the name of a witness appearing at an inquiry if the commission considers it is necessary or desirable to do so.

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**103 Protection of commission members, representatives and witnesses**

For an inquiry—

- (a) an inquiry member has, in the performance of the member's functions, the same protection and immunity as a Supreme Court judge performing the functions of a judge; and
- (b) a lawyer assisting the commission, or a lawyer or other person appearing before the commission for someone else, has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court; and
- (c) a person given a witness requirement notice to attend or appearing before the commission as a witness has the same protection as a witness in a proceeding in the Supreme Court; and
- (d) a person, for complying with a notice given to the person under section 107, has the same protection as a witness in a proceeding in the Supreme Court.

**104 Record of proceedings to be kept**

The commission must keep a record of each inquiry's proceedings.

**105 Commission's powers on inquiry**

- (1) In conducting an inquiry, the commission may—
  - (a) act in the absence of a person who has been given reasonable notice of the inquiry under section 100 or otherwise; and
  - (b) receive evidence on oath or by statutory declaration; and
  - (c) adjourn the inquiry; and
  - (d) disregard a defect, error, omission or insufficiency in a record.

[s 106]

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- (2) An inquiry member may administer an oath or affirmation to a person appearing as a witness before an inquiry.

### **106 Notice to witness**

- (1) The presiding member may, by notice given to a person (a *witness requirement notice*), require the person to attend an inquiry at a stated time and place to give evidence or produce stated records or other things.
- (2) A notice under subsection (1) may require the person to produce records or other things of a stated class or description.
- (3) A person required to appear as a witness before the commission is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the commission.

### **107 Notice requiring information**

- (1) For the purpose of an inquiry the commissioner or the presiding member may, by notice given to a person, require the person to give to the commission stated information within a stated reasonable time and in a stated reasonable way.
- (2) The person must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) It is not a reasonable excuse for subsection (2) that giving the information might tend to incriminate the person.
- (4) The following is not admissible in any civil, criminal or administrative proceeding as evidence against an individual who gives information under subsection (2)—
  - (a) the information given by the individual under the subsection and the fact of that giving (*primary evidence*);
  - (b) any information obtained as a direct or indirect result of primary evidence (*derived evidence*).



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- (5) Subsection (4) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

### **108 Inspection of records or other things**

- (1) If a record or other thing is produced to the commission at an inquiry, the commission may—
- (a) inspect the record or other thing; and
  - (b) make copies of, photograph, film or take extracts from, the record or other thing if it is relevant to the inquiry.
- (2) The commission may also take possession of the record or other thing, and keep it while it is necessary for the inquiry.
- (3) While it keeps a record or other thing, the commission must permit a person otherwise entitled to possession of the record or other thing to inspect, make copies of, photograph, film or take extracts from, the record or other thing, at a reasonable place and time the commission decides.

### **109 Offences by witnesses**

- (1) A person given a witness requirement notice must not fail, without a reasonable excuse, to—
- (a) attend as required by the notice; and
  - (b) continue to attend as required by the presiding member until excused from further attendance.

Maximum penalty—100 penalty units.

- (2) A person appearing as a witness at an inquiry must not fail—
- (a) to take an oath or make an affirmation when required by the presiding member; or
  - (b) without reasonable excuse, to answer a question the person is required to answer by the presiding member; or

[s 110]

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- (c) without reasonable excuse, to produce a record or other thing the person is required to produce under a witness requirement notice.

Maximum penalty—100 penalty units.

- (3) It is not a reasonable excuse for subsection (2)(b) or (c) that answering the question or producing the record or other thing might tend to incriminate the person.
- (4) The following is not admissible in any civil, criminal or administrative proceeding as evidence against an individual who answers a question or produces a record or other thing at an inquiry in response to a requirement under this chapter—
  - (a) the answer given, or the record or other thing produced, at the inquiry by the individual and the fact of that production (*primary evidence*);
  - (b) any information, or record or other thing, obtained as a direct or indirect result of primary evidence (*derived evidence*).
- (5) Subsection (4) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

## 110 Contempt of commission

In relation to an inquiry, a person must not—

- (a) insult the commission or an inquiry member; or
- (b) deliberately interrupt the inquiry; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the commission is conducting the inquiry; or
- (d) publish, in a public way, information that identifies, or is likely to identify, a person to whom a suppression order made under section 102 relates; or

- (e) do anything that would be contempt of court if the commission were a judge acting judicially.

Maximum penalty—100 penalty units.

### **111 Change or absence of inquiry member**

The conduct of an inquiry is not affected by—

- (a) a change in the inquiry members; or  
(b) the absence of an inquiry member if there are at least 3 remaining inquiry members.

### **112 Report by commission**

- (1) The commission must prepare a written report about each inquiry conducted by it.  
(2) The commission must give the report to the Minister.

### **113 Minister must table report**

The Minister must table the report in the Legislative Assembly within 14 days of receiving it.

## **Chapter 9 Monitoring, enforcement and investigations**

### **Part 1 Authorised persons' functions and powers generally**

#### **114 Functions of authorised person**

An authorised person has the functions of—

[s 115]

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- (a) monitoring and enforcing compliance with this Act, including compliance with section 20(1); and
- (b) investigating matters the commission is authorised to investigate under section 86 and inquiry matters.

### **115 Powers of authorised person**

For performing an authorised person's functions, the authorised person has the powers given to the authorised person under this Act.

## **Part 2 Appointment of authorised persons**

### **116 Appointment**

- (1) The commission may appoint a commission member, commission officer or other person as an authorised person.
- (2) However, the commission may appoint a person as an authorised person only if the commission is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

### **117 Appointment conditions and limit on powers**

- (1) An authorised person holds office on the conditions stated in—
  - (a) the authorised person's instrument of appointment; or
  - (b) a commission notice given to the authorised person.
- (2) The instrument of appointment or a commission notice given to an authorised person may limit the authorised person's powers under this Act.

(3) In this section—

*commission notice* means a notice authorised by the commission.

### **118 Issue of identity card**

- (1) The commission must issue an identity card to each authorised person.
- (2) The identity card must—
  - (a) contain a recent photo of the authorised person; and
  - (b) contain a copy of the authorised person's signature; and
  - (c) identify the person as an authorised person under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **119 Production or display of identity card**

- (1) In exercising a power under this Act in relation to another person, an authorised person must—
  - (a) produce the authorised person's identity card for the other person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised person does not exercise a power in relation to another person only because the authorised person has entered a place as mentioned in section 126(1)(b) or (3).

[s 120]

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## **120 When authorised person ceases to hold office**

- (1) An authorised person stops holding office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the authorised officer ceases to hold office;
  - (c) the authorised officer's resignation under section 121 takes effect.
- (2) Subsection (1) does not limit the ways an authorised person may cease to hold office.
- (3) In this section—

*condition of office* means a condition on which the authorised person holds office.

## **121 Resignation**

An authorised person may resign by signed notice given to the commission.

## **122 Return of identity card**

A person who ceases to be an authorised person must return the person's identity card to the commission within 21 days after ceasing to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

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## **Part 3 Powers of authorised persons**

### **Division 1 Power to obtain information**

#### **123 Power to require information or attendance**

- (1) An authorised person may, by notice given to a person, require the person—
  - (a) to give stated information to the authorised person within a stated reasonable time and in a stated reasonable way; or
  - (b) to attend before the authorised person at a stated reasonable time and place—
    - (i) to answer questions; or
    - (ii) to produce a stated thing.
- (2) A notice under subsection (1) may require the person to produce things of a stated class or description.
- (3) Subsection (1) does not apply for investigating an inquiry matter.

#### **124 Offences**

- (1) A person required to give information to an authorised person under section 123 must give the information as required by the notice, unless the person has a reasonable excuse.  
Maximum penalty—50 penalty units.
- (2) A person given a notice to attend before an authorised person under section 123 must, unless the person has a reasonable excuse—
  - (a) attend as required by the notice; and
  - (b) continue to attend as required by the authorised person until excused from further attendance; and

[s 125]

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- (c) answer a question the person is required to answer by the authorised person; and
- (d) produce a thing the person is required to produce by the notice.

Maximum penalty—50 penalty units.

- (3) It is a reasonable excuse for an individual not to give information, answer a question or produce a stated thing, that giving the information, answering the question or producing the thing might tend to incriminate the individual.

## **125 Inspection of produced things**

- (1) If a thing is produced to an authorised person, whether under a notice under section 123 or otherwise, the authorised person may inspect it.
- (2) If the authorised person reasonably considers the thing may be relevant to the investigation being carried out by the authorised person or for monitoring or enforcing compliance with this Act, the authorised person may do all or any of the following—
  - (a) photograph the thing;
  - (b) for a record—make a copy of, or take an extract from, the record;
  - (c) keep the thing while it is necessary for the investigation or as evidence of a contravention of this Act.
- (3) If the authorised person keeps the thing, the authorised person must allow a person otherwise entitled to possession of the thing—
  - (a) for a record—to inspect, copy, or take an extract from, the record, at the reasonable time and place the authorised person decides; or
  - (b) for another thing—to inspect or photograph the thing, at the reasonable time and place the authorised person decides.



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## **Division 2                      Entry of places**

### **126      Power to enter places**

- (1) An authorised person may enter a place if—
  - (a) an occupier of the place consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant.
- (2) Also, an authorised person may enter a place for the purpose of monitoring compliance with section 20(1) if—
  - (a) it is a health service facility; and
  - (b) the entry is authorised in writing signed by the chief executive; and
  - (c) the entry is made—
    - (i) when the facility is open for business or otherwise open for entry; and
    - (ii) after giving an occupier of the facility at least 24 hours notice of the entry.
- (3) For the purpose of asking an occupier of a place for consent to enter, an authorised person may, without an occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact an occupier; or
  - (b) enter part of the place the authorised person reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier.

## **Division 3                      Procedure for entry**

### **127      Entry with consent**

- (1) This section applies if an authorised person intends to ask an occupier of a place to consent to the authorised person or another authorised person entering the place under section 126(1)(a).
- (2) Before asking for the consent, the authorised person must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the authorised person consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

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## 128 Application for warrant

- (1) An authorised person may apply to a magistrate for a warrant for a place.
- (2) The authorised person must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

## 129 Issue of warrant

- (1) The magistrate may issue the warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence—
    - (i) about a matter being investigated by the authorised person; or
    - (ii) of an offence against this Act; and
  - (b) the evidence is at the place, or, within the next 7 days, will be at the place.
- (2) The magistrate may also issue the warrant for the place if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) the place is premises used for a purpose mentioned in section 86(g); and

[s 130]

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- (b) there is at the place, or, within the next 7 days there will be at the place, a person mentioned in that paragraph whose health or safety may be at risk.
- (3) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised person may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry to the place; and
    - (ii) exercise the authorised person’s powers under this part; and
  - (c) if subsection (1)(a)(i) applies—the matter being investigated for which the warrant is sought; and
  - (d) if subsection (1)(a)(ii) applies—particulars of the offence that the magistrate considers appropriate in the circumstances; and
  - (e) if subsection (1) applies, the evidence that may be seized under the warrant; and
  - (f) the hours of the day or night when the place may be entered; and
  - (g) the magistrate’s name; and
  - (h) the date and time of the warrant’s issue; and
  - (i) the date, within 14 days after the warrant’s issue, the warrant ends.

**130 Application by electronic communication and duplicate warrant**

- (1) An application under section 128 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—
  - (a) urgent circumstances; or

- 
- (b) other special circumstances, including, for example, the authorised person's remote location.
- (2) The application—
- (a) may not be made before the authorised person prepares the written application under section 128(2); but
- (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
- (a) it was necessary to make the application under subsection (1); and
- (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or
- (b) otherwise—
- (i) the magistrate must tell the authorised person the date and time the warrant is issued and the other terms of the warrant; and
- (ii) the authorised person must complete a form of warrant, including by writing on it—
- (A) the magistrate's name; and
- (B) the date and time the magistrate issued the warrant; and
- (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.

[s 131]

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- (6) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 128(2) and (3); and
  - (b) if the authorised person completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
  - (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—
  - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This section does not limit section 128.
- (10) In this section—

*relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

### 131 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 128, 129 or 130, unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—

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*warrant* includes a duplicate warrant mentioned in section 130(5).

### **132 Warrants—procedure before entry**

- (1) This section applies if an authorised person named in a warrant issued under this division for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised person must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to another person present at the place who is an occupier of the place in the way stated in section 119;
  - (b) give the other person a copy of the warrant;
  - (c) tell the other person the authorised person is permitted by the warrant to enter the place;
  - (d) give the other person an opportunity to allow the authorised person immediate entry to the place without using force.
- (3) However, the authorised person need not comply with subsection (2) if the authorised person believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) In this section—

*warrant* includes a duplicate warrant mentioned in section 130(5).

## **Division 4 Powers after entry**

### **133 General powers after entering places**

- (1) This section applies to an authorised person who enters a place.

[s 133]

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- (2) However, if an authorised person enters a place to get an occupier's consent to enter a place, this section applies to the authorised person only if the consent is given or the entry is otherwise authorised.
- (3) The authorised person may—
  - (a) search any part of the place; or
  - (b) examine, inspect, photograph or film any part of the place or anything at the place; or
  - (c) take an extract from, or copy, a record at the place; or
  - (d) take into or onto the place any person, equipment or material the authorised person reasonably requires for exercising a power under this division; or
  - (e) require an occupier of the place, or a person at the place, to give the authorised person reasonable help to exercise the authorised person's powers mentioned in paragraphs (a) to (d).
- (4) Also, if the place is premises mentioned in section 86(g), the authorised person may, with the approval of the chief executive, make arrangements to secure the health and safety of a person, mentioned in that paragraph, on the premises if the authorised person reasonably suspects—
  - (a) the person can not independently leave the premises; and
  - (b) the person's health or safety may be at risk.
- (5) Without limiting subsection (4), the arrangements made by the authorised person may be for the person to be relocated or provided with personal assistance or health services.
- (6) When making a requirement mentioned in subsection (3)(e), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.



### **134 Exercise of general powers**

When entering a place to exercise powers under this division, an authorised person must not do anything that may adversely affect the health or physical privacy of a person.

*Example of how a person's physical privacy may be affected—*

entering a room while a person is being examined by a medical practitioner

### **135 Failure to help authorised person**

- (1) A person required to give reasonable help under section 133(3)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If an individual is required under section 133(3)(e) to give information or produce a record, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

## **Division 5 Power to seize evidence**

### **136 Seizing evidence at a place that may be entered without consent or warrant**

- (1) This section applies if an authorised person enters a place that may be entered under this part without the consent of an occupier and without a warrant.
- (2) The authorised person may seize a thing at the place if the authorised person reasonably believes the thing is evidence—
  - (a) of a contravention of section 20(1) or of an offence against this Act; or
  - (b) that is relevant to the investigation being carried out by the authorised person.

[s 137]

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**137 Seizing evidence at a place that may only be entered with consent or warrant**

- (1) This section applies if—
  - (a) an authorised person is authorised to enter a place under this part only with the consent of an occupier or a warrant; and
  - (b) the authorised person enters the place after obtaining the necessary consent or warrant.
- (2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place if—
  - (a) the authorised person reasonably believes the thing is evidence—
    - (i) of a contravention of section 20(1) or of an offence against this Act; or
    - (ii) that is relevant to the investigation being carried out by the authorised person; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the authorised person enters the place with a warrant, the authorised person may seize the evidence for which the warrant was issued.
- (4) The authorised person may also seize anything else at the place if the authorised person reasonably believes—
  - (a) the thing is evidence—
    - (i) of a contravention of section 20(1) or of an offence against this Act; or
    - (ii) that is relevant to the investigation or of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

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### 138 Receipt for seized things

- (1) As soon as possible after an authorised person seizes a thing (a *seized thing*), the authorised person must give a receipt for the seized thing to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.
- (3) The receipt must describe generally each seized thing and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

### 139 Forfeiture of seized thing

- (1) A seized thing is forfeited to the commission if the authorised person who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the authorised person to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the authorised person to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example—*

The owner of the thing has migrated to another country.

- (3) Regard must be had to a thing's nature, condition and value in deciding—

[s 140]

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- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

#### **140 Dealing with forfeited things etc.**

- (1) On the forfeiture of a thing to the commission, the thing becomes the commission's property and may be dealt with by the commission as the commission considers appropriate.
- (2) Without limiting subsection (1), the commission may destroy or dispose of the thing.

#### **141 Access to seized things**

- (1) Until a seized thing is forfeited or returned, an authorised person must allow a person who would be entitled to the seized thing, if it were not in the authorised person's possession, to inspect it and, if it is a record, to take extracts from it or copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

#### **142 Return of seized things**

- (1) If a seized thing is not forfeited, an authorised person must return it to its owner at the end of—
  - (a) 6 months; or
  - (b) if proceedings involving the thing are started within 6 months—the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), the authorised person must immediately return the seized thing to its owner if the authorised person is satisfied that its retention as evidence is no longer necessary.

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## Division 6                      Compensation

### 143      Notice of damage

- (1) This section applies if—
  - (a) an authorised person damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction or authority of an authorised person damages property.
- (2) The authorised person must, as soon as practicable, give notice of particulars of the damage to a person who appears to the authorised person to be an owner of the property.
- (3) If the authorised person believes the damage was caused by a latent defect in the property or circumstances beyond the authorised person's or other person's control, the authorised person may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised person must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the authorised person reasonably believes is trivial.
- (6) In this section—

*owner*, of property, includes a person in possession or control of it.

### 144      Compensation

- (1) A person may claim compensation from the commission if the person incurs loss or expense because of the exercise or purported exercise of a power under any of the following divisions of this part—
  - division 2 (Entry of places)
  - division 4 (Powers after entry)

[s 145]

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- division 5 (Power to seize evidence).
- (2) Payment of compensation may be claimed and ordered in a proceeding for—
    - (a) compensation brought in a court of competent jurisdiction; or
    - (b) an offence against this Act brought against the person making the claim for compensation.
  - (3) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

## Division 7                      General enforcement matters

### 145      Obstructing authorised person

- (1) A person must not obstruct an authorised person in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person obstructs an authorised person in the exercise of a power under this Act and the authorised person decides to exercise the power, the authorised person must warn the person that—
  - (a) it is an offence to obstruct the authorised person, unless the person has a reasonable excuse; and
  - (b) the authorised person considers the person's conduct is an obstruction.
- (3) In this section—

***obstruct*** includes hinder, resist and attempt to obstruct.

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**146 Impersonation of authorised person**

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

## **Chapter 10 Matters concerning the commission**

### **Part 1 Membership**

**147 Membership of commission**

The commission consists of—

- (a) the commissioner; and
- (b) the assistant commissioners.

**148 Commissioner**

- (1) There is to be a Health Quality and Complaints Commissioner.
- (2) The Governor in Council is to appoint the commissioner.
- (3) The commissioner is to be a person with the standing appropriate for performing the commissioner's role.

**149 Assistant commissioners**

- (1) There are to be at least 5, but not more than 7, Health Quality and Complaints Assistant Commissioners.
- (2) The Governor in Council is to appoint the assistant commissioners.
- (3) Of the assistant commissioners—

[s 149]

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- (a) at least—
- (i) 1 must be a lawyer; and
  - (ii) 1 must be a medical practitioner with clinical experience; and
  - (iii) 1 must be a nurse or midwife; and
  - (iv) 1 must be an allied health professional; and
  - (v) 1 must have skills and experience in consumer issues; and
- (b) all must have skills and experience in governance.
- (4) In this section—

***allied health professional*** means a registered provider other than a medical practitioner, nurse or midwife.

***health practitioner registration Act*** means any 1 of the following Acts—

- *Chiropractors Registration Act 2001*
- *Dental Practitioners Registration Act 2001*
- *Dental Technicians and Dental Prosthetists Registration Act 2001*
- *Medical Radiation Technologists Registration Act 2001*
- *Occupational Therapists Registration Act 2001*
- *Optometrists Registration Act 2001*
- *Osteopaths Registration Act 2001*
- *Pharmacists Registration Act 2001*
- *Physiotherapists Registration Act 2001*
- *Podiatrists Registration Act 2001*
- *Psychologists Registration Act 2001*
- *Speech Pathologists Registration Act 2001*.

***medical practitioner*** includes a person registered under the law of another State or of a foreign country that provides for



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the same matter as a provision of the *Medical Practitioners Registration Act 2001*.

*midwife* includes a person authorised to practise midwifery under the law of another State or a foreign country that provides for the same matter as a provision of the *Nursing Act 1992*.

*nurse* means—

- (a) a registered nurse or enrolled nurse; or
- (b) a person authorised to practise nursing under the law of another State or a foreign country that provides for the same matter as a provision of the *Nursing Act 1992*.

*registered nurse* see the *Nursing Act 1992*, section 4.

*registered provider* includes a person registered under the law of another State or of a foreign country that provides for the same matter as a provision of a health practitioner registration Act.

## **150 Ineligibility for appointment as commission member**

A person is not eligible for appointment as a commission member if the person has been convicted of an indictable offence.

## **151 Term and conditions of appointment**

- (1) A person may be appointed as a commission member for a term of not more than 4 years.
- (2) Subject to this Act, a person holds office as a commission member on the conditions decided by the Governor in Council.
- (3) A commission member may be appointed on a full-time or part-time basis.

[s 152]

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- (4) A commission member must be appointed under this Act and not under the *Public Service Act 1996*.

*Editor's note—*

*Public Service Act 1996—see the Public Service Act 2008, section 249.*

### **152 Vacancy in commission member's office**

The office of a commission member becomes vacant if the member—

- (a) resigns office by signed notice given to the Minister; or
- (b) is removed from office under section 153.

### **153 Removal or suspension of commission member**

- (1) The Governor in Council may remove a commission member from office if the person—
- (a) is an insolvent under administration within the meaning of the Corporations Act, section 9; or
  - (b) is convicted of 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 the Minister inquiring into a matter that may warrant the removal of a commission member from office, the Governor in Council may suspend the member from office for a period of not more than 6 months.

### **154 Grant of leave to commission member**

The Minister may grant leave of absence to a commission member on the conditions the Minister considers appropriate.

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### **155 Filling vacancies**

The Governor in Council may appoint a person to act as a commission member—

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

## **Part 2 Commission business**

### **156 Conduct of business**

Subject to this Act, the commission may conduct its business, including its meetings, in the way it considers appropriate.

### **157 Presiding at meetings**

- (1) The commissioner must preside at all commission meetings at which the commissioner is present.
- (2) If the commissioner is absent from a commission meeting, an assistant commissioner chosen by the assistant commissioners present must preside.

### **158 Times and places of meetings**

- (1) Commission meetings are to be held at the times and places the commissioner decides.
- (2) However, the commissioner must call a meeting if asked in writing by at least the number of assistant commissioners forming a quorum for a commission meeting.

[s 159]

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## **159 Quorum for meetings**

A quorum for a commission meeting is the number equal to one-half of the commission members for the time being holding office or, if one-half is not a whole number, the next highest whole number.

## **160 Conduct of meetings**

- (1) A question at a commission meeting is to be decided by a majority of the votes of the commission members present.
- (2) Each commission member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) A commission member who abstains from voting is taken to have voted for the negative.
- (4) The commission may hold meetings, or allow commission members to take part in meetings, by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meetings, including, for example, teleconferencing.
- (5) A commission member who takes part in a meeting of the commission under subsection (4) is taken to have been present at the meeting.
- (6) A resolution is validly made by the commission, even if it is not passed at a commission meeting, if—
  - (a) notice of the resolution is given under procedures approved by the commission; and
  - (b) a majority of commission members agrees in writing to the resolution.

## **161 Minutes**

- (1) The commission must keep minutes of its meetings.

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- (2) If a resolution is made under section 160(6) it must be noted in the minutes of the commission meeting next happening after the making of the resolution.
  - (3) If a commission member votes against a resolution and asks that this be recorded in the minutes of the meeting, the fact that the member voted against the resolution must be recorded in the minutes.

## **162 Disclosure of interest**

- (1) This section applies to a commission member (the *interested person*) if—
  - (a) the interested person has a direct or indirect interest in an issue being considered, or about to be considered, by the commission; and
  - (b) the interest could conflict with the proper performance of the person's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a commission meeting.
- (3) Unless the commission otherwise directs, the interested person must not—
  - (a) be present when the commission considers the issue; or
  - (b) take part in a decision of the commission about the issue.
- (4) The interested person must not be present when the commission is considering whether to give a direction under subsection (3).
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
  - (a) be present when the commission is considering whether to give a direction under subsection (3) about the interested person; or



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## **164 Other directions by Minister**

- (1) The Minister may give a written direction to the commission to—
  - (a) provide a report on a specified matter to the Minister; or
  - (b) establish a specified committee under section 169; or
  - (c) investigate a health complaint, including one made by the Minister; or
  - (d) intervene in disciplinary proceedings against a registered provider under section 190; or
  - (e) investigate the quality of a health service; or
  - (f) investigate systemic issues relating to the quality of health services.
- (2) The direction may state a period within which, or a way in which, the direction must be complied with.
- (3) The commission must comply with the direction despite section 12.

## **Part 4 Other matters**

### **165 Commission's relationship with the State**

The Commission does not represent the State.

### **166 Delegation by the commission**

- (1) The commission may delegate its functions to the chief executive or another appropriately qualified commission officer.

*Note—*

Under section 181(1), the chief executive may subdelegate a delegated function to an appropriately qualified commission officer.

[s 167]

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(2) However, the commission may not delegate its function to conduct inquiries under chapter 8.

(3) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate for the function.

*Example of standing for a commission officer—*

the officer's classification level in the office

*functions* includes powers.

## **167 Preservation of rights**

(1) This section applies if a public service officer is appointed as a commission member.

(2) The person retains all rights that have accrued to the person because of employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as a commission member were a continuation of service as a public service officer.

(3) If the person stops being a commission member and again becomes a public service officer, the person's service as a commission member is to be regarded as service of a similar kind in the public service for the purpose of determining the person's rights as a public service officer.

## **168 Superannuation for commission member who was previously a public service officer**

(1) This section applies if a public service officer is appointed as a commission member and immediately before the appointment the public service officer was a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*.

(2) The person continues to be eligible to be, and to be, a member of the scheme.



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## **169 Committees**

- (1) The commission—
  - (a) must establish a consumer advisory committee and a clinical advisory committee; and
  - (b) may establish other committees.
- (2) The functions of the committees are as follows—
  - (a) for the consumer advisory committee—to advise the commission about consumers' concerns about health services and other matters relevant to the commission's functions referred to the committee by the commission; and
  - (b) for the clinical advisory committee—to advise the commission about clinical matters relevant to the commission's functions referred to the committee by the commission; and
  - (c) for another committee—to advise the commission about matters relevant to the commission's functions referred to the committee by the commission.
- (3) A committee must include persons the commission considers have the expertise and experience necessary for the performance of the committee's functions.
- (4) A committee member is entitled to the fees and allowances decided by the Governor in Council.

## **170 Nomination of persons for membership of health community councils**

- (1) This section relates to the commission's function mentioned in section 16(d) of nominating persons to the Minister who it considers suitable for appointment as members of health community councils.
- (2) In nominating the persons, the commission must have regard to—

[s 171]

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- (a) the need for community representation on health community councils; and
- (b) the expertise and experience necessary for the exercise by councils of their functions; and
- (c) the *Health Services Act 1991*, sections 28N(3) and (4) and 28Q.

### **171 Application of various public sector Acts**

- (1) The commission is—
  - (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
  - (b) a statutory body under the *Financial Accountability Act 2009*.
- (2) Under the *Statutory Bodies Financial Arrangements Act 1982*, the commission is a statutory body.
- (3) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the commission's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### **172 Annual report**

- (1) The commission must include in its annual report under the *Financial Accountability Act 2009*—
  - (a) information required by the Minister; and
  - (b) details of any direction given to the commission by the Minister that relates to the financial year for which the report is prepared.
- (2) Subject to section 205, the commission may include in an annual report information, opinion and recommendations disclosing details of—
  - (a) health complaints, inquiry matters and contraventions of this Act; or

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- (b) the quality of health services; or
  - (c) the progress or results of investigations into health complaints or offences against this Act; or
  - (d) the progress or results of inquiries; or
  - (e) systemic issues relating to the quality of health services.
- (3) However, the commission must not include in an annual report information that identifies a complainant or user unless—
- (a) the person consents to its inclusion; or
  - (b) the person's identity, as the complainant for the relevant health complaint or as a user for the relevant health service, is publicly known.

### **173 Special report**

- (1) The commission may, at any time, give to the Minister a report providing information relating to the activities of the commission.
- (2) Subject to section 205, the commission may include in the report information, opinion and recommendations disclosing details of—
- (a) health complaints or contraventions of this Act; or
  - (b) the quality of health services; or
  - (c) results of investigations into health complaints, or contraventions of this Act; or
  - (d) systemic issues relating to the quality of health services.
- (3) However, the commission must not include in the report information that identifies a complainant or a user unless—
- (a) the person consents to its inclusion; or
  - (b) the person's identity, as the complainant for the relevant health complaint or as a user for the relevant health service, is publicly known.

[s 174]

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- (4) The Minister must table the report in the Legislative Assembly within 14 days of receiving it.

## **Chapter 11      Office of the Health Quality and Complaints Commission**

### **Part 1              Establishment**

#### **174      Establishment of office**

- (1) The Office of the Health Quality and Complaints Commission is established.
- (2) The office consists of the chief executive and the other staff of the office.

### **Part 2              Office's function and powers**

#### **175      Function and powers**

- (1) The office's function is to help the commission in the performance of its functions.
- (2) The office may do anything necessary or convenient to be done in performing its function.

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## 176 Status

The office is not a statutory body for the *Financial Accountability Act 2009* or the *Statutory Bodies Financial Arrangements Act 1992*.

*Note—*

The office is a public service office under the *Public Service Act 1996*.

*Editor's note—*

*Public Service Act 1996—*see the *Public Service Act 2008*, section 249.

## Part 3 Chief executive officer

### 177 Appointment of chief executive officer

- (1) There is to be a chief executive officer of the office.
- (2) The chief executive is to be appointed by the Governor in Council.
- (3) The chief executive is appointed for the term stated in the instrument of appointment.
- (4) The stated term must not be more than 5 years.
- (5) The *Public Service Act 1996* does not apply to the appointment of the chief executive.

*Editor's note—*

*Public Service Act 1996—*see the *Public Service Act 2008*, section 249.

### 178 Conditions of appointment

- (1) The chief executive is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The chief executive holds office on terms, not provided for by this Act, decided by the Governor in Council.

[s 179]

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## **179 Function of chief executive**

Subject to direction by the commission, the chief executive is to control the office and is responsible for its efficient and effective administration and operation.

## **180 Chief executive must act independently etc.**

In performing the chief executive's function and exercising the chief executive's powers—

- (a) the chief executive must act independently, impartially, and in the public interest; and
- (b) is not subject to direction by the Minister.

## **181 Delegation by chief executive**

- (1) The chief executive may delegate the chief executive's functions, including a function delegated to the chief executive by the commission, to an appropriately qualified commission officer.
- (2) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate for the function.

*Example of standing for a commission officer—*

the officer's classification level in the office

*functions* includes powers.

## **182 Resignation**

The chief executive may resign by signed notice given to the Minister.

## **183 Ending of appointment**

The Governor in Council may end the appointment of the chief executive if the chief executive—

- (a) is convicted of an indictable offence; or
- (b) is guilty of misconduct that could warrant dismissal from the public service if the chief executive were a public service officer; or
- (c) is guilty of neglect of duty or incompetence; or
- (d) becomes incapable of satisfactorily performing the chief executive's functions.

#### **184 Acting chief executive**

The Minister may appoint a person to act as the chief executive—

- (a) during a vacancy in that office; or
- (b) during any period, or during all periods, when the chief executive is absent from duty or can not, for another reason, perform the functions of that office.

#### **185 Preservation of rights**

- (1) This section applies if a public service officer is appointed as the chief executive.
- (2) The person retains all rights that have accrued to the person because of employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as the chief executive were a continuation of service as a public service officer.
- (3) If the person stops being the chief executive and again becomes a public service officer, the person's service as chief executive is to be regarded as service of a similar kind in the public service for the purpose of determining the person's rights as a public service officer.

[s 186]

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**186 Superannuation for chief executive who was previously a public service officer**

- (1) This section applies if a public service officer is appointed as the chief executive and immediately before the appointment the public service officer was a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*.
- (2) The person continues to be eligible to be, and to be, a member of the scheme.

## **Part 4 Other staff of the office**

**187 Other commission staff**

The other staff of the office are to be employed under the *Public Service Act 1996*.

*Editor's note—*

*Public Service Act 1996—see the Public Service Act 2008, section 249.*

## **Chapter 12 Registration boards**

**188 Information from registration board**

- (1) A registration board may give the commission information, comment and recommendations in relation to a health complaint and the registered provider to whom the complaint relates.
- (2) The commission may, at any time, ask a registration board to provide information in its possession in relation to a health complaint or a registered provider to whom the complaint relates.



- (3) The registration board must comply with the commission's request.

### **189 Registration board may ask commission for information**

- (1) A registration board may at any time ask the commission for information about any complaints made to the commission about the registration board's registered providers.
- (2) The commission must comply with the registration board's request as soon as practicable.

### **190 Commission may intervene in disciplinary proceedings**

- (1) This section applies if a disciplinary proceeding is taken against a registered provider for a matter because of a health complaint or an inquiry matter and the proceeding is before a disciplinary body.
- (2) The commission may intervene in the disciplinary proceeding at any time.
- (3) On intervention, the commission becomes a party to the proceeding.
- (4) If the commission intervenes in a proceeding before the Health Practitioners Tribunal or the Nursing Tribunal, the commission may be represented by a lawyer or another person.
- (5) If the commission intervenes in a proceeding before a registration board or professional conduct review panel, the commission may nominate a person, other than a lawyer, to appear at the hearing on behalf of the commission.
- (6) The commission may intervene in an appeal against a decision of a disciplinary body.
- (7) On intervention in an appeal, the commission becomes a party to the appeal.

## Chapter 13 Offences and proceedings

### 191 False or misleading statements

A person must not state anything to the commission, a commission member or an authorised person the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

### 192 False or misleading records

- (1) A person must not give the commission, a commission member or an authorised person a record containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the record—
- (a) tells the commission, commission member or authorised person, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

### 193 Reprisal and grounds for reprisals

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that—
- (a) any person—
    - (i) has made or may make a health complaint; or
    - (ii) has provided or may provide assistance to the commission, a commission member or an authorised person; or
  - (b) any person—

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- (i) has made a health service complaint under the repealed Act; or
    - (ii) has provided assistance to the Health Rights Commissioner or an authorised person under the repealed Act.
  - (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
  - (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
  - (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
  - (5) For the contravention mentioned in subsection (3) to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

#### **194 Offence for taking reprisal**

- (1) A person who takes a reprisal commits an offence.  
Maximum penalty—167 penalty units or 2 years imprisonment.
- (2) The offence is an indictable offence that is a misdemeanour.

#### **195 Damages entitlement for reprisal**

- (1) A reprisal is a tort and a person who takes a 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 a reprisal.
- (3) If the claim for damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

[s 196]

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## **196 Summary offences**

An offence against this Act, other than an offence against section 194, is a summary offence.

## **197 Limitation on time for starting proceedings for summary offence**

A summary proceeding under the *Justices Act 1886* for a summary 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 complainant, but within 2 years after the commission of the offence.

## **198 Proceedings for indictable offences**

- (1) A proceeding on a charge for an indictable offence against this Act may be taken, at the election of the prosecution—
  - (a) by way of summary proceeding under the *Justices Act 1886*; or
  - (b) on indictment.

*Note—*

An offence against section 194 is an indictable offence.

- (2) A magistrate must not hear the charge summarily if—
  - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
  - (b) the magistrate considers the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
  - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be disregarded; and

- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

### **199 Limitation on who may summarily hear indictable offence**

- (1) The proceeding must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if the proceeding is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **200 Allegations of false or misleading information or records**

In a proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading record, it is enough for a charge to state that the information or record was, without specifying which, ‘false or misleading’.

### **201 Appointments and authority**

In a proceeding, the following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) a commission member’s, presiding member’s or inquiry member’s appointment;
- (b) the appointment of a person as an authorised person;

[s 202]

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- (c) the authority of a commission member, presiding member, inquiry member or authorised person to do anything under this Act.

## **202 Signatures**

A signature purporting to be the signature of a commission member, presiding member, inquiry member or authorised person is evidence of the signature it purports to be.

## **203 Other evidentiary aids**

- (1) In a proceeding, a certificate purporting to be that of the commissioner stating any of the following matters is evidence of the matter—
  - (a) a stated document is an appointment or notice made or given under this Act;
  - (b) a stated record is a record given to the commission or an authorised person under this Act;
  - (c) a stated document or record is a copy of a document or record mentioned in paragraph (a) or (b);
  - (d) on a stated day or during a stated period an appointment as an authorised person was or was not in force for a stated person;
  - (e) on a stated day, a stated requirement was made of a stated person.
- (2) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

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## Chapter 14 Other matters

### 204 Verifying information

For the purpose of a duty imposed by this Act on a person to take an oath to verify information, the oath the person must take is an oath that the information is true.

### 205 Response to adverse comments in commission report

- (1) This section applies to a report of the commission under section 24(1)(b), 91 or 173 or the commission's annual report mentioned in section 172.
- (2) The commission must not include in the report comment adverse to an entity identifiable from the report unless the commission has given the entity a reasonable opportunity to—
  - (a) make submissions to the commission about the comment; and
  - (b) give a written statement to the commission about the comment.
- (3) If the entity gives a written statement to the commission under subsection (2)(b) and asks that the statement be included in the report, the commission must include the statement, or a fair summary of the statement, in the report.
- (4) However, for a report under section 24(1)(b) or 91, subsection (2) is subject to section 206.

### 206 Dispensing with notice or opportunity to make submissions

- (1) The commission may, in the circumstances mentioned in subsection (2), dispense with a duty imposed on the commission under this Act—
  - (a) to give a notice to a provider; or

[s 207]

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- (b) to give an opportunity to an entity to make submissions on a report containing adverse comment about the entity.
- (2) For subsection (1), the circumstances are that the commission reasonably considers giving the notice or the opportunity to make submissions would—
  - (a) put at serious risk the health or safety of a person; or
  - (b) put a complainant or other person at risk of being harassed or intimidated; or
  - (c) prejudice an investigation or inquiry.
- (3) Subsection (1) does not apply in relation to the duty imposed by section 205 in relation to the commission's annual report mentioned in section 172 or a report under section 173.

## **207 Commission may give combined notice**

- (1) This section applies if the commission is required to, or may, give a person notices under more than 1 provision of this Act.
- (2) The commission may give the person a combined notice for the provisions.

## **208 Failure by commission to give notice or make assessment**

- (1) Subsection (2) applies if the commission fails to give a notice as required by section 54(1), 60(1), 66(5), 76(6), 80(4) or 81(6).
- (2) The requirement to give the notice continues subject to section 206 and the failure does not limit the commission in performing its functions or exercising its powers.
- (3) Subsection (4) applies if the commission fails to assess a health service complaint within the time required under section 58.



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- (4) The commission must assess the complaint and the failure does not limit the commission in performing its functions or exercising its powers.

**209 Form of consultation between commission and registration board**

- (1) This section applies for consultation between the commission and a registration board required under section 57(1), 76(2), 80(2) or 81(4).
- (2) The consultation may be in the form of a standing arrangement or more specific consultation.

**210 Commission may provide information**

- (1) If the commission refers a health complaint to a registration board or other entity under chapter 5 or 7, the commission may give the board or other entity any information given to, or gathered by, the commission in the course of dealing with the complaint.
- (2) However, subsection (1) does not apply to information obtained by the commission under chapter 6.

**211 Investigation etc. despite proceedings**

An investigation or inquiry under this Act may start or continue, and a report under this Act may be prepared or given, despite any proceedings before any court or tribunal, unless a court or tribunal of competent jurisdiction orders otherwise.

**212 Giving of information protected**

- (1) This section applies to a person who, honestly and on reasonable grounds, gives information or a record (the *information*) to the commission, a commission member, an authorised person or a commission officer—
- (a) for the purpose of a health complaint; or

[s 213]

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- (b) in the course of an investigation or inquiry; or
  - (c) otherwise under this Act.
- (2) The 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) Also, merely because the person gives the information, the person can not be held to have—
- (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3)—
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
    - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.

### **213 Reports privileged**

A person has a defence of absolute privilege for the publication of any defamatory statement made in good faith—

- (a) for the purpose of the preparation of a report authorised or required to be made under this Act; or
- (b) in a report authorised or required to be made under this Act.

### **214 Preservation of confidentiality**

- (1) A person must not record, disclose or use confidential information gained by the person through involvement in the

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administration of this Act or the repealed Act, unless the person does so—

- (a) for the purpose of this Act or the repealed Act; or
- (b) when authorised under an Act; or
- (c) if the confidential information is about a registered provider—for the purposes of the *Health Practitioners (Professional Standards) Act 1999* or the *Nursing Act 1992*; or
- (d) 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) However, subsection (2) does not apply to the disclosure of confidential information, or production of a record, to a disciplinary body.

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

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

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

- (a) a commission member or authorised person;
- (b) a commission officer or a person engaged to perform a service for the commission;
- (c) a member of a committee established under section 169;

[s 214]

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- (d) a conciliator and a person involved in conciliation under this Act.
- (6) The following persons are taken to have been involved in the administration of the repealed Act—
- (a) the Health Rights Commissioner or an authorised person under that Act;
  - (b) an officer or employee of the Health Rights Commission or a person engaged to perform a service for that commission;
  - (c) a member of the council under that Act;
  - (d) a member of a committee established under section 26 of that Act;
  - (e) a conciliator and a person involved in conciliation under that Act;
  - (f) a person who investigated a matter under that Act.
- (7) In so far as this section relates to the repealed Act, a reference in subsection (9), definition *confidential information*, to a complainant, user, provider, health service complaint, inquiry matter, investigation or inquiry includes a reference to the term under that Act.
- (8) This section does not limit section 82 or 83.
- (9) In this section—
- confidential information*** includes—
- (a) information about the identity, occupation or whereabouts of the complainant, user or provider to which a health complaint or inquiry matter relates or of any person who assists an investigation or inquiry; and
  - (b) information disclosed by a health complaint; and
  - (c) information of personal concern to an individual; and
  - (d) information that, if disclosed, may cause detriment to a person.

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## **215 Protecting officials from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the commission.
- (3) In this section—  
*official* means—
  - (a) a commission member; or
  - (b) a commission officer or a person engaged to perform a service for the commission; or
  - (c) a member of a committee established under section 169;  
or
  - (d) an authorised person; or
  - (e) a person acting under the direction or authority of an authorised person.

## **216 Review by committee of the Legislative Assembly**

It is Parliament's intention that, as soon as practicable after 1 year after the commencement of section 11, the Legislative Assembly establish a committee to review and report on the performance of the commission and generally on the operation of this Act.

## **217 Regulations**

The Governor in Council may make regulations under this Act.

## **Chapter 15      Repeal and transitional provisions**

### **Part 1              Repeal**

#### **218      Repeal of Health Rights Commission Act 1991**

The Health Rights Commission Act 1991 No. 88 is repealed.

### **Part 2              Transitional provisions**

#### **219      Definitions for pt 2**

In this part—

*commencement* means the commencement of this part.

*former commission* means the Health Rights Commission under the repealed Act.

*former commissioner* means the Health Rights Commissioner under the repealed Act.

#### **220      References to repealed Act or former commission**

- (1) In an Act or document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Act.
- (2) In an Act or document, a reference to the former commission may, if the context permits, be taken as a reference to the commission.

#### **221      Assets and liabilities etc.**

On the commencement—

- (a) the assets and liabilities of the former commissioner become assets and liabilities of the commission; and
- (b) any contracts entered into by the former commissioner, in force immediately before the commencement, are taken to have been entered into by the commission and may be enforced against or by the commission.

## **222 Officers of former commission**

A person who was an officer of the former commission immediately before the commencement continues as a commission officer.

## **223 Former commission's records**

All records of the former commission become records of the commission and may be used by the commission for this Act.

## **224 Proceedings**

- (1) A proceeding that could have been started or continued by or against the former commissioner before the commencement may be started or continued by or against the commission.
- (2) For a proceeding under the repealed Act, section 121 or 122, the judge deciding the proceeding may make the orders the judge considers necessary under the repealed Act as if this Act had not commenced.
- (3) An order mentioned in subsection (2) has effect for this Act despite any other provision of this Act.
- (4) If, immediately before the commencement, the former commissioner was a party to a proceeding under the repealed Act, section 130, the commission becomes a party in place of the former commissioner.

[s 225]

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## **225 Health service complaints**

- (1) This section applies to a health service complaint made to the former commissioner under the repealed Act and not finally dealt with before the commencement.
- (2) The health service complaint is taken to have been made to the commission and may be dealt with or further dealt with by the commission or another entity under this Act.
- (3) Without limiting subsection (2)—
  - (a) action taken in relation to the health service complaint by the former commissioner is taken to have been taken by the commission; and
  - (b) an assessment of the complaint may be continued or started under this Act; and
  - (c) a conciliation of the health service complaint may be started or continued under this Act; and
  - (d) if the complaint was referred to a registration board or other entity under the repealed Act, the referral is taken to have happened under this Act; and
  - (e) a notice given by the commissioner under the repealed Act, section 70 or 96 is taken to have been given by the commission under section 55 or an authorised person under section 123; and
  - (f) an investigation of the complaint may be continued or started under this Act.
- (4) For continuing and finalising a conciliation under subsection (3)(c), the person conciliating the health service complaint under the repealed Act is taken to be a conciliator under this Act.

## **226 Direction of Minister given under repealed Act**

- (1) Subsection (2) applies if the former commissioner was given a direction under the repealed Act, section 31 and, immediately



before the commencement, the direction had not been complied with.

- (2) The commission must comply with the direction by acting under this Act and for that purpose this Act applies with any necessary or convenient changes.

## **227 Offences**

- (1) Proceedings for an offence against the repealed Act may be continued, or started by the commission, and the provisions of the repealed Act necessary or convenient to be used in relation to the proceedings continue to apply, as if this Act had not commenced.
- (2) For subsection (1), the *Acts Interpretation Act 1954*, section 20 applies, but does not limit the subsection.

## **228 Things seized**

A thing seized under the repealed Act, and in relation to which proceedings were not finalised or started immediately before the commencement, is taken to have been properly seized under this Act.

## **229 Former commission's annual report for 2005–2006**

- (1) The commission must prepare the annual report required under the *Financial Administration and Audit Act 1977*, section 46J, and otherwise comply with the former commission's obligations under the section, in relation to the operations of the former commission for the financial year ending on 30 June 2006.
- (2) The annual report must be prepared so as to comply with the repealed Act, sections 34 and 36.

[s 230]

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**230 Amendment of regulation by Act**

The amendment of a regulation in schedule 3 does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

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## **Schedule 1      Health services**

section 8(a)

### **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, 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 hypnosis, 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.



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## **Schedule 2      Registration boards**

schedule 5, definition *registration board*

- 1    Chiropractors Board of Queensland
- 2    Dental Board of Queensland
- 3    Dental Technicians and Dental Prosthetists Board of Queensland
- 4    Medical Board of Queensland
- 5    Medical Radiation Technologists Board of Queensland
- 6    Occupational Therapists Board of Queensland
- 7    Optometrists Board of Queensland
- 8    Osteopaths Board of Queensland
- 9    Pharmacists Board of Queensland
- 10    Physiotherapists Board of Queensland
- 11    Podiatrists Board of Queensland
- 12    Psychologists Board of Queensland
- 13    Queensland Nursing Council
- 14    Speech Pathologists Board of Queensland

## Schedule 5 Dictionary

### section 7

***accepted representations*** see section 26(2).

***assistant commissioner*** means a Health Quality and Complaints Assistant Commissioner appointed under section 149.

***authorised person*** means a person appointed by the commission under section 116.

***chief executive*** means the chief executive officer of the office.

***chief health officer*** means the chief health officer under the *Health Services Act 1991*, section 57B.

***code*** see section 31(1).

***commencement*** for chapter 15, part 2, see section 219.

***commission*** means the Health Quality and Complaints Commission established under section 11(1).

***commissioner*** means the Health Quality and Complaints Commissioner appointed under section 148.

***commission member*** means the commissioner or an assistant commissioner.

***commission officer*** means the chief executive or another member of the staff of the office.

***commission standard*** means a standard made under section 22.

***complainant***—

- (a) generally, means—
  - (i) a person who makes a health quality complaint or a health service complaint; or
  - (ii) a person substituted, under section 43, for a person who makes a health service complaint; or

- (b) for chapter 7, part 3, see section 90.

**completion notice** means—

- (a) for a registration board other than the Queensland Nursing Council—a notice under the *Health Practitioners (Professional Standards) Act 1999*, section 383; or
- (b) for the Queensland Nursing Council—a notice under the *Nursing Act 1992*, section 118A; or
- (c) for another entity—notice that the entity has finished dealing with the complaint.

**conciliation** means the process of conciliation under chapter 6.

**conciliator** means a commission officer to whom the commission's function of conciliating health service complaints has been delegated under section 166.

**convicted of an indictable offence** includes convicted of an indictable offence dealt with summarily, whether or not the Criminal Code, section 659 applies to the indictable offence.

**conviction** means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

**coroner** see the *Coroners Act 2003*, schedule 2.

**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.

**disciplinary body** means—

- (a) a disciplinary committee; or
- (b) the Health Practitioners Tribunal; or
- (c) the Nursing Tribunal; or
- (d) a professional conduct review panel; or
- (e) a registration board acting under the *Health Practitioners (Professional Standards) Act 1999*.

***disciplinary committee*** means a disciplinary committee established under the *Health Practitioners (Professional Standards) Act 1999*, section 128(1)(b).

***enrolled nurse*** see the *Nursing Act 1992*, section 4.

***former commission*** for chapter 15, part 2, see section 219.

***former commissioner*** for chapter 15, part 2, see section 219.

***health community council*** means a health community council established under the *Health Services Act 1991*, section 28L.

***health complaint*** see section 35.

***Health Practitioners Tribunal*** means the Health Practitioners Tribunal established under the *Health Practitioners (Professional Standards) Act 1999*, section 26.

***health quality complaint*** see section 36.

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

***health service*** see section 8.

***health service complaint*** see section 37.

***health service facility*** means a facility at which health services mentioned in schedule 1, part 1 are usually provided.

***hospital*** means a public sector hospital, a private health facility or the Mater Misericordiae Public Hospitals.

***Human Rights and Equal Opportunity Commission***, of the Commonwealth, means the Human Rights and Equal Opportunity Commission established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth).

***inquiry*** means an inquiry by the commission under chapter 8.



***inquiry matter*** means a matter in relation to which an inquiry is conducted.

***inquiry member*** see section 96(1).

***midwife*** see the *Nursing Act 1992*, section 4.

***notice*** means written notice.

***Nursing Tribunal*** means the Nursing Tribunal under the *Nursing Act 1992*.

***obstruct*** includes—

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

***office*** means the Office of the Health Quality and Complaints Commission established under section 174(1).

***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.

***presiding member*** see section 97.

***Privacy Commissioner***, of the Commonwealth, means the Privacy Commissioner appointed under the *Privacy Act 1988* (Cwlth).

***private health facility*** see *Private Health Facilities Act 1999*, section 8.

***professional conduct review panel*** means a professional conduct review panel established under the *Health Practitioners (Professional Standards) Act 1999*, section 15.

***proposed action*** see section 25(1)(c).

***provider***—

- (a) generally, see section 9; or
- (b) for chapter 7, part 3, see section 90.

**public sector hospital** see the *Health Services Act 1991*, section 2.

**record** includes any document.

**registered provider** means a person registered by a registration board and includes an enrolled nurse and a midwife.

**registration board**—

- (a) means an entity mentioned in schedule 2; and
- (b) in relation to a registered provider means the registration board that registered the provider or, for an enrolled nurse or midwife, the Queensland Nursing Council.

**repealed Act** means the *Health Rights Commission Act 1991* as in force from time to time before its repeal.

**reprisal** means a reprisal as mentioned in section 193(3).

**seized thing** see section 138(1).

**show cause notice** see section 25(1).

**show cause period** see section 25(1)(d).

**State Coroner** means the State Coroner under the *Coroners Act 2003*.

**takes a reprisal** means the taking of a reprisal as mentioned in section 193(3).

**user** see section 10.

**witness requirement notice** see section 106(1).

## Endnotes

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	129
3 Key . . . . .	129
4 Table of reprints . . . . .	130
5 List of legislation . . . . .	130
6 List of annotations . . . . .	131

### 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 1 July 2009. Future amendments of the Health Quality and Complaints Commission Act 2006 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	1 July 2006	
1A rv	2006 Act No. 52	15 December 2006	
1B	2006 Act No. 56	1 July 2007	
1C	—	2 July 2007	prov exp 1 July 2007
1D	2007 Act No. 54	9 November 2007	R1D withdrawn, see R2
2	—	9 November 2007	
2A	2009 Act No. 9	1 July 2009	
	2009 Act No. 13		

## 5 List of legislation

### **Health Quality and Complaints Commission Act 2006 No. 25**

date of assent 29 May 2006

ss 1–2 commenced on date of assent

s 240 never proclaimed into force and om 2006 No. 52 s 25 sch

remaining provisions commenced 1 July 2006 (see s 2(1))

amending legislation—

### **Health Services Amendment Act 2006 No. 52 ss 1–2, 25 sch**

date of assent 4 December 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 15 December 2006 (2006 SL No. 310)

### **Medical Board (Administration) Act 2006 No. 56 ss 1–2, 42 sch 1**

date of assent 7 December 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2007 (2007 SL No. 141)

### **Mental Health and Other Legislation Amendment Act 2007 No. 54 s 1, pt 5**

date of assent 9 November 2007

commenced on date of assent

### **Financial Accountability Act 2009 No. 9 ss 1, 2(2), 136 sch 1**

date of assent 28 May 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2009 (2009 SL No. 80)

### **Right to Information Act 2009 No. 13 ss 1–2, 213 sch 5**

date of assent 12 June 2009

ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2009 (2009 SL No. 132)

**Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 7 pt 7**

date of assent 26 June 2009  
 ss 1–2 commenced on date of assent  
 remaining provisions not yet proclaimed into force (see s 2)

## 6 List of annotations

### Commission's other functions

s 16 amd 2006 No. 52 s 25 sch

### Cooperation with other entities

s 17 amd 2009 No. 13 s 213 sch 5

### Registration board may delegate function under s 57

s 68 amd 2006 No. 56 s 42 sch 1

### Conciliation of investigated health service complaint

s 93 amd 2007 No. 54 s 42

### Nomination of persons for membership of health community councils

prov hdg amd 2006 No. 52 s 25 sch

s 170 amd 2006 No. 52 s 25 sch

### Application of various public sector Acts

s 171 amd 2009 No. 9 s 136 sch 1

### Annual report

s 172 amd 2009 No. 9 s 136 sch 1

### Status

s 176 amd 2009 No. 9 s 136 sch 1

### Transitional regulation-making power

s 231 exp 1 July 2007 (see s 231(4))

## CHAPTER 16—AMENDMENT OF HEALTH SERVICES ACT 1991

ch hdg om R1A rv (see RA s 7(1)(k))

### Act amended in ch 16

s 232 om R1A rv (see RA s 40)

### Amendment of s 2 (Definitions)

s 233 om R1 (see RA s 40)

### Amendment of s 10 (Appointment of members)

s 234 om R1 (see RA s 40)

### Amendment of s 17 (Times and places of meetings)

s 235 om R1 (see RA s 40)

Endnotes

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**Amendment of s 22 (Managers for districts)**

s 236 om R1 (see RA s 40)

**Insertion of new s 23A**

s 237 om R1 (see RA s 40)

**Amendment of s 24 (Appointment of health service employees)**

s 238 om R1 (see RA s 40)

**Insertion of new s 62LA**

s 239 om R1 (see RA s 40)

**Insertion of new pt 9, div 6**

s 240 om 2006 No. 52 s 25 sch

**CHAPTER 17—AMENDMENT OF OTHER LEGISLATION**

ch 17 (s 241) om R1 (see RA ss 7(1)(k) and 40)

**SCHEDULE 3—CONSEQUENTIAL AMENDMENTS**

om R1 (see RA s 40)

**SCHEDULE 4—OTHER AMENDMENTS**

om R1 (see RA s 40)

**SCHEDULE 5—DICTIONARY**

def “**district health council**” om 2006 No. 52 s 25 sch

def “**health community council**” ins 2006 No. 52 s 25 sch

def “**Information Commissioner**” om 2009 No. 13 s 213 sch 5