



# Health Ombudsman Act 2013

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Queensland

# Health Ombudsman Act 2013

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# Health Ombudsman Act 2013

**An Act to establish a health ombudsman and to provide for a system for dealing with complaints and other matters relating to the health, conduct or performance of health practitioners and the services provided by health service organisations**

## **Part 1 Preliminary**

### **Division 1 Introductory**

#### **1 Short title**

This Act may be cited as the *Health Ombudsman Act 2013*.

#### **2 Commencement**

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

#### **3 Main objects**

- (1) The main objects of this Act are—
- (a) to protect the health and safety of the public; and
  - (b) to promote—
    - (i) professional, safe and competent practice by health practitioners; and
    - (ii) high standards of service delivery by health service organisations; and

- (c) to maintain public confidence in the management of complaints and other matters relating to the provision of health services.
- (2) The objects are to be achieved mainly by establishing a transparent, accountable and fair system for effectively and expeditiously dealing with complaints and other matters relating to the provision of health services, including by—
- (a) establishing the health ombudsman with the functions set out in section 25; and
  - (b) providing for the effective and efficient interaction of this Act and the National Law; and
  - (c) providing for the system to be effectively monitored by the Minister and the parliamentary committee.

#### **4 Paramount guiding principle**

- (1) The main principle for administering this Act is that the health and safety of the public are paramount.
- (2) Without limiting subsection (1), the health and safety of the public is the main consideration for—
  - (a) the health ombudsman, when deciding what relevant action to take to deal with a complaint or other matter; and
  - (b) the director of proceedings, when deciding whether to refer a matter to QCAT; and
  - (c) QCAT, when deciding a matter referred to it under this Act.

#### **5 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 all the other States.
- (2) Subsection (1) does not make the State, the Commonwealth or another State liable for an offence.

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## Division 2 Interpretation

### 6 Dictionary

The dictionary in schedule 1 defines particular words used in this Act.

### 7 Meaning of *health service*

- (1) A *health service* is a service that is, or purports to be, a service for maintaining, improving, restoring or managing people's health and wellbeing.
- (2) A health service may be provided to a person at any place including a hospital, residential care facility, community health facility or home.
- (3) A health service includes a support service for a service mentioned in subsection (1).
- (4) Also, without limiting subsection (1), a health service includes—
  - (a) a service dealing with public health, including a program or activity for—
    - (i) the prevention and control of disease or sickness; or
    - (ii) the prevention of injury; or
    - (iii) the protection and promotion of health; and

*Example of health service mentioned in paragraph (a)—*  
a cancer screening program
  - (b) a service providing alternative or complementary medicine; and
  - (c) a service prescribed under a regulation to be a health service.
- (5) A health service does not include a service prescribed under a regulation not to be a health service.

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

A *health service provider* is—

- (a) an individual (a *health practitioner*) who is—
  - (i) a health practitioner under the National Law; or
  - (ii) another individual who provides a health service;  
or
- (b) an entity, other than an individual, who provides a health service (a *health service organisation*).

*Examples of health service organisations—*

- a corporation providing a health service at a private health facility under the *Private Health Facilities Act 1999*
- a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17
- an ambulance service
- a medical, dental, pharmaceutical or physiotherapy practice

## **Division 3 Overview of Act**

### **9 Purpose of div 3**

This division gives an overview of this Act.

### **10 Relationship with the National Law**

- (1) This Act should be read in conjunction with the Health Practitioner Regulation National Law (Queensland) (referred to in this Act as the *National Law*).
- (2) The National Law establishes a registration and accreditation scheme for health practitioners.
- (3) Both this Act and part 8 of the National Law include provisions about the health, conduct and performance of registered health practitioners.

- (4) Decisions of the health ombudsman and QCAT under this Act that affect the registration of health practitioners are given effect under the National Law.

## **11 Health ombudsman**

- (1) The health ombudsman is responsible for receiving and dealing with health service complaints.
- (2) The health ombudsman also deals with other matters, including investigating systemic issues in the health system.

## **12 Director of proceedings**

The director of proceedings (who is a staff member of the Office of the Health Ombudsman) is responsible for taking proceedings against health practitioners before QCAT.

## **13 Making health service complaints**

- (1) A person may make a complaint to the health ombudsman under this Act about a service provided by a health practitioner or a health service organisation.
- (2) The National Law provides for voluntary and mandatory notifications about registered health practitioners which are made to the health ombudsman and dealt with under this Act as health service complaints.

## **14 Dealing with health service complaints and other matters**

- (1) The health ombudsman may assess a complaint to decide the most appropriate action to take.
- (2) The health ombudsman may facilitate local resolution of a complaint between the complainant and the relevant health service provider.
- (3) If the health ombudsman is satisfied there is a serious risk to persons and it is necessary to protect public health or safety,

the health ombudsman may take immediate action to deal with a matter by—

- (a) for registered health practitioners—suspending, or imposing conditions on, the practitioner’s registration; or
  - (b) for other health practitioners—prohibiting, or imposing restrictions on, the practitioner’s practice.
- (4) The health ombudsman may investigate a matter, using the investigation powers under this Act, and prepare a report on the investigation.
  - (5) The health ombudsman may make an order prohibiting a health practitioner other than a registered health practitioner from practising, or imposing restrictions on the practitioner’s practice.
  - (6) The health ombudsman may refer a matter concerning a registered health practitioner to the director of proceedings for decision about whether proceedings should be taken against the practitioner before QCAT.
  - (7) The health ombudsman may refer a complaint or matter concerning a registered health practitioner to the National Agency to be dealt with under the National Law (except for certain serious matters).
  - (8) The health ombudsman may conciliate a complaint, which may lead to the parties entering a confidential legally binding settlement.
  - (9) The health ombudsman may conduct an inquiry into a complaint or other matter, using the inquiry powers under this Act, and prepare a report on the inquiry.
  - (10) The health ombudsman may refer a complaint or matter to another State or Commonwealth entity that has a function to deal with it.

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## **15 Timeliness**

- (1) This Act states timeframes in which the health ombudsman and other entities must take particular actions in relation to complaints.
- (2) Investigations must generally be completed within 1 year but 3 month extensions (recorded on a public register) are permitted.

## **16 Disciplinary orders of QCAT and other jurisdictions**

- (1) After hearing a matter concerning a registered health practitioner, the orders that QCAT may make include suspending or cancelling the practitioner's registration, imposing conditions on the practitioner's registration or requiring the practitioner to pay a fine.
- (2) Orders of other jurisdictions that prohibit a health practitioner other than a registered health practitioner from practising, or impose restrictions on the practitioner's practice, also apply in Queensland.

## **17 Keeping complainants and providers informed**

The health ombudsman must keep complainants and health service providers informed by—

- (a) giving a notice when the health ombudsman decides to take particular relevant action to deal with a complaint; and
- (b) giving progress reports, at not less than 3 monthly intervals, of the progress of an investigation.

## **18 Minister's role**

- (1) The Minister oversees the administration of the health service complaints management system, including the performance of the health ombudsman, the National Agency and the National Boards under the system.

- (2) The Minister may direct the health ombudsman to investigate a particular matter or hold an inquiry about a particular matter.
- (3) The health ombudsman, the National Agency and National Boards must give information and reports about particular matters to the Minister on request.
- (4) The Minister may ask the health ombudsman to prepare and publish performance reports for the health ombudsman, the National Agency or the National Boards.

## **19 Parliamentary committee's role**

The parliamentary committee—

- (a) monitors the operation of the health service complaints management system, including the performance of the health ombudsman, the National Agency and the National Boards under the system; and
- (b) advises the Minister in relation to the appointment of the health ombudsman.

## **Division 4 Application of Act to persons whose status changes**

### **20 Application of Act to former health service providers**

- (1) This section applies if an entity was, but is no longer, a health service provider.
- (2) A complaint may be made, and a complaint or other matter may be dealt with, under this Act in relation to the entity's behaviour while the entity was a health service provider as if the entity were still a health service provider.
- (3) For the purposes of subsection (2), this Act applies, with any necessary changes, to the entity as if a reference to a health service provider included the entity.



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**21 Application of Act to former registered health practitioners**

- (1) This section applies if a person was, but is no longer, a registered health practitioner.
- (2) A complaint may be made, and a complaint or other matter may be dealt with, under this Act in relation to the person's behaviour while the person was a registered health practitioner as if the person were still a registered health practitioner.
- (3) For the purposes of subsection (2), this Act (other than part 7, division 1) applies, with any necessary changes, to the person as if a reference to a registered health practitioner included that person.

*Note—*

See the National Law, section 138, for the application of part 8 of the National Law in relation to a person who is no longer registered in a health profession under the National Law.

**22 Application of Act to persons formerly registered under corresponding prior Act**

- (1) This section applies if a person is not a registered health practitioner but the person was registered in a health profession under a corresponding prior Act.
- (2) A complaint may be made, and a complaint or other matter may be dealt with, under this Act in relation to the person's behaviour while the person was registered under the corresponding prior Act as if the person were a registered health practitioner.
- (3) However, subsection (2) applies only to the extent—
  - (a) a complaint about the person's behaviour could have been made under the corresponding prior Act; and
  - (b) the action taken under this Act to deal with the matter could have been taken under the corresponding prior Act.

- (4) For the purposes of subsection (2), this Act (other than part 7, division 1) applies, with any necessary changes, to the person as if a reference to a registered health practitioner included that person.

*Note—*

See the National Law, section 139, for the application of part 8 of the National Law in relation to a person who was registered in a health profession under a corresponding prior Act and is not, and has not been, registered in a health profession under the National Law.

- (5) In this section—

*corresponding prior Act* see the National Law, section 5.

## **23 Matters may be dealt with despite death of relevant person**

- (1) This section applies if—
- (a) a person dies and, if the person were alive, the person could make a health service complaint about a particular matter; or
  - (b) a person makes a health service complaint but dies before the complaint is finally dealt with; or
  - (c) a health service complaint could be made for which a person would be the relevant health service provider but the complaint is not made before the person dies; or
  - (d) a health service complaint is made for which a person is the relevant health service provider but the person dies before the complaint is finally dealt with; or
  - (e) a person dies and a matter concerning the person—
    - (i) was being dealt with, but had not been finally dealt with, under this Act when the person died; or
    - (ii) was not being, but was a matter that could have been, dealt with under this Act at the time the person died.
- (2) If subsection (1)(a) applies, a health service complaint may be made on behalf of the person.

- (3) If subsection (1)(b) applies, the health ombudsman may, at another person's request, permit the other person to be substituted as the complainant.
- (4) If subsection (1)(c) applies, a health service complaint may be made for which the person is the relevant health service provider.
- (5) The health ombudsman or another entity may deal with (or continue to deal with) a health service complaint or other matter mentioned in subsection (1) to (4) under this Act in the way the health ombudsman or other entity considers appropriate.

*Examples—*

- 1 If a registered health practitioner provides a health service to a person and the person dies—
  - (a) a member of the person's family may make a health service complaint on the person's behalf; and
  - (b) the health ombudsman may refer the complaint to the director of proceedings who may refer it to QCAT; and
  - (c) QCAT may hear the matter and decide to impose a condition on the practitioner's registration.
- 2 A health service complaint is made about a health service practitioner but the practitioner dies before the complaint is finally dealt with under this Act. The health ombudsman may carry out an investigation under part 8 of a matter to which the complaint relates to identify systemic issues with the provision of health services.

## Part 2 Health ombudsman

### 24 Establishment

There is to be a Health Ombudsman.

*Note—*

For provisions about the health ombudsman's appointment and related matters, see part 16, division 1.

## **25 Functions**

The health ombudsman's functions are—

- (a) to receive health service complaints and take relevant action to deal with them under this Act; and
- (b) to identify and deal with health service issues by undertaking investigations, inquiries and other relevant action; and
- (c) to identify and report on systemic issues in the way health services are provided, including issues affecting the quality of health services; and
- (d) to monitor the National Boards' and National Agency's performance of their functions relating to the health, conduct and performance of registered health practitioners who provide health services in Queensland; and
- (e) to provide information to the public, health practitioners and health service organisations about—
  - (i) providing health services in a way that minimises health service complaints; and
  - (ii) resolving health service complaints; and
- (f) to report to the Minister and the parliamentary committee about—
  - (i) the administration of the health service complaints management system; and
  - (ii) the performance of the health ombudsman's functions; and
  - (iii) the performance of the National Boards' and National Agency's functions relating to the health, conduct and performance of registered health practitioners who provide health services in Queensland; and
- (g) to publish reports about the health service complaints management system.

## **26 General powers**

The health ombudsman has power to do all things that are necessary or convenient to be done for or in connection with the performance of the health ombudsman's functions.

## **27 How health ombudsman must act**

In performing the health ombudsman's functions, the health ombudsman must act independently, impartially and in the public interest.

## **28 Health ombudsman generally not subject to direction**

- (1) The Minister may give a direction to the health ombudsman under section 81 (to undertake an investigation) or 152 (to conduct an inquiry) and may require the provision of reports and other information under part 13.
- (2) Otherwise, the health ombudsman is not subject to direction by anyone about how the health ombudsman performs the health ombudsman's functions.

## **29 Advisory committees and panels**

To support the performance of the health ombudsman's functions, the health ombudsman may establish committees and panels of appropriately qualified persons to advise the health ombudsman about clinical matters or health consumer issues.

*Examples—*

- 1 The health ombudsman may establish a panel of medical experts and consult a member of the panel before taking immediate action against a health practitioner under part 7.
- 2 The health ombudsman may establish a committee to provide the health ombudsman with advice during an investigation of a systemic issue relating to the provision of a particular health service.

### **30 Cooperation with other entities**

The health ombudsman must consult and cooperate with other public entities with functions that are relevant to, or may impact on, the health ombudsman's functions, including, for example, any of the following entities—

- (a) the Queensland Human Rights Commission established under the *Anti-Discrimination Act 1991*;
- (b) the Australian Human Rights Commission;
- (c) the Australian Privacy Commissioner;
- (d) the public guardian under the *Public Guardian Act 2014*;
- (e) the Crime and Corruption Commission;
- (f) the information commissioner and RTI commissioner under the *Right to Information Act 2009*;
- (g) the privacy commissioner under the *Information Privacy Act 2009*;
- (h) the National Agency and National Boards;
- (i) the ombudsman under the *Ombudsman Act 2001*;
- (j) the Queensland Police Service;
- (k) the State Coroner.

## **Part 3 Health service complaints**

### **Division 1 Preliminary**

#### **31 Meaning of *health service complaint***

A *health service complaint* is a complaint about a health service or other service provided by a health service provider.

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*Examples of matters that may be the subject of a health service complaint—*

- the health, conduct or performance of a health practitioner while providing a health service
- the treatment or care provided to an individual by a health service organisation or employee of a health service organisation
- the adequacy of a response by a health service provider to a complaint made to the provider about a particular service provided by an employee of the provider
- the level of compliance by a health service provider with accepted standards of professional conduct, having regard to any relevant prescribed conduct documents

## **Division 2                      Making and dealing with a complaint**

### **32            Who may make a complaint**

Any person may make a health service complaint.

*Examples of persons who may make a health service complaint—*

- an individual to whom a health service is provided
- a parent, guardian or other representative of an individual to whom a health service is provided
- a health practitioner with concerns about the health, conduct or performance of another practitioner

### **33            How to make a complaint**

- (1) A person may make a complaint to the health ombudsman—
  - (a) orally, including by telephone; or
  - (b) in writing, including by email or other electronic means.
- (2) If a complaint is made orally—
  - (a) the health ombudsman must make a record of the complaint; and
  - (b) if the health ombudsman decides not to accept the complaint at the time it is made and gives notice of the

decision as mentioned in section 278(2), the health ombudsman must include details of the decision in the record made under paragraph (a).

- (3) On request, the health ombudsman must give a person reasonable assistance to make a complaint.

### **34 Complainant may be asked to confirm complaint or give further information**

- (1) If a complaint is made orally, the health ombudsman may ask the complainant to confirm the complaint in writing.
- (2) The health ombudsman may ask the complainant for any of the following information—
  - (a) the complainant's name and address;
  - (b) other identifying information about the complainant;
  - (c) the basis for the complaint;
  - (d) information relevant to the complaint that the health ombudsman needs to deal with the complaint under this Act.
- (3) The health ombudsman may ask the complainant to verify by statutory declaration any information the complainant has given the health ombudsman.
- (4) A request may include a stated reasonable period for complying with the request.
- (5) The health ombudsman is not required to deal with the complaint, or deal further with the complaint, until the complainant complies with a request to the extent the complainant is reasonably able to comply.

*Note—*

Also, under section 44(1)(b)(i), a complainant's non-compliance with a request may be a ground on which the health ombudsman decides to take no further action on the complaint.



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### **35 Deciding how to proceed generally**

- (1) Within 7 days after receiving a complaint, the health ombudsman must—
  - (a) decide—
    - (i) to accept the complaint and take particular relevant action to deal with the matter of the complaint; or
    - (ii) to accept the complaint and take no further action in relation to it; or

*Note—*

See section 44 for the grounds on which the health ombudsman may decide to take no further action on a complaint.

    - (iii) not to accept the complaint; and
  - (b) give notice of the decision to the complainant and relevant health service provider under section 278.
- (2) In determining for subsection (1) the number of days that have elapsed since the health ombudsman received a complaint, any days on which there is an outstanding requirement under section 34 are not counted.

### **35A Non-acceptance of complaint**

The health ombudsman may decide not to accept a complaint if the health ombudsman is satisfied—

- (a) the complaint would be more appropriately dealt with by an entity other than the health ombudsman or an entity to whom the health ombudsman may refer the complaint under this Act; or
- (b) the complainant has not sought a resolution of the complaint with the relevant health service provider and it is reasonable in the circumstances for the complainant to first seek the resolution.

## **Division 3                      Other matters dealt with as complaints**

### **36            Notifications under the National Law**

Under the National Law, section 146, this Act applies to a notification made to the health ombudsman under the National Law, part 8, division 2 or 3, as if the notification were a complaint made under division 2 of this part.

### **37            Matters referred by National Boards or government entities**

- (1) This section applies if the health ombudsman—
  - (a) becomes aware of a particular matter, other than a health service complaint, by way of—
    - (i) a referral from a National Board under the National Law, part 8, division 12; or
    - (ii) information received from a government entity; and
  - (b) decides to take relevant action to deal with the matter.
- (2) The health ombudsman may, with a person's agreement, deal with the matter as if it were a complaint and the person were the complainant.

*Example—*

When investigating a health care related death under the *Coroners Act 2003*, a coroner becomes aware of a matter that may be dealt with under this Act and brings the matter to the attention of the health ombudsman. With the agreement of a member of the family of the person who died, the health ombudsman may deal with the matter as if it were a complaint and the family member were the complainant.



- (i) the complaint concerns a health service provided to a child and the complainant is the child's parent; or
  - (ii) the complaint concerns a health service provided to a person with impaired capacity and the complainant is the person's guardian under the *Guardianship and Administration Act 2000*; or
  - (iii) the complaint concerns a health service provided to a person who has died and the complainant is a member of the person's family; or
  - (iv) the complaint concerns a health service provided to another person who has asked the complainant to make the complaint.
- (3) Each of the following is a **relevant action** for dealing with a matter relating to a health service other than as part of a health service complaint—
- (a) taking immediate action under part 7;
  - (b) investigating the matter under part 8;
  - (c) issuing a prohibition order under part 8A;
  - (d) referring the matter to the National Agency or an entity of the State, another State or the Commonwealth under part 9;
  - (e) for a matter relating to a registered health practitioner, referring the matter to the director of proceedings under part 10, division 2 for decision about whether to refer the matter to QCAT;
  - (f) carrying out an inquiry into the matter under part 12.

### **39 Relevant action not limited to complaints**

- (1) The health ombudsman may take relevant action to deal with a matter whether or not a health service complaint has been made about the matter.
- (2) The health ombudsman's power to take relevant action to deal with a health service complaint (other than facilitating local

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resolution of it or conciliating it) is not affected if the complaint is withdrawn.

#### **40 Relevant action relating to more than 1 matter**

- (1) In making a decision about taking relevant action in relation to a health service provider, the health ombudsman may consider 2 or more health service complaints or other matters relating to the provider.

*Example—*

The health ombudsman may take immediate action under part 7 in relation to a practitioner on the basis of information about the practitioner's conduct arising from 2 or more complaints.

- (2) The health ombudsman may deal with 2 or more matters relating to a health service provider together, including by giving a notice under this Act that relates to 2 or more complaints or taking a particular relevant action to deal with 2 or more complaints together.

#### **41 Complaints may be split**

The health ombudsman may deal separately with 2 or more matters arising from a complaint, including by dealing with a complaint concerning 2 or more health practitioners as if a separate complaint had been made for each practitioner.

#### **42 More than 1 relevant action may be taken**

The health ombudsman may take more than 1 relevant action to deal with a matter.

#### **43 Relevant action may be taken despite proceedings**

The health ombudsman may take relevant action to deal with a matter despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

#### **43A Relevant action may be taken despite referral**

The health ombudsman may take action under part 6 in relation to a health service complaint or other matter despite referring the complaint or matter to—

- (a) the National Agency under part 9, division 1; or
- (b) an entity of the State, another State or the Commonwealth under section 92.

#### **44 Decision to take no further action on a matter**

(1) At any time, the health ombudsman may decide to take no further action on a health service complaint or other matter if the health ombudsman reasonably considers—

- (a) the complaint or other matter—
  - (i) is frivolous, vexatious, trivial or not made in good faith; or
  - (ii) is misconceived or lacking in substance; or
  - (iii) is being adequately dealt with by another appropriate entity; or
  - (iv) has been resolved or otherwise appropriately finalised by the health ombudsman or another appropriate entity; or
  - (v) despite reasonable efforts by the health ombudsman or another appropriate entity, cannot be resolved; or
- (b) for a complaint—
  - (i) the complainant has failed, without reasonable excuse, to—
    - (A) satisfactorily cooperate with attempts made or arranged by the health ombudsman to resolve the complaint; or
    - (B) comply with a request from the health ombudsman for information the health



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- (b) considering submissions received under section 47 from the complainant or relevant health service provider; and
- (c) analysing information obtained under section 48 from the complainant, relevant health service provider and others; and
- (d) communicating with the complainant or relevant health service provider; and
- (e) consulting with an entity with relevant technical expertise about the matter of the complaint.

#### **47 Submissions**

- (1) The health ombudsman may give a notice to the complainant or the relevant health service provider inviting submissions about the complaint to be given to the health ombudsman within a stated period.
- (2) The stated period for giving submissions must be reasonable but must not be more than 14 days after the notice is given.
- (3) The health ombudsman must consider each submission received within the stated period.

#### **48 Power to require information**

- (1) For the purpose of the assessment, the health ombudsman may, by notice given to the complainant, relevant health service provider or any other person, require the person to give stated information to the health ombudsman within a stated period.

*Example—*

For the purpose of assessing a complaint about a health practitioner, the health ombudsman may give a notice to the practitioner's employer requiring the employer to give particular patient files to the health ombudsman.

- (2) The stated period for giving the information must be reasonable but must not be more than 14 days after the notice is given.



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- (3) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

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

- (5) In this section—

*information* includes a document.

#### **49 Period for completing assessment**

- (1) The health ombudsman must complete the assessment within 30 days after deciding to carry out the assessment.
- (2) However, the health ombudsman may extend the period for assessing the complaint by a further period of up to 30 days if necessary because of—
- (a) the size or complexity of the complaint; or
  - (b) the time taken to obtain submissions under section 47 or information under section 48.

#### **50 Decision following assessment**

After completing the assessment, the health ombudsman must—

- (a) decide—
  - (i) to take particular relevant action to further deal with the complaint; or
  - (ii) to take no further action in relation to the complaint; and

*Note—*

See section 44 for the grounds on which the health ombudsman may decide to take no further action on a complaint.

- (b) give notice of the decision to the complainant and relevant health service provider under section 278.

## **Part 6                      Local resolution of complaints**

### **51            Application of pt 6**

This part applies if the health ombudsman decides to try to resolve a health service complaint under this part.

### **52            How local resolution may be achieved**

- (1) The purpose of taking action under this part is to facilitate resolution of the complaint between the complainant and relevant health service provider as quickly as possible and with minimal intervention by the health ombudsman.
- (2) To facilitate resolution of the complaint, the health ombudsman may take the actions the health ombudsman considers appropriate including, for example—
  - (a) analysing information provided with the complaint; and
  - (b) considering submissions received under section 53 from the complainant or relevant health service provider; and
  - (c) analysing information obtained under section 54 from the complainant, relevant health service provider and others; and
  - (d) facilitating meetings and other communications between the complainant and relevant health service provider; and
  - (e) facilitating agreement on a course of action between the complainant and relevant health service provider.

### **53            Submissions**

- (1) The health ombudsman may give a notice to the complainant or the relevant health service provider inviting submissions

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about the complaint to be given to the health ombudsman within a stated period.

- (2) The stated period for giving submissions must be reasonable but must not be more than 14 days after the notice is given.
- (3) The health ombudsman must consider each submission received within the stated period.

#### **54 Power to require information**

- (1) For the purpose of facilitating resolution of the complaint, the health ombudsman may, by notice given to the complainant, relevant health service provider or any other person, require the person to give stated information to the health ombudsman within a stated period.
- (2) The stated period for giving the information must be reasonable but must not be more than 14 days after the notice is given.
- (3) The person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) It is a reasonable excuse for an individual not to give information that giving the information might tend to incriminate the individual.
- (5) In this section—  
*information* includes a document.

#### **55 Period for attempting resolution**

- (1) The health ombudsman must try to resolve the health service complaint within 30 days after deciding to try local resolution.
- (2) The health ombudsman may extend the period for taking action under this part to resolve the complaint by a further period of up to 30 days if—
  - (a) it has not been possible to resolve the complaint within the period mentioned in subsection (1) because of the

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time taken to obtain submissions under section 53 or information under section 54; or

- (b) the complaint has not been resolved within the period mentioned in subsection (1) but the health ombudsman believes the complaint may be resolved under this part within the extended period.

## 56 Further action if complaint not resolved

If the complaint is not resolved within the period provided under section 55, the health ombudsman must—

- (a) decide—
  - (i) to take particular relevant action to further deal with the complaint; or
  - (ii) to take no further action in relation to the complaint; and

*Note—*

See section 44 for the grounds on which the health ombudsman may decide to take no further action on a complaint.

- (b) give notice of the decision to the complainant and relevant health service provider under section 278.

# Part 7 Immediate action in relation to health practitioners

## Division 1 Immediate registration action

### 57 Meaning of *immediate registration action*

In this division—

*immediate registration action*, in relation to a registered health practitioner, means the suspension of, or imposition of a condition on, the practitioner's registration.

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## 58 Power to take immediate registration action

- (1) The health ombudsman may take immediate registration action under this division in relation to a registered health practitioner if—
- (a) the health ombudsman reasonably believes that—
    - (i) because of the practitioner’s health, conduct or performance, the practitioner poses a serious risk to persons; and
    - (ii) it is necessary to take the action to protect public health or safety; or
  - (b) the health ombudsman reasonably believes the practitioner’s registration was improperly obtained because the practitioner or someone else gave a National Board information or a document that was false or misleading in a material particular; or
  - (c) the practitioner’s registration has been cancelled or suspended under the law of a jurisdiction, whether in Australia or elsewhere, that is not a participating jurisdiction under the National Law; or
  - (d) the health ombudsman reasonably believes the action is otherwise in the public interest.

*Example of when action may be taken in the public interest—*

A registered health practitioner is charged with a serious criminal offence, unrelated to the practitioner’s practice, for which immediate registration action is required to be taken to maintain public confidence in the provision of services by health practitioners.

- (2) The health ombudsman may take the action at any time, whether or not a complaint has been made in relation to the registered health practitioner.

*Note—*

The National Law, section 205 provides for the relevant National Board to give effect to the health ombudsman’s decision.

**58A Varying immediate registration action on health ombudsman's own initiative**

- (1) This section applies if, at any time after a decision to take immediate registration action in relation to a registered health practitioner, there is a material change in relation to the matter giving rise to the immediate registration action.
- (2) The health ombudsman may vary an immediate registration action only if—
  - (a) the health ombudsman reasonably believes the material change justifies varying the decision made; and
  - (b) the variation is on the grounds mentioned in section 58.

*Example of varying an immediate registration action—*

The health ombudsman varies an immediate registration action that suspended the registration of a health practitioner, to another immediate registration action that places conditions on the practitioner's registration so that the person can not have direct patient contact.

- (3) If the health ombudsman makes a decision (the ***variation decision***) to vary the immediate registration action, sections 59 to 65, 94 and 279 apply to the variation decision as if it were, to the extent of the variation, a decision to take immediate registration action.

**58B Varying immediate registration action on application by registered health practitioner**

- (1) A health practitioner may apply to the health ombudsman to vary an immediate registration action if there is a material change in relation to the matter giving rise to the immediate registration action.
- (2) An application under subsection (1) must—
  - (a) be in the approved form; and
  - (b) be accompanied by any other information reasonably required by the health ombudsman.
- (3) In deciding the application, the health ombudsman—

- (a) must consider whether the material change justifies varying the action taken; and
  - (b) is limited to the grounds mentioned in section 58.
- (4) The health ombudsman must decide to do 1 of the following—
- (a) vary the immediate registration action in the way requested in the application;
  - (b) vary the immediate registration action in a way that is different to that requested in the application;
  - (c) not to vary the immediate registration action.
- (5) If the health ombudsman decides to vary the immediate registration action in the way requested in the application—
- (a) the health ombudsman must give the practitioner who made the application notice of the decision; and
  - (b) the health ombudsman must give notice of the variation to—
    - (i) the relevant National Board; and
    - (ii) if the immediate registration action was taken in response to a complaint—the complainant; and
  - (c) sections 62, 65, 94 and 279 apply to the variation decision as if it were, to the extent of the variation, a decision to take immediate registration action.
- (6) If the health ombudsman proposes to vary the immediate registration action in a way that is different to that requested in the application, sections 59(1) to (3), 60, 62 to 65, 94 and 279 apply to the variation decision as if it were, to the extent of the variation, a decision to take immediate registration action.
- (7) If the health ombudsman proposes not to vary the immediate registration action, the health ombudsman must give the practitioner who made the application notice—
- (a) stating the proposed decision; and

- (b) inviting the practitioner to make a submission to the health ombudsman, within a stated period of at least 5 business days, about the proposed decision.
- (8) The practitioner may make submissions orally or in writing.
- (9) The health ombudsman must have regard to any submissions made by the practitioner within the stated period before deciding not to vary the immediate registration action.
- (10) If the health ombudsman decides not to vary the immediate registration action, the health ombudsman must give notice of the decision to the practitioner stating the following—
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) that the practitioner may apply to QCAT for a review of the decision;
  - (d) how, and the period within which, the practitioner may apply for the review of the decision.

## **59 Show cause process**

- (1) If the health ombudsman proposes to take immediate registration action in relation to a registered health practitioner, the health ombudsman must give the practitioner a notice—
  - (a) stating the proposed action; and
  - (b) inviting the practitioner to make a submission to the health ombudsman, within a stated period of at least 7 days, about the proposed action.
- (2) The practitioner may make submissions orally or in writing.
- (3) The health ombudsman must have regard to any submissions made by the practitioner within the stated period before deciding whether to take immediate registration action in relation to the practitioner.
- (4) However, if the health ombudsman is satisfied it is necessary to do so to ensure the health and safety of an individual or the



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public, the health ombudsman may take immediate registration action without complying with subsections (1) to (3).

## **60 Notice about immediate registration action**

- (1) Immediately after deciding to take immediate registration action in relation to a registered health practitioner, the health ombudsman must give notice of the health ombudsman's decision to the practitioner.
- (2) The notice must state—
  - (a) the immediate registration action that the health ombudsman has decided to take; and
  - (b) the reasons for the decision to take the immediate registration action; and
  - (c) the further relevant action that the health ombudsman proposes to take under section 64; and
  - (d) that the practitioner may apply to QCAT for a review of the decision to take the immediate registration action; and
  - (e) how, and the period within which, the practitioner may apply for the review of the decision.
- (3) The health ombudsman must give a copy of the notice to the relevant National Board.
- (4) If the immediate registration action was taken in response to a complaint, the health ombudsman must give notice of the immediate registration action to the complainant.

*Note—*

Notice is also given to employers and may be given to particular health practitioners with whom the health practitioner shares premises under section 279.

## **61 Show cause process after taking action**

- (1) This section applies if, under section 59(4), the health ombudsman takes immediate registration action in relation to a registered health practitioner without complying with section 59(1) to (3).
- (2) The notice given to the practitioner under section 60 must include, or be accompanied by, an invitation for the practitioner to make a submission to the health ombudsman, within a stated period of at least 7 days, about the action taken.
- (3) If the practitioner makes a submission within the stated period, the health ombudsman must—
  - (a) have regard to the submission and decide if the action taken is appropriate; and
  - (b) give the practitioner—
    - (i) a notice confirming the action taken; or
    - (ii) a notice under section 65 ending the action taken.

## **62 Period of immediate registration action**

- (1) A decision of the health ombudsman to take immediate registration action in relation to a registered health practitioner takes effect on the day the notice under section 60 is given to the practitioner or, if a later day is stated in the notice, the later day.
- (2) The decision continues to have effect until the earlier of the following happens—
  - (a) QCAT sets aside the decision—
    - (i) on application by the practitioner for a review of the decision; or
    - (ii) on referral of the matter to QCAT by the director of proceedings on the health ombudsman's behalf;

- (b) the health ombudsman revokes the suspension or removes the conditions (whichever is relevant) under section 65.

### **63 Application to QCAT for review**

- (1) If the health ombudsman decides to take immediate registration action in relation to a registered health practitioner, the practitioner may apply, as provided under the QCAT Act, to QCAT for a review of the decision.
- (2) If the health ombudsman gives a notice to the practitioner under section 61(3)(b)(i) confirming the decision to take the immediate registration action, an application to QCAT for a review of the decision may be made within 28 days after that notice is given.

### **64 Health ombudsman must immediately take further relevant action**

Immediately after deciding to take immediate registration action in relation to a registered health practitioner, the health ombudsman must—

- (a) investigate the matter giving rise to the immediate action under part 8; or
- (b) refer the matter to the National Agency or an entity of the State, another State or the Commonwealth under part 9; or
- (c) refer the matter to the director of proceedings under part 10, division 2.

### **65 Health ombudsman may end immediate registration action**

- (1) This section applies if, at any time after taking immediate registration action in relation to a registered health practitioner, the health ombudsman is satisfied the immediate

registration action is no longer necessary on the grounds mentioned in section 58.

- (2) The health ombudsman must—
- (a) revoke the suspension or remove the conditions (whichever is relevant); and
  - (b) give notice of the revocation or removal to—
    - (i) the registered health practitioner; and
    - (ii) the relevant National Board; and
    - (iii) if the immediate registration action was taken in response to a complaint—the complainant.

## **Division 2                    Interim prohibition orders**

### **66            Application of div 2**

This division does not apply to a person in the person's capacity as a registered health practitioner.

### **67            Interim prohibition orders**

An *interim prohibition order* is an order issued to a health practitioner—

- (a) prohibiting the practitioner from providing any health service or a stated health service; or
- (b) imposing stated restrictions on the provision of any health service, or a stated health service, by the practitioner.

### **68            Power to issue interim prohibition orders**

- (1) The health ombudsman may issue an interim prohibition order to a health practitioner (other than in the person's capacity as a registered health practitioner) if—
- (a) the health ombudsman reasonably believes that—

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- (i) because of the practitioner's health, conduct or performance, the practitioner poses a serious risk to persons; and
  - (ii) it is necessary to issue the order to protect public health or safety; or
- (b) the health ombudsman reasonably believes issuing the order is otherwise in the public interest.

*Example of when issuing the order is in the public interest—*

A health practitioner is charged with a serious criminal offence, unrelated to the practitioner's practice, for which an interim prohibition order is required to be issued to maintain public confidence in the provision of services by health practitioners.

- (2) Without limiting subsection (1)(a), the serious risk posed to a person by a health practitioner may be a serious risk of harm caused by the practitioner—
- (a) practising the practitioner's profession unsafely, incompetently or while intoxicated by alcohol or drugs; or
  - (b) financially exploiting the person; or
  - (c) engaging in a sexual or improper personal relationship with the person; or
  - (d) discouraging the person from seeking clinically accepted care or treatment; or
  - (e) making false or misleading claims about the health benefits of a particular health service; or
  - (f) making false or misleading claims about the practitioner's qualifications, training, competence or professional affiliations.
- (3) In deciding under subsection (1)(a) whether, because of a health practitioner's health, conduct or performance, the practitioner poses a serious risk to persons, the health ombudsman may have regard to a prescribed conduct document under section 288.

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- (4) The health ombudsman may issue an interim prohibition order at any time, whether or not a complaint has been made in relation to the practitioner.

### **68A Varying interim prohibition order on health ombudsman's own initiative**

- (1) This section applies if, at any time after a decision to issue an interim prohibition order to a health practitioner, there is a material change in relation to the matter giving rise to the issue of the interim prohibition order.
- (2) The health ombudsman may vary an interim prohibition order only if—
  - (a) the health ombudsman reasonably believes the material change justifies varying the decision made; and
  - (b) the variation is on the grounds mentioned in section 68.

*Example of varying interim prohibition order—*

The health ombudsman varies an interim prohibition order prohibiting the person from providing a health service to persons under the age of 18, to an interim prohibition order prohibiting the person from providing any health service in a clinical or non-clinical capacity.

- (3) If the health ombudsman makes a decision (the ***variation decision***) to vary the interim prohibition order, sections 69 to 76, 78, 79, 94 and 279 apply to the variation decision as if it were, to the extent of the variation, a decision to issue an interim prohibition order.

### **68B Varying interim prohibition order on application by health practitioner**

- (1) A health practitioner may apply to the health ombudsman to vary an interim prohibition order if there is a material change in relation to the matter giving rise to the issue of the interim prohibition order.
- (2) An application under subsection (1) must—
  - (a) be in the approved form; and

- (b) be accompanied by any other information reasonably required by the health ombudsman.
- (3) In deciding the application, the health ombudsman—
  - (a) must consider whether the material change justifies varying the action taken; and
  - (b) is limited to the grounds mentioned in section 68.
- (4) The health ombudsman must decide to do 1 of the following—
  - (a) vary the interim prohibition order in the way requested in the application;
  - (b) vary the interim prohibition order in a way that is different to that requested in the application;
  - (c) not to vary the interim prohibition order.
- (5) If the health ombudsman decides to vary the interim prohibition order in the way requested in the application—
  - (a) the health ombudsman must give the practitioner who made the application notice of the decision; and
  - (b) sections 71, 73, 76, 78, 79, 94 and 279 apply to the variation decision as if it were, to the extent of the variation, a decision to issue an interim prohibition order.
- (6) If the health ombudsman proposes to vary the interim prohibition order in a way that is different to that requested in the application, sections 69(1) to (3), 70, 71, 73 to 76, 78, 79, 94 and 279 apply to the variation decision as if it were, to the extent of the variation, a decision to issue an interim prohibition order.
- (7) If the health ombudsman proposes not to vary the interim prohibition order, the health ombudsman must give the practitioner who made the application notice—
  - (a) stating the proposed decision; and

- (b) inviting the practitioner to make a submission to the health ombudsman, within a stated period of at least 7 days, about the proposed decision.
- (8) The practitioner may make submissions orally or in writing.
- (9) The health ombudsman must have regard to any submissions made by the practitioner within the stated period before deciding not to vary the interim prohibition order.
- (10) If the health ombudsman decides not to vary the interim prohibition order, the health ombudsman must give notice of the decision to the practitioner stating the following—
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) that the practitioner may apply to QCAT for a review of the decision;
  - (d) how, and the period within which, the practitioner may apply for the review of the decision.

## **69 Show cause process**

- (1) If the health ombudsman proposes to issue an interim prohibition order to a health practitioner, the health ombudsman must give the practitioner a notice—
  - (a) stating the proposed order; and
  - (b) inviting the practitioner to make a submission to the health ombudsman, within a stated period of at least 7 days, about the proposed order.
- (2) The practitioner may make submissions orally or in writing.
- (3) The health ombudsman must have regard to any submissions made by the practitioner within the stated period before deciding whether to issue the interim prohibition order.
- (4) However, if the health ombudsman is satisfied it is necessary to do so to ensure the health and safety of an individual or the public, the health ombudsman may issue an interim



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prohibition order without complying with subsections (1) to (3).

## **70 Content of interim prohibition order**

An interim prohibition order—

- (a) must state the details of the order that apply to the practitioner; and
- (b) must also state, or be accompanied by a notice that states, the following—
  - (i) the reasons for the decision to issue the order;
  - (ii) the further relevant action that the health ombudsman proposes to take in relation to the practitioner;
  - (iii) that the practitioner may apply to QCAT for a review of the decision to issue the order; and
  - (iv) how, and the period within which, the practitioner may apply for the review of the decision.

## **71 Notice to complainant**

If an interim prohibition order was issued in response to a complaint, the health ombudsman must give the complainant a notice stating the details of the order that apply to the practitioner.

*Note—*

Notice is also given to employers and may be given to particular health practitioners with whom the health practitioner shares premises under section 279.

## **72 Show cause process after issuing order**

- (1) This section applies if, under section 69(4), the health ombudsman issues an interim prohibition order to a health practitioner without complying with section 69(1) to (3).

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- (2) The interim prohibition order must include, or be accompanied by, an invitation for the practitioner to make a submission to the health ombudsman, within a stated period of at least 7 days, about the order.
- (3) If the practitioner makes a submission within the stated period, the health ombudsman must—
  - (a) have regard to the submission and decide if the interim prohibition order is appropriate; and
  - (b) give the practitioner—
    - (i) a notice confirming the order; or
    - (ii) a notice under section 76 revoking the order.

### **73 Period of interim prohibition order**

- (1) An interim prohibition order takes effect on the day it is given to the health practitioner or, if a later day is stated in the order, the later day.
- (2) The order continues to have effect until the earliest of the following happens—
  - (a) the order ends under section 90H;  
*Note—*  
Section 90H provides for the ending of an interim prohibition order issued to a health practitioner in relation to a health service complaint or other matter when a prohibition order issued to the practitioner for the complaint or matter takes effect.
  - (b) QCAT sets aside the decision to issue the order on application by the practitioner for a review of the decision;
  - (c) the health ombudsman revokes the order under section 76.

### **74 Application to QCAT for review**

- (1) If the health ombudsman decides to issue an interim prohibition order to a health practitioner, the practitioner may

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apply, as provided under the QCAT Act, to QCAT for a review of the decision.

- (2) If the health ombudsman gives a notice to the practitioner under section 72(3)(b)(i) confirming the order, an application to QCAT for a review of the decision to issue the order may be made within 28 days after that notice is given.

## **75 Health ombudsman must immediately take further relevant action**

Immediately after issuing an interim prohibition order to a health practitioner, the health ombudsman must—

- (a) investigate the matter giving rise to the issue of the order under part 8; or
- (b) refer the matter to an entity of the State, another State or the Commonwealth under part 9; or
- (c) refer the matter to the director of proceedings under part 10, division 2.

## **76 Health ombudsman may revoke order**

- (1) This section applies if, at any time after issuing an interim prohibition order to a health practitioner, the health ombudsman is satisfied the order is no longer necessary on the grounds mentioned in section 68.
- (2) The health ombudsman must—
  - (a) revoke the order; and
  - (b) give notice of the revocation to the practitioner and, if the interim prohibition order was issued in response to a complaint, to the complainant.

## **77 Corresponding interstate interim orders**

A regulation may prescribe an order to be a corresponding interstate interim order if the order—

- (a) is issued under a law of another State; and
- (b) corresponds, or substantially corresponds, to an interim prohibition order under this division.

## **78 Offence of contravening order**

A person must not contravene an interim prohibition order or corresponding interstate interim order.

Maximum penalty—200 penalty units.

## **79 Publication of orders**

- (1) The health ombudsman must publish, on a publicly accessible website of the health ombudsman, the following information about each current interim prohibition order—
  - (a) the name of the health practitioner to whom the order was issued;
  - (b) the day the order took effect;
  - (c) the details of the order mentioned in section 67(a) or (b) that apply to the practitioner.
- (2) The health ombudsman must also publish, on a publicly accessible website of the health ombudsman, information about corresponding interstate interim orders of which the health ombudsman is aware that corresponds to the information mentioned in subsection (1)(a) to (c).
- (3) The information may also be published to the public in another way the health ombudsman considers appropriate.

# **Part 8 Investigations**

## **80 Health ombudsman may decide to investigate**

The health ombudsman may carry out an investigation of—

- (a) a matter that is the subject of a health service complaint;  
or
- (b) a systemic issue relating to the provision of a health service, including an issue affecting the quality of a health service; or
- (c) another matter, if the health ombudsman considers an investigation of the matter is relevant to achieving an object of this Act.

## **81 Minister may direct investigation**

- (1) The Minister may, by notice, direct the health ombudsman to undertake an investigation of a stated matter relating to the provision of a health service.
- (2) The direction may include a stated reasonable period within which the investigation must be completed.
- (3) The health ombudsman must comply with the request.

## **82 Notice to particular provider being investigated**

- (1) This section applies if an investigation concerns a particular health service provider and notice of the decision to carry out the investigation has not been given to the provider under section 278.
- (2) The health ombudsman must notify the provider about the investigation before or when it is started.

## **83 Investigative powers**

Part 15 provides for powers that may be exercised for the purpose of conducting an investigation.

## **84 Progress reports**

- (1) The health ombudsman must, at not less than 3 monthly intervals, give a notice of the progress of an investigation to—

- (a) any health service provider being investigated; and
  - (b) if the investigation relates to a health service complaint, the complainant.
- (2) A person who has a right to be given a notice under subsection (1) may, by notice to the health ombudsman, waive the right.
- (3) At any time before the investigation is complete, a notice given by a person to the health ombudsman under subsection (2) may be withdrawn.

## **85 Times by which investigations must be completed**

- (1) The health ombudsman must complete an investigation as quickly as is reasonable in all the circumstances and, in any case, by the day (the *due day*) that is 1 year, or any extended time decided under subsection (2), after the decision to carry out the investigation.
- (2) The health ombudsman may extend the due day for completing an investigation if the health ombudsman reasonably considers that, in all the circumstances (including, for example, the size and complexity of the matters being investigated), it is not possible to properly complete the investigation by the due day.
- (3) The due day for completing an investigation may be extended more than once under subsection (2) but each extension may not be more than 3 months.
- (4) The health ombudsman must keep a register, on a publicly accessible website of the health ombudsman, of investigations that have not been completed within 1 year after the decision to carry them out.
- (5) The register must list the following matters for each of the investigations—
- (a) the general nature of the matter being investigated;
  - (b) the day on which it was decided to carry out the investigation;

- (c) the current due day for completing the investigation;
  - (d) the reason for each extension of the due day.
- (6) The register must not include information that identifies a complainant, health service provider or individual to whom a health service was provided.
- (7) Also, despite subsection (5)(a), the register must not state anything about the nature of the matter being investigated if the health ombudsman considers that doing so may—
- (a) put at serious risk a person’s health or safety; or
  - (b) put a complainant or other person at risk of being harassed or intimidated; or
  - (c) prejudice an investigation or inquiry.
- (8) If an investigation is not completed within 2 years after the decision to carry it out—
- (a) the health ombudsman must give notices to the Minister and the parliamentary committee stating—
    - (i) details of the matter being investigated; and
    - (ii) why the investigation has not been completed; and
  - (b) without limiting section 179(1)(c), the parliamentary committee may review the health ombudsman’s performance of functions under this part in relation to the investigation.
- (9) This section does not apply to an investigation carried out in compliance with a direction by the Minister under section 81 if the direction includes a stated time by which the investigation must be completed.

## 86 Investigation reports

- (1) After completing an investigation, the health ombudsman may prepare a report on the investigation (an *investigation report*) containing information, comment or recommendations for action.

- (2) In preparing an investigation report, the health ombudsman may have regard to a prescribed conduct document under section 288.
- (3) The health ombudsman must not include in an investigation report any adverse comment about an entity identifiable from the report unless the entity has been given a copy of the comment and given a reasonable period of at least 28 days to make a submission about it.
- (4) If an entity makes a submission under subsection (3), the health ombudsman—
  - (a) must have regard to the submission before finalising the investigation report; and
  - (b) must not include the relevant comment in the report unless the health ombudsman also includes the entity's submission, or a fair summary of it, in the report.
- (5) If the health ombudsman proposes to recommend in an investigation report that a particular entity take particular action, the health ombudsman must consult with the entity about the recommendation before finalising the report.
- (6) Subsection (3) does not apply to—
  - (a) an investigation report that is not made publicly available and not given to any entity other than the Minister, the parliamentary committee, the National Agency, a National Board or a government entity; or
  - (b) an investigation report to the extent it is given to the director of proceedings or disclosed in a proceeding for a matter referred to QCAT.
- (7) Also, subsections (3) and (5) do not apply to the extent that the health ombudsman reasonably considers giving an entity a copy of comments or consulting with the entity about a matter would—
  - (a) put at serious risk a person's health or safety; or
  - (b) put a complainant or other person at risk of being harassed or intimidated; or



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- (c) prejudice an investigation or inquiry.

## **87 To whom investigation report is given**

- (1) If the health ombudsman decides to refer an investigated matter to the director of proceedings under part 10, division 2 for decision about whether to refer the matter to QCAT, the health ombudsman must not make the investigation report publicly available and may only give the report to an entity mentioned in section 86(6).
- (2) Otherwise, subject to section 88, the health ombudsman may—
- (a) make an investigation report publicly available; and
  - (b) give a copy of an investigation report to an entity the health ombudsman considers appropriate.

*Examples of entities to whom an investigation report may be given—*

- for an investigation of a matter arising from a health service complaint about a health service organisation—the complainant and relevant health service organisation
  - the parliamentary committee
  - the National Agency or a National Board
  - an entity with functions relevant to the matters raised in the report
- (3) Also, if an investigation was carried out in compliance with a direction by the Minister under section 81, or if the Minister asks for a copy, the health ombudsman must give a copy of the investigation report to the Minister.

## **88 Disclosure of investigation report containing confidential information**

- (1) For the purpose of section 272(3)—
- (a) section 87(2) authorises the disclosure of an investigation report containing confidential information identifying a person who is or was a health service provider; but

- (b) section 87(2) does not authorise the disclosure of an investigation report containing confidential information identifying a protected person other than a person who is or was a health service provider.
- (2) Subsection (1)(b) does not limit the extent to which an investigation report containing confidential information about a protected person may be disclosed under section 272(4) to (6).
- (3) In this section—  
*confidential information* see section 272(8).  
*protected person* means a person mentioned in section 272(8), definition *confidential information*, paragraph (b).

## 89 Implementation of recommendations and supplementary report

- (1) This section applies if an investigation report includes recommendations about a health service provider taking particular action.
- (2) When, or after, giving a copy of the investigation report to the health service provider under section 87, the health ombudsman may ask the health service provider to give to the health ombudsman, by a stated day (the *due day*), a report about any implementation of the recommendations.
- (3) The due day must be a reasonable period of at least 14 days after the request is made.
- (4) The health service provider must comply with the request unless the provider has a reasonable excuse.
- Maximum penalty—50 penalty units.
- (5) After having regard to any report received from the health service provider by the due day, the health ombudsman may prepare a supplementary report to the investigation report.
- (6) Sections 86(2) to (7), 87 and 88 apply to a supplementary report prepared under subsection (5) as if it were an investigation report.

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## 90 Notice of decision after investigating matter

After completing an investigation of a matter under this part, the health ombudsman must—

- (a) decide—
  - (i) to take particular relevant action to further deal with the matter; or
  - (ii) to take no further action in relation to the matter; and

*Note—*

See section 44 for the grounds on which the health ombudsman may decide to take no further action on a matter under this part.

- (b) give notice of the decision—
  - (i) if the investigation relates to a health service complaint—to the complainant and relevant health service provider under section 278; or
  - (ii) otherwise—to any health service provider being investigated.

## Part 8A Prohibition orders

### Division 1 Preliminary

#### 90A Application of part

This part does not apply to a person in the person's capacity as a registered health practitioner.

#### 90B Prohibition order

A *prohibition order* is an order issued to a health practitioner—

[s 90C]

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- (a) prohibiting the practitioner, either permanently or for a stated period, from providing any health service or a stated health service; or
- (b) imposing stated restrictions on the provision of any health service, or a stated health service, by the practitioner.

## **Division 2                    Issue of prohibition order**

### **90C    Power to issue order**

- (1) The health ombudsman may issue a prohibition order to a health practitioner (other than in the person's capacity as a registered health practitioner) if the health ombudsman—
  - (a) has completed an investigation under part 8 relating to the practitioner; and
  - (b) is satisfied that, because of the practitioner's health, conduct or performance, the practitioner poses a serious risk to persons.
- (2) Without limiting subsection (1)(b), the serious risk posed to a person by a health practitioner may be a serious risk of harm caused by the practitioner—
  - (a) practising the practitioner's profession unsafely, incompetently or while intoxicated by alcohol or drugs; or
  - (b) financially exploiting the person; or
  - (c) engaging in a sexual or improper personal relationship with the person; or
  - (d) discouraging the person from seeking clinically accepted care or treatment; or
  - (e) making false or misleading claims about the health benefits of a particular health service; or

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- (f) making false or misleading claims about the practitioner's qualifications, training, competence or professional affiliations.
  - (3) In deciding under subsection (1)(b) whether, because of a health practitioner's health, conduct or performance, the practitioner poses a serious risk to persons, the health ombudsman may have regard to a prescribed conduct document under section 288.

### **90D Show cause process**

- (1) If the health ombudsman proposes to issue a prohibition order to a health practitioner, the health ombudsman must give the practitioner a notice—
  - (a) stating the proposed order; and
  - (b) inviting the practitioner to make a written submission to the health ombudsman, within a stated period of at least 20 business days, about the proposed order.
- (2) The health ombudsman must have regard to any written submissions made by the practitioner within the stated period before deciding whether to issue the prohibition order.

### **90E Content of order**

A prohibition order—

- (a) must state the details of the order that apply to the health practitioner; and
- (b) must also state, or be accompanied by a notice that states, the following—
  - (i) the reasons for the decision to issue the order;
  - (ii) that the practitioner may apply to QCAT for a review of the decision to issue the order;
  - (iii) how, and the period within which, the practitioner may apply for the review of the decision.

### **90F Notice to complainant**

If a prohibition order was issued in response to a complaint, the health ombudsman must give the complainant a notice stating the details of the order that apply to the health practitioner.

### **90G When order takes effect**

A prohibition order takes effect on the day it is given to the health practitioner or, if a later day is stated in the order, the later day.

### **90H Prohibition order ends interim prohibition order**

If the health ombudsman issues a prohibition order to a health practitioner in relation to a health service complaint or other matter, any interim prohibition order issued to the practitioner in relation to that complaint or matter ends when the prohibition order takes effect.

## **Division 3 Variation or revocation of prohibition order**

### **90I Power to vary order on health ombudsman's own initiative**

The health ombudsman may, at any time after issuing a prohibition order to a health practitioner, vary the order if—

- (a) there has been a material change in relation to the matter giving rise to the issue of the order; and
- (b) the health ombudsman reasonably believes the change justifies varying the order; and
- (c) the variation is on the grounds mentioned in section 90C.

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**90J Power to vary order on application by health practitioner**

- (1) A health practitioner may apply to the health ombudsman to vary a prohibition order issued to the practitioner if there is a material change in relation to the matter giving rise to the issue of the order.
- (2) An application under subsection (1) must be—
  - (a) in the approved form; and
  - (b) accompanied by any other information reasonably required by the health ombudsman.
- (3) The health ombudsman must consider the application and decide—
  - (a) to vary the prohibition order in the way requested in the application; or
  - (b) to vary the prohibition order in a way different to the way requested in the application; or
  - (c) not to vary the prohibition order.
- (4) The health ombudsman may vary the prohibition order only if—
  - (a) there has been a material change in relation to the matter giving rise to the issue of the order; and
  - (b) the health ombudsman reasonably believes the change justifies varying the order; and
  - (c) the variation is on the grounds mentioned in section 90C.

**90K Show cause process**

- (1) This section applies if the health ombudsman proposes to do any of the following (each a *show cause decision*)—
  - (a) vary a prohibition order under section 90I;
  - (b) vary a prohibition order under section 90J in a way different to the way requested in the application under that section;

[s 90L]

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- (c) not to vary a prohibition order under section 90J in response to an application under that section.
- (2) Section 90D applies to the health ombudsman making the show cause decision—
  - (a) as if a reference in the section to the health ombudsman issuing a prohibition order were a reference to the health ombudsman making the show cause decision; and
  - (b) with any other necessary changes.

### **90L Effect of decision to vary and notice requirements**

- (1) If the health ombudsman varies a prohibition order issued to a health practitioner under this division—
  - (a) the health ombudsman must—
    - (i) give the practitioner a replacement prohibition order that reflects the variation; and
    - (ii) if the prohibition order was issued in response to a complaint, give the complainant a notice stating the details of the order, as varied, that apply to the practitioner; and
  - (b) the variation takes effect when the replacement prohibition order is given to the practitioner, or on a later day stated in the order; and
  - (c) the prohibition order as in effect before the variation ends when the variation takes effect.
- (2) If the health ombudsman makes a decision mentioned in section 90K(1)(a), (b) or (c), the health ombudsman must give the health practitioner a notice stating the following—
  - (a) the decision;
  - (b) the reasons for the decision;
  - (c) that the practitioner may apply to QCAT for a review of the decision;
  - (d) how, and the period within which, the practitioner may apply for the review of the decision.



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### **90M Revocation of order**

- (1) This section applies if, at any time after issuing a prohibition order to a health practitioner, the health ombudsman is satisfied the order is no longer necessary on the grounds mentioned in section 90C.
- (2) The health ombudsman must—
  - (a) revoke the order; and
  - (b) give notice of the revocation to the practitioner and, if the order was issued in response to a complaint, to the complainant.

## **Division 4 Other provisions**

### **90N Application to QCAT for review**

- (1) This section applies if the health ombudsman decides—
  - (a) to issue a prohibition order to a health practitioner; or
  - (b) to vary a prohibition order issued to a health practitioner under section 90I; or
  - (c) to vary a prohibition order issued to a health practitioner in a way different to the way requested in an application by the practitioner under section 90J; or
  - (d) not to vary a prohibition order issued to a health practitioner under section 90J in response to an application under that section.
- (2) The health practitioner may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

### **90O Corresponding interstate orders**

A regulation may prescribe an order to be a corresponding interstate order if the order—

- (a) is issued under a law of another State; and

- (b) corresponds, or substantially corresponds, to a prohibition order under this part.

### **90P Offence of contravening prohibition order**

A person must not contravene a prohibition order or corresponding interstate order.

Maximum penalty—200 penalty units.

### **90Q Publication of prohibition orders**

- (1) The health ombudsman must publish, on a publicly accessible website of the health ombudsman, the following information about each current prohibition order—
  - (a) the name of the health practitioner to whom the order was issued;
  - (b) the day the order took effect;
  - (c) the details of the order mentioned in section 90B(a) or (b) that apply to the practitioner;
  - (d) the details of any variation of the order under division 3.
- (2) The health ombudsman must also publish, on a publicly accessible website of the health ombudsman, information about corresponding interstate orders of which the health ombudsman is aware that corresponds to the information mentioned in subsection (1)(a) to (d).
- (3) The information may also be published to the public in another way the health ombudsman considers appropriate.
- (4) This section applies subject to any non-publication order under the QCAT Act or court order about publication of information.
- (5) The health ombudsman must not publish information that the health ombudsman considers it would be inappropriate to publish.

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## **Part 9                      Referral to National Agency or    other entity**

### **Division 1                      Referral to National Agency**

#### **91            Application of division**

This division applies to a health service complaint or other matter concerning a registered health practitioner.

#### **91A        General power to refer complaint or matter**

The health ombudsman may refer the health service complaint or other matter to the National Agency.

#### **91B        Requirement to refer complaint or matter indicating impairment**

The health ombudsman must refer the health service complaint or other matter to the National Agency if it indicates the health practitioner has or may have an impairment.

#### **91C        Complaint or matter indicating serious matter must not be referred**

- (1) The health ombudsman must not refer the health service complaint or other matter to the National Agency if it relates to, or is, a matter (a *serious matter*)—
  - (a) that indicates either or both of the following—
    - (i) the registered health practitioner may have behaved in a way that constitutes professional misconduct;
    - (ii) another ground may exist for the suspension or cancellation of the registered health practitioner's registration; and

[s 91D]

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- (b) that the health ombudsman is satisfied should be dealt with by the health ombudsman.

*Note—*

A health service complaint or other matter indicating a matter mentioned in subsection (1)(a) may be referred to the director of proceedings who may refer it to QCAT on the health ombudsman's behalf under section 103.

- (2) In deciding whether to be satisfied as mentioned in subsection (1)(b), the health ombudsman must have regard to—
  - (a) whether the registered health practitioner's behaviour is of such a serious nature that it may only be appropriately dealt with by the health ombudsman; and
  - (b) whether the matter involves a significant issue for the health and safety of the public.

## **91D Dealing with complaint indicating impairment matter and serious matter**

- (1) This section applies if a health service complaint indicates both of the following—
  - (a) a matter that must be referred to the National Agency under section 91B (an *impairment matter*);
  - (b) a matter that must not be referred to the National Agency under section 91C (a *serious matter*).
- (2) The health ombudsman—
  - (a) must deal with the impairment matter and serious matter separately under section 41; and
  - (b) must refer the impairment matter to the National Agency under section 91B; and
  - (c) must not refer the serious matter to the National Agency under section 91C.

## **91E Form of referral**

- (1) If the health ombudsman refers a health service complaint or other matter to the National Agency under this division, the health ombudsman must give the National Agency all relevant information the health ombudsman has about the complaint or other matter, including, for a health service complaint—
  - (a) details of the complaint, the complainant and the relevant health service provider; and
  - (b) if the health ombudsman intends to start or continue conciliating the complaint while or after the National Agency or a National Board deals with it—notice of that intention.
- (2) In this section—

*information* includes a submission.

## **Division 2 Referral to other entities**

### **92 Referral to other government entities**

- (1) The health ombudsman may refer a health service complaint or other matter to an entity of the State, another State or the Commonwealth with functions that include dealing with the matter.
- (2) The health ombudsman may refer a matter concerning a registered health practitioner to the co-regulatory authority for a co-regulatory jurisdiction if—
  - (a) the matter happened in the co-regulatory jurisdiction; or
  - (b) the practitioner's principal place of practice is in the co-regulatory jurisdiction.
- (3) The health ombudsman must consult with the entity about the proposed referral before referring the matter.

### **93 Reports from State entities**

- (1) This section applies if, under section 92, a matter is referred to an entity of the State.
- (2) The entity may, on its own initiative or if asked by the health ombudsman, give the health ombudsman reports about the progress and results of the action taken by the entity about the matter.
- (3) As soon as practicable and within 28 days after ceasing to deal with the matter, the entity must give the health ombudsman a written report of the results of the action taken about the matter.

## **Part 10 QCAT**

### **Division 1 General**

#### **94 QCAT's jurisdiction**

- (1) QCAT has jurisdiction—
  - (a) to review a decision by the health ombudsman—
    - (i) to take immediate registration action in relation to a registered health practitioner; or
    - (ii) to issue an interim prohibition order to a health practitioner; or
    - (iii) not to vary an immediate registration action in relation to a registered health practitioner; or
    - (iv) not to vary an interim prohibition order issued to a health practitioner; or
    - (v) to issue a prohibition order to a health practitioner; or
    - (vi) to vary a prohibition order issued to a health practitioner on the health ombudsman's own initiative; or

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- (vii) to vary a prohibition order issued to a health practitioner in a way different to the way requested in an application by the practitioner; or
  - (viii) not to vary a prohibition order issued to a health practitioner in response to an application by the practitioner; and
  - (b) to hear a matter concerning a registered health practitioner referred to QCAT by the director of proceedings on the health ombudsman's behalf under section 103; and
  - (c) to hear an application under section 110 to change or remove a condition imposed by QCAT on a registered health practitioner's registration.
- (2) Also, under the National Law, QCAT is given jurisdiction to—
- (a) hear a matter referred to QCAT by a National Board under the National Law, section 193B; and
  - (b) review an appellable decision under the National Law, section 199.

*Note—*

The National Law, section 199 refers to an appeal to QCAT against an appellable decision. This is taken to be a reference to a review of the decision as provided under the QCAT Act. See the *Health Practitioner Regulation National Law Act 2009*, section 9.

- (3) For the QCAT Act, this Act is taken to be an enabling Act that confers the jurisdiction mentioned in subsection (2) on QCAT.
- (4) Subsection (3) applies even though it is the National Law that confers the jurisdiction on QCAT and, on that basis, is also an enabling Act for the QCAT Act.

*Note—*

The QCAT Act, sections 6 and 7 include provision about the relationship between that Act and an enabling Act.

- (5) QCAT is to exercise its review jurisdiction to review a decision as mentioned in subsection (1)(a) or (2)(b).

- (6) QCAT is to exercise its original jurisdiction to hear and decide any other matter mentioned in this section.

## **95 Notices to be given to complainant**

- (1) For a matter before QCAT arising from a health service complaint—
- (a) the complainant is a person to whom notice must be given under a QCAT notice provision; but
  - (b) a requirement under a QCAT notice provision for the relevant health practitioner to give a notice to the complainant is taken to be a requirement that the health ombudsman or a National Board (whichever is a party to the proceeding) give the notice to the complainant.
- (2) In this section—

*QCAT notice provision* means the QCAT Act, section 37(2)(b), 92(b), 121(1)(b) or 138(3)(b).

## **96 Orders that QCAT may make**

- (1) Division 3 provides for the orders that QCAT may make after hearing—
- (a) a matter relating to a registered health practitioner that was referred to QCAT by the director of proceedings on the health ombudsman's behalf under section 103; or
  - (b) an application under section 110 to change or remove a condition imposed by QCAT on a registered health practitioner's registration.
- (2) The National Law, part 8, division 12 provides for the orders that QCAT may make after hearing a matter referred to QCAT by a National Board under the National Law, section 193B.
- (3) The QCAT Act provides for the orders that QCAT may make when exercising its review jurisdiction.



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## 97 Constitution of QCAT

- (1) For a disciplinary proceeding, QCAT must be constituted by 1 judicial member.

*Note—*

Division 6 provides for QCAT to be assisted by assessors.

- (2) Subsection (1) does not apply to a proceeding for—
- (a) the review of a decision by the health ombudsman mentioned in section 94(1)(a) relating to an interim prohibition order or prohibition order; or
  - (b) the review of an appealable decision under the National Law, section 199 relating to a decision made under the National Law, part 7.
- (3) In this section—
- judicial member* see the QCAT Act, schedule 3.

## 98 Particular hearings to be held in private

- (1) A hearing for an impairment matter relating to a health practitioner is not open to the public unless—
- (a) QCAT reasonably believes it is in the public interest for it to be open to the public; or
  - (b) the practitioner asks for it to be open to the public.

- (2) In this section—

*impairment matter*, in relation to a health practitioner, means—

- (a) a matter referred to QCAT by the director of proceedings or a National Board on the ground that the practitioner has or may have an impairment; or
- (b) the review of a decision under the National Law, section 199, if the decision was or appears to have been made only on the ground that the practitioner had or may have had an impairment; or

- (c) an application under section 110 to change or remove a condition imposed on a registered health practitioner's registration, if the condition was or appears to have been imposed only on the ground that the practitioner had or may have had an impairment.

## **99 QCAT may exclude witnesses from hearing**

- (1) This section applies if—
  - (a) a complainant or other witness is to give evidence to QCAT in a disciplinary proceeding; and
  - (b) QCAT reasonably believes the attendance of the complainant or witness before giving evidence would seriously prejudice the fairness of the hearing.
- (2) QCAT may direct that the complainant or other witness be excluded from a part or all of the hearing until the complainant or witness gives evidence.

## **100 No stay of particular decisions**

- (1) This section applies if a health practitioner applies for a review of—
  - (a) a decision of the health ombudsman to take immediate action under part 7; or
  - (b) a decision of a National Board to take immediate action under the National Law, part 8, division 7; or
  - (c) a decision of the health ombudsman to issue a prohibition order under part 8A.
- (2) QCAT must not grant a stay of the decision.

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## **Division 2                      Director of proceedings**

### **101      Application of div 2**

This division applies if the health ombudsman decides to refer a complaint or other matter concerning a registered health practitioner to the director of proceedings.

### **102      Information to be given with referral**

When referring the matter, the health ombudsman must give the director all the relevant information that the health ombudsman has about the matter.

### **103      How director must deal with referral**

- (1) The director must—
  - (a) refer the matter, as provided under the QCAT Act, to QCAT on behalf of the health ombudsman; or
  - (b) refer the matter back to the health ombudsman to deal with under section 105.
- (2) If the director refers the matter back to the health ombudsman, the director may—
  - (a) recommend that particular further action be taken by the health ombudsman; or
  - (b) request that the health ombudsman obtain stated information or information of a stated kind under this Act.

*Example—*

The director may be unable to decide if a matter should be referred to QCAT or may consider that further evidence is needed to conduct a proceeding for the matter before QCAT. The director may refer the matter back to the health ombudsman with a recommendation that the health ombudsman further investigate the matter under part 8. Alternatively, the director may request that the health ombudsman obtain particular information.

- (3) In deciding whether to refer the matter to QCAT, the director must have regard to—
  - (a) the paramount guiding principle; and
  - (b) the seriousness of the matter; and
  - (c) the likelihood of proving relevant matters before QCAT; and
  - (d) the orders that QCAT may make; and
  - (e) anything else the director considers relevant.
- (4) Before deciding whether to refer the matter to QCAT, the director may consult with the relevant National Board.
- (5) The director must refer the matter to QCAT if it is a matter that, under the National Law, the health ombudsman is required to refer to QCAT.

#### **104 Referral to QCAT**

- (1) If the director decides to refer the matter to QCAT on behalf of the health ombudsman, QCAT may exercise its original jurisdiction under the QCAT Act to hear and decide the matter.
- (2) If the matter relates to a health service complaint, the referral must include the details of the complainant.

#### **105 Referral back to health ombudsman**

- (1) If the director refers the matter back to the health ombudsman, the health ombudsman must—
  - (a) decide—
    - (i) to take particular relevant action to further deal with the matter; or
    - (ii) to take no further action in relation to the matter; and

*Note—*

See section 44 for the grounds on which the health ombudsman may decide to take no further action on a matter.

- (b) give notice of the decision—
  - (i) if the matter is a complaint—to the complainant and relevant health service provider under section 278; or
  - (ii) otherwise—to any health service provider to whom the matter relates.
- (2) However, if the referral requests that the health ombudsman obtain stated information or information of a stated kind, the health ombudsman must—
  - (a) obtain the stated information or information of the stated kind; and
  - (b) refer the matter back to the director to deal with under section 103 on the basis of the information.

## **Division 3                      Action QCAT may take**

### **106      Application of div 3**

This division applies in relation to a matter concerning a registered health practitioner.

### **107      Decision about registered health practitioner other than student**

- (1) This section applies in relation to a matter concerning a registered health practitioner, other than a student, referred to QCAT by the director of proceedings under section 103.
- (2) After hearing the matter, QCAT may decide—
  - (a) the practitioner has no case to answer and no further action is to be taken in relation to the matter; or

- (b) one or more of the following—
  - (i) the practitioner has behaved in a way that constitutes unsatisfactory professional performance;
  - (ii) the practitioner has behaved in a way that constitutes unprofessional conduct;
  - (iii) the practitioner has behaved in a way that constitutes professional misconduct;
  - (iv) the practitioner has an impairment;
  - (v) the registration was improperly obtained because the practitioner or someone else gave the relevant National Board information or a document that was false or misleading in a material particular.
- (3) If QCAT makes a decision referred to in subsection (2)(b), it may decide to do one or more of the following—
  - (a) caution or reprimand the practitioner;
  - (b) impose a condition on the practitioner's registration, including, for example—
    - (i) a condition requiring the practitioner to complete specified further education or training, or to undergo counselling, within a specified period; or
    - (ii) a condition requiring the practitioner to undertake a specified period of supervised practice; or
    - (iii) a condition requiring the practitioner to do, or refrain from doing, something in connection with the practitioner's practice; or
    - (iv) a condition requiring the practitioner to manage the practitioner's practice in a specified way; or
    - (v) a condition requiring the practitioner to report to a specified person at specified times about the practitioner's practice; or

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- (vi) a condition requiring the practitioner not to employ, engage or recommend a specified person or class of persons;
  - (c) require the practitioner to pay a fine of not more than \$30,000 to the health ombudsman;
  - (d) suspend the practitioner's registration for a specified period;
  - (e) cancel the practitioner's registration.
- (4) If QCAT decides to cancel the practitioner's registration or the practitioner does not hold registration, QCAT may also decide to—
- (a) disqualify the practitioner from applying for registration as a registered health practitioner indefinitely or for a specified period; or
  - (b) prohibit the practitioner, either permanently or for a stated period, from—
    - (i) providing any health service or a specified health service; or
    - (ii) using any title or a specified title.

*Notes—*

- 1 Sections 21 and 22 provide for the application of this Act to a person as if the person were a registered health practitioner.
- 2 The National Law, section 205 provides for the relevant National Board to give effect to QCAT's decision.

## **108 Decision about student**

- (1) This section applies in relation to a matter concerning a registered health practitioner who is a student that is referred to QCAT by the director of proceedings under section 103.
- (2) After hearing the matter, QCAT may decide—
  - (a) the student has an impairment; or
  - (b) the student has no case to answer and no further action is to be taken in relation to the matter.

- (3) If QCAT decides the student has an impairment, it may decide to—
  - (a) impose a condition on the student’s registration; or
  - (b) suspend the student’s registration.

*Note—*

The National Law, section 205 provides for the relevant National Board to give effect to QCAT’s decision.

## **109 Review of conditions**

- (1) This section applies if, under section 107(3)(b) or 108(3)(a), QCAT decides to impose a condition on a registered health practitioner’s registration.
- (2) QCAT must also decide if the National Law, part 7, division 11, subdivision 2 applies to the condition.

*Note—*

See the National Law, sections 125(2)(b), 126(3)(b) and 127(3)(b).

- (3) If QCAT decides that subdivision does apply to the condition, QCAT must decide a review period for the condition for the purpose of applying that subdivision.
- (4) If QCAT decides that subdivision does not apply to the condition—
  - (a) QCAT must decide a period during which the condition may not be changed or removed under this part; and
  - (b) the practitioner may apply to QCAT under section 110 to change or remove the condition.

## **110 Application to QCAT for review of condition**

- (1) This section applies if, under section 109(4)(b), a registered health practitioner may apply to QCAT to change or remove a condition imposed on the practitioner’s registration.
- (2) The practitioner may make the application at any time after the end of the period decided under section 109(4)(a).



- (3) The application must—
  - (a) be made as provided under the QCAT Act; and
  - (b) state—
    - (i) that the practitioner believes the condition is no longer appropriate; and
    - (ii) the reasons for the belief.
- (4) QCAT must decide the application by—
  - (a) changing the condition; or
  - (b) removing the condition; or
  - (c) refusing to change or remove the condition.

### **111 Further review of condition**

- (1) This section applies if, under section 110, QCAT decides an application other than by removing a condition.
- (2) Sections 109 and 110 apply in relation to the condition as if a reference in section 109 to QCAT imposing a condition were a reference to QCAT making the decision mentioned in subsection (1).

## **Division 5 Appointment of assessors**

### **117 Panels of assessors**

There is to be—

- (a) a public panel of assessors; and
- (b) the following professional panels of assessors—
  - (i) an Aboriginal and Torres Strait Islander health practitioners panel of assessors;
  - (ii) a Chinese medicine practitioners panel of assessors;
  - (iii) a chiropractors panel of assessors;

- (iv) a dental hygienists, dental therapists and oral health therapists panel of assessors;
- (v) a dental prosthetists panel of assessors;
- (vi) a dentists panel of assessors;
- (vii) a medical practitioners panel of assessors;
- (viii) a medical radiation practitioners panel of assessors;
- (ix) a midwifery panel of assessors;
- (x) a nursing panel of assessors;
- (xi) an occupational therapists panel of assessors;
- (xii) an optometrists panel of assessors;
- (xiii) an osteopaths panel of assessors;
- (xiv) a paramedics panel of assessors;
- (xv) a pharmacists panel of assessors;
- (xvi) a physiotherapists panel of assessors;
- (xvii) a podiatrists panel of assessors;
- (xviii) a psychologists panel of assessors.

### **118 Appointment of individuals to panels of assessors**

- (1) The Governor in Council may, by gazette notice, appoint an individual as a member of the public panel of assessors or a professional panel of assessors.
- (2) Each panel of assessors must consist of the number of members decided by the Minister for the panel having regard to—
  - (a) the likely demand for members to assist the tribunal; and
  - (b) for a professional panel of assessors—the diversity of the profession.
- (3) An individual is qualified to be recommended by the Minister for appointment as a member of the public panel of assessors

only if the Minister is satisfied the person has sufficient experience, knowledge, skills and standing in the community having regard to the functions of assessors.

- (4) An individual is qualified to be recommended by the Minister for appointment as a member of a professional panel of assessors only if—
  - (a) the individual is registered with the National Board for the profession for which the panel is established; and
  - (b) the Minister is satisfied the individual has sufficient experience, knowledge, skills and standing in the profession having regard to the functions of assessors.

### **118A Temporary appointment to public panel of assessors**

- (1) This section applies if the Minister reasonably believes it is necessary to urgently appoint an individual as a member of the public panel of assessors because the principal registrar has advised the Minister that—
  - (a) none of the panel members will be available for the hearing of a disciplinary proceeding; or
  - (b) a panel member of a particular gender is required under section 130 for a hearing of a disciplinary proceeding and—
    - (i) none of the panel members are of that gender; or
    - (ii) the panel members of that gender will not be available to hear the matter.
- (2) Despite section 118(1), the Minister may appoint an individual to the public panel of assessors for a period of not more than 6 months.
- (3) An individual is qualified for appointment to the panel under this section only if the individual is qualified for appointment to the panel under section 118(3).
- (4) As soon as practicable after making the appointment, the Minister must publish notice of the appointment in the gazette.

## **119 Temporary appointment to professional panel of assessors**

- (1) This section applies if the Minister reasonably believes that it is necessary to urgently appoint an individual as a member of a professional panel of assessors because—
  - (a) the principal registrar considers a disciplinary proceeding is likely to raise issues of a specialist or technical nature, whether on the basis of advice received under section 131 or otherwise; and
  - (b) the principal registrar has advised the Minister that—
    - (i) none of the panel members has the desirable professional background or skills; or
    - (ii) panel members who do have the desirable professional background or skills will not be available to hear the matter.
- (2) Despite section 118(1), the Minister may appoint an individual to a professional panel of assessors for a period of not more than 6 months.
- (3) An individual is qualified for appointment to a panel under this section only if the individual is qualified for appointment to the panel under section 118(4).
- (4) As soon as practicable after making the appointment, the Minister must publish notice of the appointment in the gazette.

## **120 Disqualification from membership of panel of assessors**

An individual must not be appointed as, or continue as, a member of a panel of assessors if—

- (a) for the public panel of assessors—
  - (i) the individual is a member of a National Board; or
  - (ii) the individual is, or has been, a health practitioner;  
or

- 
- (iii) the individual is, or has been, registered as a health practitioner under a law of a foreign country or a former law of a State that corresponds to the National Law; or
  - (b) for a professional panel of assessors—
    - (i) the individual is a member of a National Board; or
    - (ii) the individual is a registered health practitioner—
      - (A) whose registration ceases to have effect; or
      - (B) whose registration is subject to conditions that limit the practitioner’s right to practise the profession; or
      - (C) who has entered into an undertaking with the relevant National Board.

## **121 Procedure for recommending members of panels of assessors**

- (1) Before recommending individuals as members of the public panel of assessors, the Minister must—
  - (a) invite nominations from community groups and other entities that the Minister considers have an interest in consumer health issues; and
  - (b) by placing press or on-line advertisements throughout the State, invite members of the public to nominate individuals who are qualified as mentioned in section 118(3) and not disqualified under section 120(a).
- (2) Before recommending individuals as members of a professional panel of assessors, the Minister must invite nominations from—
  - (a) the National Board for the profession for which the panel is established; and
  - (b) universities and training institutions that—
    - (i) are established in Queensland; and

- (ii) are engaged in the education of students for the profession for which the panel is established; and
  - (c) professional colleges established in Australia that the Minister considers are relevant to the profession for which the panel is established; and
  - (d) professional associations that the Minister considers are representative of the profession for which the panel is established; and
  - (e) persons who are qualified as mentioned in section 118(4) and not disqualified under section 120(b).
- (3) The invitation in subsection (2)(e) must be made by placing press or on-line advertisements throughout the State.

## **122 Duration of appointment**

A member of a panel of assessors may be appointed for a term not longer than 5 years.

*Note—*

See also sections 118A(2) and 119(2) for a member of a panel appointed under those sections.

## **123 Conditions of appointment**

A member of a panel of assessors holds office on the conditions provided in this Act and the other conditions decided by the Governor in Council.

## **124 Vacation of office**

- (1) A member of a panel of assessors vacates the member's office if—
- (a) the member can not continue as a member under section 120; or
  - (b) the member resigns by signed notice of resignation given to the Minister; or

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- (c) the Governor in Council, by notice given to the member, removes the member from the panel.
- (2) The Governor in Council may remove a member from a panel if the member is—
- (a) incapable of properly performing the functions of an assessor; or
  - (b) unfit to be a member of a panel.

*Example of circumstances when member may be unfit to be a member of a panel—*

A member of a professional panel of assessors may be considered to be unfit to hold office as a member if disciplinary action is taken against the member under this Act.

## **125 Payment of assessors**

An assessor assisting QCAT in a hearing of a disciplinary proceeding is entitled to be paid the remuneration and allowances decided by the Governor in Council.

## **Division 6 QCAT to be assisted by assessors**

### **126 Tribunal to be assisted by assessors**

- (1) In conducting a hearing of a disciplinary proceeding relating to a registered health practitioner, the tribunal must be assisted by—
  - (a) 1 assessor chosen by the principal registrar from the public panel of assessors; and
  - (b) 2 assessors chosen by the principal registrar from—
    - (i) the professional panel of assessors for the practitioner’s profession; or
    - (ii) if the practitioner is registered in more than 1 profession—the panel of assessors for the profession to which the disciplinary proceeding relates.

- (2) Despite subsection (1), QCAT may conduct a hearing of a disciplinary proceeding without the assistance of assessors if QCAT is satisfied it is necessary because of the urgency of the matter.

## **127 Assessors' function**

- (1) The function of an assessor in a hearing of a disciplinary proceeding is to sit with the tribunal and advise the tribunal about questions of fact.
- (2) To enable an assessor to perform the assessor's function, the assessor may, during the hearing—
  - (a) ask questions of a witness before the tribunal; and
  - (b) discuss any question of fact with a lawyer or other person appearing for a party at the hearing.

## **128 Choosing assessors generally**

- (1) As soon as practicable after the relevant document for a disciplinary proceeding is filed in the QCAT registry, the principal registrar must choose assessors to assist the tribunal in a hearing of the proceeding.
- (2) In this section—

*QCAT registry* means the registry under the QCAT Act.

*relevant document*, for a disciplinary proceeding, means the application under the QCAT Act, section 33 or referral under the QCAT Act, section 34 (whichever is relevant).

## **129 Particular persons not eligible to be assessor in a disciplinary proceeding**

A person is not eligible to be an assessor for a hearing of a disciplinary proceeding if the person was a member of a national panel that made a decision about a matter to which the disciplinary proceeding relates.



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### **130 Requirement about gender balance**

- (1) This section applies if—
  - (a) a disciplinary proceeding before the tribunal relates to a health service complaint concerning the provision of a health service to a particular person; and
  - (b) the member constituting the tribunal for the proceeding is not the same gender as the person to whom the health service was provided.
- (2) In choosing assessors to assist the tribunal in the hearing of the disciplinary proceeding, the principal registrar must ensure at least 1 of the assessors is the same gender as the person to whom the health service was provided.

### **131 Choosing assessors if specialist and technical issues involved**

- (1) This section applies when a matter is referred to QCAT by the director of proceedings on the health ombudsman's behalf under section 103 or by a National Board under the National Law, section 193B.
- (2) The director or board must—
  - (a) advise the principal registrar whether the matter is likely to raise issues of a specialist or technical nature; and
  - (b) if the matter is likely to raise issues of a specialist or technical nature, advise the principal registrar of the desirable professional background or skills of the assessors to be chosen from the professional panel of assessors.
- (3) The principal registrar must have regard to the director's or board's advice under subsection (2) when choosing the assessors to assist the tribunal in the hearing of the disciplinary proceeding for the matter.

### **132 Disclosure of interests**

- (1) This section applies if an assessor who is to help the tribunal in a particular disciplinary proceeding has or acquires an interest, financial or otherwise, that may conflict with the proper performance of the assessor's functions.
- (2) The assessor must—
  - (a) disclose the nature of the interest to the president of the tribunal; and
  - (b) not take part in the proceeding or exercise powers for it, unless all parties to the proceeding and the president agree otherwise.

### **133 Costs for assessors**

Without limiting the National Law, section 210(1), QCAT's costs of obtaining assistance from assessors in a disciplinary proceeding are payable from the Agency Fund.

## **Part 11 Conciliation**

### **134 Application of pt 11**

This part applies if the health ombudsman decides to conciliate a health service complaint under this part.

### **135 Purpose of conciliation**

The purpose of conciliating the health service complaint under this part is to facilitate the parties to—

- (a) settle the complaint in a reasonable way; and
- (b) if appropriate, enter into a contract to give effect to the terms of the settlement.

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**136 Conciliator’s function exclusive**

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

**137 Person not to conciliate and investigate same health service complaint**

A person must not be involved in conciliating the health service complaint if the person has been involved in investigating a matter arising from the complaint.

**138 Conciliation function**

- (1) The health ombudsman may assign 1 or more conciliators to conciliate the health service complaint.
- (2) The function of a conciliator assigned to the complaint is to encourage settlement of the complaint by—
  - (a) arranging negotiations between the complainant and relevant health service provider; and
  - (b) assisting in the conduct of the negotiations; and
  - (c) assisting the complainant and relevant health service provider to reach agreement; and
  - (d) assisting in the resolution of the complaint in any other way.

**139 Requirement to negotiate in good faith**

- (1) During conciliation of the health service complaint, the complainant and relevant health service provider must negotiate in good faith.

*Examples of good faith in negotiating—*

- agreeing to meet at reasonable times proposed by another party
- attending meetings that the party had agreed to attend
- complying with negotiation procedures agreed to by the parties
- not capriciously adding or withdrawing items for negotiation

- disclosing relevant information as appropriate for the negotiations
  - taking part for the purpose of resolving the complaint rather than to gain some other benefit (for example, to obtain information for another purpose)
- (2) The health ombudsman may consider the extent of compliance with subsection (1) when deciding whether to end the conciliation and what other relevant action (if any) to take in relation to the complaint.

#### **140 When conciliation may happen if particular other relevant action is taken**

- (1) This section provides for when conciliation may start if the health ombudsman decides to take particular other relevant action to deal with the complaint.
- (2) If the health ombudsman takes immediate action under part 7, conciliation must not start until—
- (a) the immediate action ends under section 62 or 73; or
  - (b) the time that conciliation may start under subsection (3) to (5), whichever is relevant to the action taken by the health ombudsman after taking the immediate action.
- (3) If the health ombudsman starts an investigation of a matter arising from the health service complaint under part 8, the ombudsman must not start conciliation of the complaint until the investigation has been completed and an investigation report has been prepared.
- (4) If the health ombudsman refers the matter to the National Agency or an entity of the State, another State or the Commonwealth under part 9, conciliation must not start until the National Agency or other entity has finished dealing with the matter.
- (5) If the health ombudsman refers the complaint to the director of proceedings under part 10, division 2, the ombudsman must not start conciliation of the complaint until—
- (a) the matter of the complaint has been referred to QCAT and QCAT has decided the matter; or

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- (b) the director of proceedings has referred the complaint back to the health ombudsman to deal with under section 105.
- (6) However, despite subsections (2) to (5), the health ombudsman may start conciliation of the complaint at any time if—
- (a) the relevant health service provider has agreed to conciliation only for the purpose of arranging a financial settlement or other compensation with the complainant; and
  - (b) the health ombudsman is satisfied the conciliation will not compromise or interfere with the other action being taken by the health ombudsman or another entity to deal with the complaint.
- (7) If the health ombudsman takes relevant action mentioned in subsection (2) to (5) and also starts conciliation under subsection (6), the health ombudsman must advise the conciliator of the relevant action being taken.

#### **141 Conciliator to notify the health ombudsman of public interest issues**

- (1) If, after conciliation starts, the conciliator identifies an issue that the conciliator considers involves the public interest, the conciliator must inform the health ombudsman of the issue as soon as is practicable.
- (2) Without limiting the issues to which subsection (1) may apply, it is an issue involving the public interest if a ground exists for a National Board to take health, conduct or performance action against a registered health practitioner.

#### **142 Ending or suspending conciliation to take other relevant action**

- (1) This section applies if, after conciliation starts, the health ombudsman decides to take other relevant action mentioned in section 140(2) to (5), including (for example) action taken in

response to information provided by the conciliator under section 141.

- (2) The health ombudsman must—
  - (a) give notice of the other relevant action being taken to the complainant and relevant health service provider under section 278; and
  - (b) notify the conciliator of the other relevant action being taken and—
    - (i) direct the conciliator to end the conciliation; or
    - (ii) direct the conciliator to suspend the conciliation.
- (3) If conciliation is suspended, section 140(2) to (5) applies as if a reference in the subsections to starting conciliation were a reference to resuming conciliation.
- (4) Despite subsection (2), the health ombudsman may, in the circumstances mentioned in section 140(6), continue the conciliation for the purpose mentioned in section 140(6)(a).

#### **143 Explanation to parties about public interest issues and possible ending or suspension of conciliation**

At the start of conciliation, the conciliator must explain to the complainant and relevant health service provider—

- (a) the obligation applying to the conciliator under section 141; and
- (b) the effect of section 142.

#### **144 Progress reports from conciliator**

On request by the health ombudsman, the conciliator must give the health ombudsman a written progress report about the conciliation.

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## **145 Results report from conciliator**

- (1) At the end of conciliation of the health service complaint, the conciliator must give a written report of the results of the conciliation to the health ombudsman.
- (2) The report must include the details of any agreement reached.
- (3) If agreement was not reached, the report may include a recommendation about the action the health ombudsman should take under section 147.
- (4) When, or as soon as practicable after, the conciliator gives the report to the health ombudsman, the conciliator must give copies of the report to the complainant and relevant health service provider.

## **146 Enforceable agreement**

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

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

On receiving a report under section 145 that agreement was not reached in the conciliation of the health service complaint, the health ombudsman must—

- (a) decide—
  - (i) to take particular relevant action to further deal with the complaint; or
  - (ii) to take no further action in relation to the complaint; and

*Note—*

See section 44 for the grounds on which the health ombudsman may decide to take no further action on a complaint.

- (b) give notice of the decision to the complainant and relevant health service provider under section 278.

## **148 Ending conciliation**

- (1) The health ombudsman must end the conciliation of the health service complaint if—
    - (a) the health ombudsman considers the complaint can not be resolved by conciliation; or
    - (b) the Minister directs the health ombudsman under section 81 to investigate the complaint or under section 152 to conduct an inquiry in relation to the complaint.
  - (2) The health ombudsman may end the conciliation if the health ombudsman believes a party is not negotiating in good faith as required under section 139.
  - (3) Section 142(2)(b)(i) also provides for when the health ombudsman must end the conciliation.
  - (4) If the health ombudsman ends the conciliation, the health ombudsman must—
    - (a) if subsection (1)(b) applies, comply with the Minister’s direction; or
    - (b) otherwise, decide—
      - (i) to take particular relevant action to further deal with the complaint; or
      - (ii) to take no further action in relation to the complaint.
- Note—*
- See section 44 for the grounds on which the health ombudsman may decide to take no further action on a complaint.
- (5) The health ombudsman must give notice of a decision under subsection (4) to the complainant and relevant health service provider under section 278.



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## 149 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 health ombudsman as a ground for an investigation or inquiry or as evidence in an investigation or inquiry; and
  - (c) can not be used by the National Agency or a National Board for the purpose of taking health, conduct or performance action under the National Law.
- (3) For example, anything said or admitted during a conciliation can not be admitted in a proceeding to enforce a contract mentioned in section 146.
- (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 use; or
  - (b) the document or copy, if the person who prepared the document and all persons named in the document consent to its admission or use.

## 150 Confidentiality of information relating to conciliation

- (1) A conciliator must not disclose to another person—
  - (a) anything said or admitted during a conciliation (*restricted information*); or
  - (b) a document prepared for, or in the course of, a conciliation (a *restricted document*).

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a disclosure of restricted information or a restricted document—
  - (a) to the health ombudsman, in the giving of information or a report under section 141, 144 or 145; or
  - (b) to a staff member of the Office of the Health Ombudsman giving administrative support to a conciliator.
- (3) A person to whom a conciliator discloses restricted information or a restricted document under subsection (2) must not disclose it to another person.

Maximum penalty—100 penalty units.

- (4) Subsections (1) and (3) do not apply to a disclosure of restricted information or a restricted document that does not identify a party to the conciliation.
- (5) A reference in this section to *disclosing* a document is a reference to giving, or allowing access to, the document or a copy of the document.

## Part 12 Inquiries

### 151 Health ombudsman may conduct inquiry

The health ombudsman may conduct an inquiry into any of the following if the health ombudsman considers it would be in the public interest to do so—

- (a) a matter to which a health service complaint relates;
- (b) a systemic issue relating to the provision of a health service;
- (c) another matter that the health ombudsman considers is relevant to achieving an object of this Act.

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**152 Minister may direct health ombudsman to conduct inquiry**

- (1) The Minister may, by notice, direct the health ombudsman to conduct an inquiry into a stated matter relating to the provision of health services.
- (2) The direction may include—
  - (a) terms of reference for the inquiry; and
  - (b) a person to be appointed as an inquiry member for the inquiry; and
  - (c) a stated reasonable period within which the inquiry must be completed.
- (3) The health ombudsman must comply with the request.
- (4) The Minister may change the terms of reference at any time before the inquiry is completed.

**153 Persons conducting or assisting inquiry**

- (1) With the Minister's approval, the health ombudsman may appoint an appropriately qualified person as an inquiry member to conduct a particular inquiry with the health ombudsman.
- (2) If the health ombudsman appoints 1 or more inquiry members for an inquiry, the health ombudsman is to preside at each hearing held for the inquiry.
- (3) The health ombudsman may also engage a lawyer or other appropriately qualified person to help with the conduct of a particular inquiry.

**154 Procedure**

- (1) When conducting an inquiry, an inquiry member—
  - (a) must observe natural justice; and

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- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues; and
  - (c) is not bound by the rules of evidence; and
  - (d) may inform himself or herself in any way he or she considers appropriate, including by holding hearings; and
  - (e) may decide the procedures to be followed for the inquiry.
- (2) However, an inquiry member must comply with this part and any procedural rules prescribed under a regulation.

### **155 Notice of inquiry hearing**

- (1) The health ombudsman must give at least 14 days notice of the time and place of a hearing to anyone the health ombudsman believes should be given the opportunity to appear at the hearing.
- (2) The health ombudsman may also give public notice of a hearing.

### **156 Inquiry hearing to be held in public except in special circumstances**

- (1) A hearing must be held in public except as provided in this section.
- (2) The health ombudsman may, of the health ombudsman's own initiative or on the application of a person appearing before or represented at a hearing, direct that the hearing, or part of the hearing, be held in private.
- (3) The health ombudsman may give a direction under subsection (2) only if satisfied it is appropriate to do so in the special circumstances of the case.
- (4) When giving a direction under subsection (2), the health ombudsman may give a direction about the persons who may be present.

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**157 Suppression of name of witness**

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

**158 Protection of inquiry members, representatives and witnesses**

- (1) An inquiry member has, in the performance of the inquiry member's duties relating to the inquiry, the same protection and immunity as a judge of the Supreme Court.
- (2) A lawyer or other person appearing at a hearing for someone else has the same protection and immunity as a lawyer appearing for a party in a proceeding in the Supreme Court.
- (3) A person given a witness requirement notice to attend a hearing, or appearing before a hearing as a witness, has the same protection as a witness in a proceeding in the Supreme Court.
- (4) A person, for complying with a notice given to the person under section 162, has the same protection as a witness in a proceeding in the Supreme Court.

**159 Record of proceeding to be kept**

The health ombudsman must keep a record of the proceedings of each hearing.

**160 Powers for inquiry hearing and right to representation**

- (1) In conducting a hearing, the health ombudsman may—
  - (a) act in the absence of a person who has been given reasonable notice of the hearing under section 155 or otherwise; and
  - (b) receive evidence on oath or affirmation or by statutory declaration; and
  - (c) adjourn the hearing; and

- (d) disregard any defect, error, omission or insufficiency in a document.
- (2) An inquiry member may administer an oath or affirmation to a person appearing as a witness before a hearing.
- (3) A person appearing at a hearing has a right to be represented by a lawyer or other person approved by the health ombudsman.

### **161 Notice to witness**

- (1) The health ombudsman may, by notice given to a person (a *witness requirement notice*), require the person to attend a hearing at a stated time and place to give evidence or produce stated documents or things.
- (2) A person required by a witness requirement notice to attend a hearing is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the health ombudsman.

### **162 Notice requiring information**

- (1) For the purpose of an inquiry, the health ombudsman may, by notice given to a person, require the person to give to an inquiry member stated information within a stated reasonable period 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 subsection (2) and the fact of that giving (*primary evidence*);

- (b) any information 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.

### **163 Inspection of records and other things**

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

### **164 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 health ombudsman until excused from further attendance.

Maximum penalty—100 penalty units.

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

- (c) fail, 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 a hearing in response to a requirement under this part—
  - (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.

## 165 Contempt of inquiry member

In relation to a hearing, a person must not—

- (a) insult an inquiry member; or
- (b) deliberately interrupt the hearing; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the hearing is being conducted; or
- (d) publish, in a public way, information that identifies a person to whom a suppression order made under section 157 relates; or
- (e) do anything that would be contempt of court if an inquiry member were a judge acting judicially.



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Maximum penalty—100 penalty units.

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

If an inquiry is being conducted by the health ombudsman and 1 or more other inquiry members, the conduct of an inquiry is not affected by—

- (a) a change in the other inquiry members; or
- (b) the absence of any of the other inquiry members.

### **167 Preparation of report about inquiry**

The health ombudsman must prepare a written report about each inquiry conducted under this part.

### **168 Opportunity to respond to adverse comment in report**

- (1) This section applies if a report being prepared under section 167 contains an adverse comment about a person.
- (2) The health ombudsman must give the person a copy of the proposed comment and give the person a reasonable period, of at least 28 days, within which to make a submission about it.
- (3) If the person makes a submission under subsection (2), the health ombudsman—
  - (a) must have regard to the submission before finalising the report; and
  - (b) must not include the relevant comment in the report unless the health ombudsman also includes the person's submission, or a fair summary of it, in the report.

### **169 Submission and tabling of report**

- (1) The health ombudsman must give the report prepared under section 167 to the Minister.
- (2) The Minister must table the report in the Legislative Assembly within 14 days after receiving it.

## **Part 13 Minister's role**

### **170 Minister's functions**

The Minister has the following functions under this Act—

- (a) to oversee—
  - (i) the effective and efficient administration of the health service complaints management system; and
  - (ii) the performance of the health ombudsman; and
  - (iii) the National Boards' and National Agency's performance of their functions relating to the health, conduct and performance of registered health practitioners who provide health services in Queensland;
- (b) to keep Parliament and the community informed of the matters mentioned in paragraph (a).

### **171 Minister may request information or reports from health ombudsman**

- (1) The Minister may, by notice, ask the health ombudsman for information about a stated matter relevant to the health ombudsman's functions.
- (2) The Minister may, by notice, ask the health ombudsman to give a report to the Minister whenever the health ombudsman—
  - (a) takes particular relevant action; or
  - (b) receives a complaint about, or otherwise becomes aware of, a particular type of matter or a matter concerning a particular type of health service provider.

*Example—*

The Minister may ask the health ombudsman to give a report whenever the health ombudsman—

- takes immediate action under part 7; or

- receives, or takes relevant action to deal with, a complaint about a Hospital and Health Service.

## **172 Minister may request information from National Agency or National Board**

The Minister may, by notice, ask the National Agency or a National Board for information about a stated matter relevant to its functions relating to the health, conduct and performance of registered health practitioners who provide health services in Queensland.

## **173 Periodic reports**

A reference in section 171(1) or 172 to a request for information about a matter includes a request for periodic reports about the matter.

## **174 Minister may ask that information be given to engaged persons**

- (1) This section applies if the Minister—
  - (a) engages a person to help the Minister perform a function under this part; and
  - (b) considers that, to provide the help, the person is likely to need access to information from the health ombudsman, the National Agency or a National Board.

*Example—*

The Minister engages a person to audit the handling of health service complaints.

- (2) The Minister may, by notice, ask the health ombudsman, the National Agency or a National Board to disclose information relevant to its functions under this Act or the National Law to the person on request by the person.
- (3) A person who obtains confidential information under this section must not—

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- (a) disclose the information to anyone other than the Minister or a person authorised by the Minister; or
- (b) use the information other than in the performance of the function for which the person was engaged.

Maximum penalty—100 penalty units.

- (4) In this section—

*disclose* includes give access to.

*information* includes a document.

*confidential information* means information that—

- (a) is not publicly available; and
- (b) identifies a person who—
  - (i) is or was a complainant; or
  - (ii) is or was a health service provider; or
  - (iii) was provided with a service by a health service provider; or
  - (iv) gave information to the health ombudsman under this Act.

## **175 Information that may or may not be requested**

- (1) Subject to this section, the Minister may ask for information under this part that the Minister needs to perform the Minister's functions.
- (2) The information that the Minister may request from the health ombudsman under this part—
  - (a) does not include anything said during a conciliation or a document prepared for, or in the course of, a conciliation; but
  - (b) includes information received by the health ombudsman under the National Law.

*Example of information received under the National Law—*

information given to the health ombudsman by a National Board in response to a request under the National Law, section 206B

- (3) The information that the Minister may request from the National Agency or a National Board under this part includes information about a matter concerning a registered health practitioner who provides health services in Queensland, even if the matter arose outside Queensland.
- (4) The information that may be requested under this part includes information that identifies a complainant, a person who has received a health service, a health service provider or another person.
- (5) A reference in this section to a request by the Minister for information includes a request by the Minister to give information to a person under section 174.
- (6) In this section—  
*information* includes a report.

**176 Minister may ask health ombudsman to publish particular reports**

- (1) The Minister may, by notice, ask the health ombudsman to prepare and publish reports about—
  - (a) the administration of the health service complaints management system; or
  - (b) the health ombudsman's performance of stated functions; or
  - (c) the performance by the National Agency or a National Board of stated functions relating to the health, conduct and performance of registered health practitioners who provide health services in Queensland.
- (2) Before making a request under subsection (1), the Minister may consult with the parliamentary committee, the health ombudsman, the National Agency or any National Board to which the request relates.

### **177 Compliance with Minister's request**

- (1) The health ombudsman, the National Agency or a National Board must comply with a request made by the Minister under this part.
- (2) A request by the Minister under this part—
  - (a) may state reasonable requirements about the information that is to be given or published, including, for example—
    - (i) the period within which information is to be given or published; and
    - (ii) the form in which information is to be given or published; and
    - (iii) the performance measures to be used in preparing information; and
  - (b) may nominate a particular person who may receive information on the Minister's behalf.
- (3) In this section—

*information* includes a report.

### **178 Use or disclosure of information**

- (1) This section applies in relation to information given to the Minister, or someone else on the Minister's behalf, under this part that is not publicly available.
- (2) The information may be used or disclosed only in the performance of the Minister's functions under section 170.
- (3) Subsection (2) does not limit the *Parliament of Queensland Act 2001*, section 8.

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## Part 14 Parliamentary Committee's role

### 179 Committee's functions

- (1) The parliamentary committee has the following functions under this Act—
  - (a) to monitor and review the operation of the health service complaints management system;
  - (b) to identify and report on particular ways in which the health service complaints management system might be improved;
  - (c) to monitor and review the performance by the health ombudsman of the health ombudsman's functions under this Act;
  - (d) to monitor and review the National Boards' and National Agency's performance of their functions relating to the health, conduct and performance of registered health practitioners who provide health services in Queensland;
  - (e) to examine reports of the health ombudsman, the National Agency and National Boards;
  - (f) to advise the Minister in relation to the appointment of the health ombudsman;
  - (g) to report to the Legislative Assembly on—
    - (i) any matter referred to the committee by the Legislative Assembly; and
    - (ii) any other matter about the health service complaints management system that the committee considers should be brought to the Assembly's attention.
- (2) It is not a function of the parliamentary committee under this Act to—
  - (a) re-investigate a particular complaint or other matter; or

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- (b) reconsider a decision, finding or recommendation of the health ombudsman, the National Agency or a National Board in relation to a particular complaint or other matter.

**180 Committee may request information from health ombudsman**

The parliamentary committee may, by notice, ask the health ombudsman for information about a stated matter relevant to the health ombudsman's functions.

**181 Committee may request information from National Agency or National Board**

The parliamentary committee may, by notice, ask the National Agency or a National Board for information about a stated matter relevant to the National Agency or National Board's functions relating to the health, conduct and performance of registered health practitioners who provide health services in Queensland.

**182 Periodic reports**

A reference in section 180 or 181 to a request for information about a matter includes a request for periodic reports about the matter.

**183 Information that may or may not be requested**

- (1) The information that the parliamentary committee may request from the health ombudsman under this part—
  - (a) does not include anything said during a conciliation or a document prepared for, or in the course of, a conciliation; but
  - (b) includes information received by the health ombudsman under the National Law.



*Example of information received under the National Law—*

information given to the health ombudsman by a National Board in response to a request under the National Law, section 206B

- (2) The information that the parliamentary committee may request from the National Agency or a National Board under this part includes information about a matter concerning a registered health practitioner who provides health services in Queensland, even if the matter arose outside Queensland.
- (3) The information that may be requested under this part includes information that identifies a complainant, a person who has received a health service, a health service provider or another person.
- (4) In this section—  
*information* includes a report.

#### **184 Compliance with committee's request**

- (1) The health ombudsman, the National Agency or a National Board must comply with a request made by the parliamentary committee under this part.
- (2) A request may state reasonable requirements about giving information or reports to the committee including, for example, the period within which, or the form in which, the information or reports are to be given.

#### **185 Committee's powers not limited**

To remove any doubt, it is declared that this part does not limit the parliamentary committee's powers under the *Parliament of Queensland Act 2001*, chapter 3, part 1.

## **Part 15                      Authorised persons**

### **Division 1                      General provisions about authorised persons**

#### **186      Functions of authorised persons**

An authorised person has the following functions—

- (a) to carry out activities for the purpose of an investigation by the health ombudsman under part 8;
- (b) to investigate, monitor and enforce compliance with this Act;
- (c) to investigate or monitor the activities of a person the subject of immediate registration action taken, or an interim prohibition order issued, by the health ombudsman under part 7, while the action or order is in effect.

#### **187      Health ombudsman is an authorised person**

The health ombudsman is an authorised person.

#### **188      Health ombudsman may appoint authorised persons**

The health ombudsman may, by instrument in writing, appoint an appropriately qualified person, including an appropriately qualified staff member of the Office of the Health Ombudsman, as an authorised person.

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

- (1) An authorised person (other than the health ombudsman) holds office on any conditions stated in—
  - (a) the authorised person’s instrument of appointment; or
  - (b) a signed notice given to the authorised person; or

- 
- (c) a regulation.
  - (2) The instrument of appointment, a signed notice given to the authorised person or a regulation may limit the authorised person's powers.
  - (3) In this section—  
*signed notice* means a notice signed by the health ombudsman.

## **190 When office ends**

- (1) The office of a person as an authorised person (other than the health ombudsman) ends 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 office ends;
  - (c) the authorised person's resignation under section 191 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an authorised person ends.
- (3) In this section—  
*condition of office* means a condition under which the authorised person holds office.

## **191 Resignation**

An authorised person (other than the health ombudsman) may resign by signed notice given to the health ombudsman.

## **192 Issue of identity card**

- (1) The health ombudsman 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.

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

- (1) In exercising a power in relation to another person in the other person's presence, 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 197(1)(b).

### **194 Return of identity card**

If the office of a person as an authorised person (other than the health ombudsman) ends, the person must return the person's identity card to the health ombudsman within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

### **195 References to exercise of powers**

If—

- (a) a provision of this part refers to the exercise of a power by an authorised person; and
  - (b) there is no reference to a specific power;
- the reference is to the exercise of all or any authorised persons' powers under this part or a warrant, to the extent the powers are relevant.

### **196 Reference to document includes reference to reproductions from electronic document**

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

## **Division 2 Entry of places by authorised persons**

### **Subdivision 1 Power to enter**

#### **197 General power to enter places**

- (1) An authorised person may enter a place if—
  - (a) an occupier at the place consents under subdivision 2 to the entry and section 200 has been complied with for the occupier; or
  - (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 207 has been complied with for the occupier.

- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

## **Subdivision 2      Entry by consent**

### **198      Application of sdiv 2**

This subdivision 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 197(1)(a).

### **199      Incidental entry to ask for access**

For the purpose of asking the occupier for the consent, an authorised person may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the 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 of the place.

### **200      Matters authorised person must tell occupier**

Before asking for the consent, the authorised person must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and

- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

## **201 Consent acknowledgement**

- (1) If the consent is given, the authorised person may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) that the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) that the occupier gives the authorised person or another authorised person consent to enter the place and exercise the powers; and
  - (d) the time and day the consent was given; and
  - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the authorised person must immediately give a copy to the occupier.
- (4) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (2) 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.

## **Subdivision 3      Entry under warrant**

### **202      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 written application to be given by statutory declaration.

### **203      Issue of warrant**

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence—
  - (a) about a matter being investigated by the health ombudsman; or
  - (b) of an offence against this Act; or
  - (c) of a person carrying out an activity the person is not authorised to carry out because of immediate registration action taken, or an interim prohibition order issued, by the health ombudsman under part 7.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised person or any 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; and
- (c) particulars of the matter being investigated or offence that the magistrate considers appropriate; and
- (d) if subsection (1)(b) applies, the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) 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 day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

## **204 Electronic application**

- (1) An application under section 202 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 202(2); but
  - (b) may be made before the written application is sworn.

## **205 Additional procedure if electronic application**

- (1) For an application made under section 204, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under section 204; and
  - (b) the way the application was made under section 204 was appropriate.
- (2) 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, including, 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 information mentioned in section 203(2); and
    - (ii) the authorised person must complete a form of warrant, including by writing on it the information mentioned in section 203(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The authorised person must, at the first reasonable opportunity, send to the magistrate—
  - (a) the written application complying with section 202(2) and (3); and
  - (b) if the authorised person completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—

- (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.
- (6) Despite subsection (3), 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.
- (7) This section does not limit section 202.
- (8) In this section—
- relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

## **206 Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in—
- (a) the warrant; or
  - (b) compliance with this subdivision;
- unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—
- warrant* includes a duplicate warrant mentioned in section 205(3).

## **207 Entry procedure**

- (1) This section applies if an authorised person is intending to enter a place under a warrant issued under this subdivision.

- (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 who is an occupier of the place and is present by producing the authorised person’s identity card or another document evidencing the authorised person’s appointment;
  - (b) give the other person a copy of the warrant;
  - (c) tell the other person that 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 entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—

*warrant* includes a duplicate warrant mentioned in section 205(3).

## **Division 3                      Other authorised persons’ powers and related matters**

### **Subdivision 1                General powers of authorised persons after entering places**

#### **208      Application of sdiv 1**

- (1) The power under this subdivision may be exercised if an authorised person enters a place under section 197(1)(a) or (c).
- (2) However, the powers under this division are subject to any conditions of the consent or terms of the warrant.

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## 209 General powers

- (1) The authorised person may do any of the following—
  - (a) search any part of the place;
  - (b) inspect, examine or film any part of the place or anything at the place;
  - (c) take for examination a thing, or a sample of or from a thing, at the place;
  - (d) place an identifying mark in or on anything at the place;
  - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
  - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
  - (g) take to, into or onto the place and use any person, equipment and materials the authorised person reasonably requires for exercising the authorised person's powers under this division;
  - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The authorised person may take a necessary step to allow the exercise of a power under subsection (1).
- (3) If the authorised person takes a document from the place to copy it, the authorised person must copy and return the document to the place as soon as practicable.
- (4) If the authorised person takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the authorised person must produce the document and return the article or device to the place as soon as practicable.
- (5) In this section—

*examine* includes analyse, test, account, measure, weigh, grade, gauge and identify.

*film* includes photograph, videotape and record an image in another way.

*inspect*, a thing, includes open the thing and examine its contents.

## **210 Power to require reasonable help**

- (1) The authorised person may make a requirement of an occupier of the place or another person at the place to give the authorised person reasonable help to exercise a general power under section 209, including, for example, to produce a document or to give information.
- (2) When making the requirement, the authorised person must warn the occupier or other person that it is an offence for the occupier or other person not to comply with the requirement unless the occupier or other person has a reasonable excuse.

## **211 Offence to contravene requirement to give reasonable help**

- (1) A person of whom a requirement has been made under section 210 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a requirement made under section 210 if complying might tend to incriminate the individual or expose the individual to a penalty.

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## **Subdivision 2      Seizure by authorised persons and forfeiture**

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

- (1) This section applies to a place that an authorised person may enter under this part without the consent of an occupier of the place and without a warrant.
- (2) An authorised person who enters the place may seize a thing at the place if the authorised person reasonably believes the thing is evidence—
  - (a) about a matter being investigated by the health ombudsman; or
  - (b) of an offence against this Act.

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

- (1) This section applies if—
  - (a) an authorised person is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the authorised person enters the place after obtaining the consent or under a warrant.
- (2) If the authorised person enters the place with the occupier's consent, the authorised person may seize a thing at the place only if—
  - (a) the authorised person reasonably believes the thing is evidence—
    - (i) about a matter being investigated by the health ombudsman; or
    - (ii) of an offence against this Act; and

- (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the authorised person enters the place under 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) about a matter being investigated by the health ombudsman; or
    - (ii) of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- (5) The authorised person may also seize a thing at the place if the authorised person reasonably believes it has just been used in committing an offence against this Act.

## **214 Seizure of property subject to security**

- (1) An authorised person may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the authorised person or a person acting for the authorised person.

## **215 Power to secure seized thing**

- (1) Having seized a thing under this division, an authorised person may—
  - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
  - (b) move it from the place of seizure.



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- (2) For subsection (1)(a), the authorised person may, for example—
- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
  - (b) for equipment—make it inoperable; or
- Example—*
- make it inoperable by dismantling it or removing a component without which the equipment can not be used
- (c) require a person who the authorised person reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an authorised person could do under subsection (1)(a).

## **216 Offence to contravene other seizure requirement**

A person must comply with a requirement made of the person under section 215(2)(c) unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **217 Offence to interfere**

- (1) If access to a seized thing is restricted under section 215, a person must not tamper with the thing or with anything used to restrict access to the thing without—
- (a) an authorised person’s approval; or
  - (b) a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If access to a place is restricted under section 215, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—
- (a) an authorised person’s approval; or

(b) a reasonable excuse.

Maximum penalty—100 penalty units.

### **Subdivision 3      Safeguards for seized things**

#### **218      Receipt and information notice for seized thing**

- (1) This section applies if an authorised person seizes anything under this division unless—
  - (a) the authorised person reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
  - (b) because of the condition, nature and value of the thing it would be unreasonable to require the authorised person to comply with this section.
- (2) The authorised person must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
  - (a) a receipt for the thing that generally describes the thing and its condition; and
  - (b) an information notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
  - (a) be given in the same document; and
  - (b) relate to more than 1 seized thing.
- (5) The authorised person may delay giving the receipt and information notice if the authorised person reasonably suspects giving them may frustrate or otherwise hinder an

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activity carried out by the authorised person under this part for the purpose of an investigation by the health ombudsman.

- (6) However, the delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

## **219 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, the authorised person who seized the thing must allow an owner of the thing—
- (a) to inspect it at any reasonable time and from time to time; and
  - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

## **220 Return of seized thing**

- (1) This section applies if a seized thing has some intrinsic value and is not—
- (a) forfeited or transferred under subdivision 4 or 5; or
  - (b) subject to a disposal order under division 4.
- (2) The authorised person must return the seized thing to an owner—
- (a) generally—at the end of 6 months after the seizure; or
  - (b) if a proceeding for an offence involving the thing, or a disciplinary proceeding in which the thing is proposed to be used as evidence, is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.

- (3) Despite subsection (2), if the thing was seized as evidence, the authorised person must return the thing seized to an owner as soon as practicable after the authorised person is satisfied—
  - (a) its continued retention as evidence is no longer necessary; and
  - (b) it is lawful for the owner to possess it.
- (4) Nothing in this section affects a lien or other security over the seized thing.

## **Subdivision 4      Forfeiture**

### **221      Forfeiture by health ombudsman decision**

- (1) The health ombudsman may decide a seized thing is forfeited to the State if an authorised person—
  - (a) after making reasonable inquiries, can not find an owner; or
  - (b) after making reasonable efforts, can not return it to an owner.
- (2) However, the authorised person is not required to—
  - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*  
the owner of the thing has migrated to another country
- (3) Regard must be had to the thing's condition, nature and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

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## **222 Information notice about forfeiture decision**

- (1) If the health ombudsman decides under section 221(1) to forfeit a thing, the health ombudsman must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) The information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if the place where the thing was seized is—
  - (a) a public place; or
  - (b) a place where the notice is unlikely to be read by the former owner.

## **Subdivision 5 Dealing with property forfeited or transferred to State**

### **223 When thing becomes property of the State**

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 221(1);  
or
- (b) the owner of the thing and the State agree, in writing, to the transfer of the ownership of the thing to the State.

### **224 How property may be dealt with**

- (1) This section applies if, under section 223, a thing becomes the property of the State.

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- (2) The health ombudsman may deal with the thing as the health ombudsman considers appropriate, including, for example, by destroying it or giving it away.
- (3) The health ombudsman must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the health ombudsman sells the thing, the health ombudsman may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the thing.
- (5) This section is subject to any disposal order made for the thing.

## Division 4                      Disposal orders

### 225      Disposal order

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) The court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
  - (a) anything that was the subject of, or used to commit, the offence;
  - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
  - (a) whether or not it has been seized under this part; and
  - (b) if the thing has been seized—whether or not it has been returned to the former owner.
- (4) In deciding whether to make a disposal order for a thing, the court—

- (a) may require notice to be given to anyone the court considers appropriate, including, for example, any person who may have any property in the thing; and
  - (b) must hear any submissions that any person claiming to have any property in the thing may wish to make.
- (5) The court may make any order to enforce the disposal order that it considers appropriate.
- (6) This section does not limit the court's powers under another law.

## **Division 5                      Other information-obtaining powers of authorised persons**

### **226      Power to require name and address**

- (1) This section applies if an authorised person—
- (a) finds a person committing an offence against this Act; or
  - (b) finds a person in circumstances that lead the authorised person to reasonably suspect the person has just committed an offence against this Act; or
  - (c) has information that leads the authorised person to reasonably suspect a person has just committed an offence against this Act.
- (2) The authorised person may require the person to state the person's name and residential address.
- (3) The authorised person may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
- (a) be in possession of evidence of the correctness of the stated name or address; or
  - (b) otherwise be able to give the evidence.

- (4) When making a requirement under this section, the authorised person must give the person a warning that it is an offence for the person not to comply with the requirement unless the person has a reasonable excuse.

## **227 Offence to contravene requirement to give name and address**

- (1) A person of whom a requirement has been made under section 226 must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the requirement was made.

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

- (1) This section applies if an authorised person reasonably believes—

- (a) an offence against this Act has been committed; and
- (b) a person may be able to give information about the offence.

- (2) This section also applies if an authorised person reasonably believes a person may be able to give information (the *relevant information*)—

- (a) about a matter being investigated by the health ombudsman; or
- (b) about a health practitioner's compliance with immediate action taken against the practitioner under part 7; or
- (c) that is information, or information of a kind, requested by the director of proceedings in a referral under section 103(2)(b).

- (3) The authorised person may, by notice given to the person, require the person to—



- (a) give the authorised person stated information related to the offence, or that is or relates to the relevant information, at a stated reasonable time and place; or
  - (b) attend before the authorised person at a stated reasonable time and place to answer questions, or produce documents, related to the offence or the relevant information.
- (4) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.
- (5) In this section—  
*information* includes a document.

## **229 Offence to contravene information requirement**

- (1) A person of whom a requirement is made under section 228(3)(a) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

## **229A Offence to contravene attendance requirement**

- (1) A person of whom a requirement is made under section 228(3)(b) must not fail, without reasonable excuse, to—

- (a) attend as required by the notice; and
- (b) continue to attend as required by the authorised person until excused from further attendance; and
- (c) answer a question the person is required to answer by the authorised person; and

- (d) produce a document the person is required to produce by the notice.

Maximum penalty—100 penalty units.

- (2) For subsection (1), it is a reasonable excuse for an individual to fail to answer a question or produce a document if answering the question or producing the document might tend to incriminate the individual or expose the individual to a penalty.

## **Division 6                      Miscellaneous provisions relating to authorised persons**

### **230      Duty to avoid inconvenience and minimise damage**

In exercising a power, an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 232.

### **231      Notice of damage**

- (1) This section applies if—
  - (a) an authorised person damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an authorised person damages something.
- (2) However, this section does not apply to damage the authorised person reasonably considers is trivial or if the authorised person reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.

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- (3) The authorised person must give notice of the damage to the person who appears to the authorised person to be an owner, or person in control, of the thing.
  - (4) However, if for any reason it is not practicable to comply with subsection (3), the authorised person must—
    - (a) leave the notice at the place where the damage happened; and
    - (b) ensure it is left in a conspicuous position and in a reasonably secure way.
  - (5) The authorised person may delay complying with subsection (3) or (4) if the authorised person reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation.
  - (6) The delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place.
  - (7) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person or the assistant, the authorised person may state the belief in the notice.
  - (8) The notice must state—
    - (a) particulars of the damage; and
    - (b) that the person who suffered the damage may claim compensation under section 232.

## **232 Compensation**

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an authorised person including a loss arising from compliance with a requirement made of the person under division 3 or 5.
- (2) However, subsection (1) does not include loss arising from a lawful seizure or a lawful forfeiture.

- (3) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act, the investigation of which gave rise to the claim for compensation.
- (4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.
- (6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (7) Section 230 does not provide for a statutory right of compensation other than is provided by this section.
- (8) In this section—

*loss* includes costs and damage.

### **233 Obstructing authorised person**

- (1) A person must not obstruct an authorised person, or someone helping an authorised person, exercising a power unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.
- (2) If a person has obstructed an authorised person, or someone helping an authorised person, and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—
  - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
  - (b) the authorised person considers the person’s conduct an obstruction.

(3) In this section—

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

### **234 Impersonating authorised person**

A person must not impersonate an authorised person.

Maximum penalty—100 penalty units.

## **Division 7 Review of particular decisions**

### **235 Right of appeal**

A person who has a right to be given an information notice about a decision made under this part has a right to appeal against the decision.

*Note—*

Information notices are given under sections 218 and 222.

### **236 Appeal process starts with internal review**

- (1) Every appeal against a decision must be, in the first instance, by way of an application for an internal review.
- (2) A person who has a right to appeal against a decision may apply to the health ombudsman for a review of the decision.

### **237 How to apply for a review**

- (1) An application for a review of a decision must be—
  - (a) in the approved form; and
  - (b) supported by enough information to enable the health ombudsman to decide the application.
- (2) The application must be made within 20 business days after—

- (a) the day the person is given the information notice about the decision; or
  - (b) if the person is not given an information notice for the decision—the day the person otherwise becomes aware of the decision.
- (3) The health ombudsman may extend the period for applying for the review.
- (4) The application must not be dealt with by—
- (a) the person who made the decision; or
  - (b) a person in a less senior office than the person who made the decision.
- (5) Subsection (4)—
- (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
  - (b) does not apply to a decision made by the health ombudsman.

### **238 Stay of operation of decision**

- (1) An application for a review of a decision does not stay the decision.
- (2) However, the applicant may immediately apply for a stay of the decision to the Magistrates Court.
- (3) The court may stay the decision to secure the effectiveness of the review and a later appeal to the court.
- (4) The stay—
- (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- (5) The period of the stay must not extend past the time when the health ombudsman makes a review decision about the

decision and any later period the court allows to enable the applicant to appeal against the review decision.

- (6) An application for a review of a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

### 239 Review decision

- (1) The health ombudsman must, within 28 days after receiving the application—
- (a) review the decision (the *original decision*); and
  - (b) make a decision (the *review decision*) to—
    - (i) confirm the original decision; or
    - (ii) amend the original decision; or
    - (iii) substitute another decision for the original decision; and
  - (c) give the applicant notice (the *review notice*) of the review decision.
- (2) If the review decision is not the decision sought by the applicant, the review notice must state the following—
- (a) the day the notice is given to the applicant (the *review notice day*);
  - (b) the reasons for the decision;
  - (c) that the applicant may appeal against the decision to the Magistrates Court within 28 days after the review notice day;
  - (d) how to appeal;
  - (e) that the applicant may apply to the Magistrates Court for a stay of the decision.
- (3) If the health ombudsman does not give the review notice within the 28 days, the health ombudsman is taken to have made a review decision confirming the original decision.

## **240 Who may appeal**

A person who has applied for a review of an original decision and is dissatisfied with the review decision may appeal to the Magistrates Court against the decision.

## **241 Procedure for an appeal to the court**

- (1) An appeal to the Magistrates Court is started by filing a notice of appeal with the clerk of the court.
- (2) A copy of the notice must be served on the health ombudsman.
- (3) The notice of appeal must be filed within 28 days after the review notice day.
- (4) The court may, whether before or after the time for filing the notice of appeal ends, extend the period for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal.

## **242 Stay of operation of review decision**

- (1) The Magistrates Court may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
  - (a) may be granted on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be amended or revoked by the court.
- (3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.
- (4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.



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### **243 Powers of court on appeal**

- (1) In deciding an appeal, the Magistrates Court—
  - (a) has the same powers as the health ombudsman in making the review decision appealed against; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
  - (a) confirm the review decision; or
  - (b) set aside the review decision and substitute another decision; or
  - (c) set aside the review decision and return the matter to the health ombudsman with directions the court considers appropriate.

### **244 Effect of decision of court on appeal**

- (1) If the Magistrates Court acts to set aside the review decision and return the matter to the health ombudsman with directions the court considers appropriate, and the health ombudsman makes a new decision, the new decision is not subject to review or appeal under this division.
- (2) If the court substitutes another decision, the substituted decision is taken to be the decision of the health ombudsman, and the health ombudsman must give effect to the decision as if the decision was the original decision of the health ombudsman and no application for a review or appeal had been made.

## **Part 16**                      **Appointment of health ombudsman and establishment of office**

### **Division 1**                      **Appointment of health ombudsman and related matters**

#### **245**      **Appointment**

- (1) The health ombudsman is to be appointed by the Governor in Council on the recommendation of the Minister.
- (2) The health ombudsman is appointed under this Act and not the *Public Service Act 2008*.

#### **246**      **Minister's recommendation**

- (1) The Minister may recommend a person for appointment as health ombudsman only if the Minister—
  - (a) has advertised for expressions of interest from suitably qualified persons and considered the expressions of interest received; and
  - (b) has consulted with the parliamentary committee about the appointment; and
  - (c) is satisfied the person has the skills and knowledge to perform the health ombudsman's functions effectively and efficiently.
- (2) Subsection (1)(a) and (b) do not apply in relation to an appointment of a person to act in the office of health ombudsman.
- (3) Also, subsection (1)(a) does not apply in relation to the reappointment of a person as health ombudsman.

## **247 Term of appointment**

- (1) The health ombudsman holds office for the period, not more than 4 years, stated in the health ombudsman's instrument of appointment but may be reappointed.
- (2) The health ombudsman stops holding office before the end of the term of appointment if the health ombudsman resigns under section 249 or is removed from office under section 250.

## **248 Conditions of appointment**

- (1) The health ombudsman holds office on the conditions stated in the health ombudsman's instrument of appointment.
- (2) The health ombudsman is to be paid the remuneration and allowances decided by the Governor in Council.

## **249 Resignation**

The health ombudsman may, at any time, resign office by signed notice given to the Minister.

## **250 Removal from office**

- (1) The Governor in Council may remove the health ombudsman from office if the health ombudsman—
  - (a) is found guilty of an indictable offence or an offence against this Act; or
  - (b) becomes an insolvent under administration; or
  - (c) becomes disqualified from managing corporations under the *Corporations Act 2001* (Cwlth), part 2D.6.
- (2) Also, the Governor in Council may, on the Minister's recommendation, remove the health ombudsman from office if the Minister is satisfied the health ombudsman—
  - (a) has engaged in—

- (i) inappropriate or improper conduct in an official capacity; or
    - (ii) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office; or
  - (b) has become incapable of performing the health ombudsman's functions; or
  - (c) has neglected the health ombudsman's duties or performed the health ombudsman's functions incompetently.
- (3) In this section—
- insolvent under administration* see the *Corporations Act 2001* (Cwlth), section 9.

## 251 Suspension from office

- (1) The Minister may, by notice given to the health ombudsman, suspend the health ombudsman's appointment for a stated term of up to 60 days if the Minister—
  - (a) is aware of a matter which is, or may be, a ground for removing the health ombudsman from office under section 250; and
  - (b) considers it is necessary in the public interest for the health ombudsman to be suspended from office pending further consideration of the matter.
- (2) The Minister may, by notice given to the health ombudsman—
  - (a) extend the suspension from time to time, for further stated periods of up to 60 days, if the Minister considers the extension is necessary in the public interest while consideration of the matter continues; or
  - (b) end the suspension at any time.

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## **252 Acting as health ombudsman**

The Minister may appoint a person to act as the health ombudsman if—

- (a) the person appointed as health ombudsman—
  - (i) is removed or suspended; or
  - (ii) is absent or unable to discharge the functions of the office (whether because of illness or otherwise); or
- (b) there is a vacancy in the office.

## **Division 2 Office of the Health Ombudsman**

### **253 Establishment of office**

- (1) An office called the Office of the Health Ombudsman is established.
- (2) The office consists of the health ombudsman and the staff of the office.

### **254 Function**

The office's function is to help the health ombudsman perform the health ombudsman's functions.

### **255 Staff**

- (1) The staff of the office are employed under the *Public Service Act 2008*.
- (2) The staff of the office are not subject to direction by anyone other than the health ombudsman, or a person authorised by the health ombudsman, about how the office's functions are to be performed.

### **256 Control of office**

The health ombudsman controls the office.

### **257 Office is a statutory body**

- (1) The office is a statutory body for the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the office's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

## **Division 3 Director of proceedings**

### **258 Appointment of director of proceedings**

- (1) The health ombudsman must appoint a staff member of the Office of the Health Ombudsman to be the director of proceedings.
- (2) The appointee must be a lawyer and otherwise appropriately qualified.

### **259 Functions**

- (1) The director's functions are—
  - (a) to decide whether or not to refer health service complaints and other matters concerning registered health practitioners to QCAT on the health ombudsman's behalf under section 103; and
  - (b) to conduct proceedings for the complaints and other matters that the director refers to QCAT.
- (2) In proceedings before QCAT, the director may appear in person or by a lawyer, whether or not from within the Office of the Health Ombudsman.
- (3) The person holding appointment as the director must not perform any other functions that may conflict with the proper performance of the functions stated in subsection (1).

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**260 Director not subject to direction**

The director is not subject to the direction of the health ombudsman or anyone else about a decision whether or not to refer a matter concerning a registered health practitioner to QCAT or about the conduct of a matter before QCAT.

## **Part 17 Offences and proceedings**

**261 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, any person—
  - (a) has made or may make a health service complaint; or
  - (b) has provided or may provide information or other assistance to the health ombudsman, a staff member of the Office of the Health Ombudsman or an authorised person.
- (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.

**262 Offence for taking reprisal**

- (1) A person who takes a reprisal commits an offence.  
Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) The offence is an indictable offence that is a misdemeanour.

### **263 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.

### **264 False or misleading information**

- (1) A person must not, in relation to the administration of this Act, give information that the person knows is false or misleading in a material particular to the health ombudsman, a staff member of the Office of the Health Ombudsman or an authorised person.

Maximum penalty—100 penalty units.

- (2) Subsection (1) applies whether or not the information was given in response to a specific power under this Act.
- (3) Subsection (1) does not apply to a document if the person, when giving the document—
- (a) tells the health ombudsman, staff 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.
- (4) In this section—  
*information* includes a document.



## **265 Recovery of fines**

A fine imposed on a registered health practitioner under section 107 is a debt due to the Office of the Health Ombudsman.

## **266 Appointment and authority**

- (1) For a proceeding under an Act, the following must be presumed unless a party to the proceeding, by prescribed notice, requires proof of it—
  - (a) the appointment of an official;
  - (b) the authority of an official to do anything under this Act.
- (2) In this section—

*prescribed notice*, for a proceeding under an Act, means notice at least 14 days before the day a court starts to hear the proceeding.

## **267 Signatures and documents**

A signature purporting to be the signature of an official is evidence of the signature it purports to be.

## **268 Other evidentiary aids**

A certificate purporting to be signed by the health ombudsman and stating any of the following matters is evidence of the matter—

- (a) a stated document is one of the following things issued, made or given under this Act—
  - (i) a notice, order or requirement;
  - (ii) an appointment, approval or decision;
  - (iii) a record or extract from a record;
  - (iv) a report;

- (b) a stated document is a copy of a document mentioned in paragraph (a);
- (c) on a stated day, a stated person was given a stated notice under this Act;
- (d) on a stated day, a stated request or requirement was made of a stated person;
- (e) 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.

## **269 Summary offences**

- (1) An offence against this Act, other than section 262, is a summary offence.
- (2) 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) 6 months after the offence comes to the knowledge of the complainant, but within 2 years after the commission of the offence.

## **270 Statement of complainant's knowledge**

In a complaint starting a proceeding for an offence against this Act, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter stated.

## **271 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 262 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).

## Part 18                      Disclosure of information and related matters

### 272      Confidentiality

- (1) This section applies to a person who is or was any of the following persons—
- (a) the health ombudsman;
  - (b) a staff member of the Office of the Health Ombudsman;
  - (c) a member of a committee or panel established under section 29;

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- (d) an inquiry member;
  - (e) an authorised person;
  - (f) another person engaged by the health ombudsman to help in the performance of the health ombudsman's functions.
- (2) The person must not disclose confidential information to anyone else except to the extent the disclosure is permitted under this section.

Maximum penalty—100 penalty units.

- (3) Confidential information may be disclosed in the performance of a function under this Act or to the extent required or permitted under this Act.

*Example—*

Confidential information may be disclosed to a member of a committee or panel established under section 29 for the purpose of the member providing advice to the health ombudsman.

- (4) Confidential information about a person may be disclosed to the person or with the person's consent.
- (5) Confidential information may be disclosed to any of the following entities if the entity requests it on the basis that provision of the information is necessary to enable the entity to exercise its functions—
- (a) the chief executive officer under the *Human Services (Medicare) Act 1973* of the Commonwealth;
  - (b) an entity performing functions under the *Health Insurance Act 1973* of the Commonwealth;
  - (c) the Secretary within the meaning of the *National Health Act 1953* of the Commonwealth;
  - (d) the Secretary to the Department in which the *Migration Act 1958* of the Commonwealth is administered.
- (6) Confidential information may be disclosed—
- (a) to the Minister or the parliamentary committee; or
  - (b) to the National Agency or a National Board; or

- (c) to a government entity with functions—
- (i) that correspond to functions of the health ombudsman under this Act; or

*Example—*

the Health Care Complaints Commission under the *Health Care Complaints Act 1993* (NSW)

- (ii) about protecting the health and safety of the public; or

*Examples—*

- the Queensland Police Service
- the department in which the *Hospital and Health Boards Act 2011* is administered
- the chief health officer under the *Hospital and Health Boards Act 2011*
- a coroner under the *Coroners Act 2003*

- (d) to the extent required or permitted under the National Law or another Act (whether of the Commonwealth or a State); or
- (e) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
- (f) to an entity, or for a purpose, prescribed under a regulation.
- (7) This section does not apply to a conciliator in relation to the disclosure of information to which section 150 applies.
- (8) In this section—

***confidential information*** means information that—

- (a) is not publicly available; and
- (b) is in a form that identifies a person who—
- (i) is or was a complainant under this Act or was a complainant under the repealed Act; or
- (ii) is or was a health service provider or was a provider under the repealed Act; or

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- (iii) was provided with a service by a health service provider or was a user under the repealed Act; or
  - (iv) gave information to the health ombudsman under this Act or to the former commission under the repealed Act; and
- (c) was acquired by, or may be accessed by, a person in his or her capacity as a person mentioned in subsection (1).

*disclose* includes give access to.

*former commission* means the Health Quality and Complaints Commission in existence under the repealed Act immediately before the commencement of this section.

*information* includes a document.

*repealed Act* means the repealed *Health Quality and Complaints Commission Act 2006*.

## **273 Publication of information about immediate action and QCAT decisions**

- (1) The health ombudsman may publish, on a publicly accessible website or in another way the health ombudsman considers appropriate, information about—
- (a) immediate action taken under part 7; or
  - (b) a prohibition order issued under part 8A; or
  - (c) a decision of QCAT under part 10 or the National Law.
- (2) Subsection (1) applies subject to any non-publication order under the QCAT Act or court order about publication of the information.
- (3) The health ombudsman must not publish information that the health ombudsman considers it would be inappropriate to publish.

*Example—*

The health ombudsman may consider it inappropriate to publish a reference to an impairment of a health practitioner that was a ground on which immediate action was taken.

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## **274 Disclosure of information for legal proceeding**

- (1) A person is not required to disclose confidential information to a court or tribunal, or to produce a document containing confidential information to a court or tribunal, unless it is necessary to do so for a purpose of this Act or the National Law.
- (2) Subsection (1) does not apply to the disclosure of information or production of a document to a court or tribunal in a criminal proceeding or disciplinary proceeding.
- (3) In this section—  
*confidential information* see section 272(8).

## **275 Information given to health ombudsman and others**

- (1) This section applies to a person who, honestly and on reasonable grounds, gives information to the health ombudsman, a staff member of the Office of the Health Ombudsman or an authorised person—
  - (a) for the purpose of a health service complaint; or
  - (b) in the course of an investigation under part 8 or inquiry under part 12; 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

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- (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.
- (5) A reference in this section to a person giving information includes the person giving the person's expert advice about a matter or the person's opinion about a matter.
- (6) In this section—  
*information* includes a document.

## **276 Reports and other published information 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; or
- (c) in information that the health ombudsman is authorised or required to publish on a website or publish to the public in another way.

# **Part 19 Particular notices given by health ombudsman**

## **277 Meaning of *employer* for pt 19**

In this part—

*employer*, of a health practitioner, means an entity that—

- (a) employs the practitioner to provide health services; or



- (b) engages the practitioner to provide health services under a contract for services; or
- (c) operates a facility at which the health practitioner provides health services; or
- (d) the practitioner is providing services to or on behalf of, whether in an honorary capacity, as a volunteer or otherwise, and whether or not the practitioner receives payment from the entity for the services.

## **278 Notice of decision relating to complaint**

- (1) As soon as practicable, and no later than 7 days, after making a decision to which this section applies, the health ombudsman must give notice to the complainant and relevant health service provider stating the following—
  - (a) the decision;
  - (b) if the health ombudsman has decided to take relevant action, the particular relevant action that the health ombudsman has decided to take;
  - (c) the reasons for the decision.
- (2) If the decision is a decision not to accept a health service complaint made orally, the requirement to give notice under subsection (1) applies as follows—
  - (a) the notice to the complainant may be given orally at the time when the complaint is made;
  - (b) if notice to the complainant is given as mentioned in paragraph (a), the health ombudsman is not required to give notice of the complaint, or the decision not to accept it, to the relevant health service provider.
- (3) A requirement under this Act to give notice of a decision under this section to the relevant health service provider does not apply if—
  - (a) the decision is to take no further action in relation to the matter; and

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- (b) the health ombudsman has not previously given a notice to, or otherwise communicated with, the relevant health service provider about the matter.
- (4) A requirement under this Act to give a notice under this section to a complainant does not apply if the complainant has advised the health ombudsman (orally or in writing) that the complainant waives compliance with the requirement.

## **279 Notice to employers about particular serious matters**

- (1) This section applies if the health ombudsman—
  - (a) takes immediate action in relation to a health practitioner under part 7; or
  - (b) investigates a health service complaint or other matter concerning a health practitioner under part 8 because the health ombudsman considers—
    - (i) the practitioner may have behaved in a way that constitutes professional misconduct; or
    - (ii) another ground may exist for the suspension or cancellation of the practitioner’s registration; or
    - (iii) a ground may exist for the health ombudsman to make an interim prohibition order, or a prohibition order, against the practitioner; or
  - (c) issues a prohibition order to a health practitioner under part 8A, division 2; or
  - (d) varies a prohibition order issued to a health practitioner under part 8A, division 3.
- (2) The health ombudsman must give notice of the immediate action, the investigation or the issue or variation of the prohibition order, to each person who the health ombudsman believes is an employer of the practitioner.
- (3) The health ombudsman may also give notice of the immediate action, the investigation or the issue or variation of the prohibition order, to other health practitioners with whom the health practitioner shares premises if—

- (a) the health practitioner is self-employed; and
  - (b) the health practitioner shares the cost of the premises with the other practitioners.
- (4) However, subsections (2) and (3) do not apply to the extent that the health ombudsman reasonably considers giving the notice may—
- (a) put at serious risk a person's health or safety; or
  - (b) put a complainant or other person at risk of being harassed or intimidated; or
  - (c) prejudice an investigation or inquiry.
- (5) If, at any time after giving notice to a person under subsection (2) or (3), the health ombudsman decides to end the immediate action, take no further action in relation to the complaint or other matter the subject of the investigation, or revoke the prohibition order, the health ombudsman must give notice of the decision to the person.

## **280 Notice to employers about particular QCAT decisions**

- (1) This section applies if, in a proceeding to which the health ombudsman is a party, QCAT decides a matter concerning a health practitioner.
- (2) The health ombudsman must give notice of the decision to each person who the health ombudsman believes is an employer of the practitioner.
- (3) The health ombudsman may also give notice of the decision to other health practitioners with whom the health practitioner shares premises if—
  - (a) the health practitioner is self-employed; and
  - (b) the health practitioner shares the cost of the premises with the other practitioners.

### **281 Notice to National Board about Court of Appeal decisions**

- (1) This section applies if the Court of Appeal decides an appeal against a decision of QCAT under this Act concerning a registered health practitioner.
- (2) If the National Board that registered the practitioner is not a party to the appeal, the health ombudsman must give notice of the decision to the National Board.

### **282 Notice to employers about other matters**

- (1) This section applies if the health ombudsman becomes aware (whether by receiving a complaint or otherwise) of a matter concerning a health practitioner.
- (2) The health ombudsman may give notice of the matter to any of the following people if the health ombudsman considers it would be appropriate to do so, having regard to all the circumstances and to the paramount guiding principle—
  - (a) a person the health ombudsman believes is an employer of the practitioner;
  - (b) other health practitioners with whom the health practitioner shares premises if—
    - (i) the health practitioner is self-employed; and
    - (ii) the health practitioner shares the cost of the premises with the other practitioners.

*Example—*

The health ombudsman may consider it appropriate to notify an employer if the health ombudsman receives a number of health service complaints about a health practitioner that suggest a pattern of conduct.

### **283 Notice to education providers about particular serious matters concerning students**

- (1) This section applies if the health ombudsman becomes aware (whether by receiving a complaint or otherwise) that a student may have an impairment that, in the course of the student

undertaking clinical training, may place the public at substantial risk of harm.

- (2) The health ombudsman must give notice to each education provider that the health ombudsman believes—
  - (a) is providing a program of study in which the student is enrolled; or
  - (b) has arranged clinical training for the student.

## **284 Notice to health service provider not required in particular circumstances**

A requirement under this Act for the health ombudsman to give notice of a decision or other matter to a health service provider does not apply to the extent that the health ombudsman considers that doing so may—

- (a) put at serious risk a person's health or safety; or
- (b) put a complainant or other person at risk of being harassed or intimidated; or
- (c) prejudice an investigation or inquiry.

## **Part 20 Other matters**

### **285 Delegations**

- (1) The health ombudsman may delegate his or her functions under this or another Act to an appropriately qualified staff member of the Office of the Health Ombudsman.
- (2) However, the health ombudsman may not delegate the following functions—
  - (a) deciding to take immediate action in relation to a health practitioner under part 7;
  - (b) issuing a prohibition order under part 8A;
  - (c) deciding to carry out an inquiry into a matter under part 12.

- (3) In this section—  
*functions* includes powers.

## **286 Appointment of conciliators**

- (1) The health ombudsman must appoint a suitable number of appropriately qualified persons as conciliators.
- (2) A person appointed as a conciliator may be a staff member of the Office of the Health Ombudsman.

## **287 Protection of officials from liability**

- (1) An official is not civilly liable to someone 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 State.

## **288 Prescribed documents about appropriate conduct**

- (1) A regulation may prescribe a code of conduct, charter, standard or other document (a *prescribed conduct document*) to provide guidance to health service providers, persons receiving health services and entities performing functions under this Act about the standard of services that should be provided by health service providers or a related matter.
- (2) The documents that may be prescribed under subsection (1) include a document prepared by the Minister.
- (3) A person may have regard to a prescribed conduct document when making a decision under this Act about—
- (a) what constitutes appropriate conduct or practice for a health service provider; or
  - (b) what is an appropriate way for a health service provider to provide a service.

- (4) This section does not limit the extent to which a person may apply, or have regard to, a standard, code or guideline applying to registered health practitioners under the National Law.

## **289 Whether information *identifies* a person**

For this Act, information *identifies* a person if it directly identifies the person or it is likely to lead to the identification of the person.

## **290 Annual report to include Ministerial directions**

- (1) The annual report of the Office of the Health Ombudsman under the *Financial Accountability Act 2009* for a financial year must include the details of each direction given to the health ombudsman by the Minister under section 81 or 152 during the financial year.
- (2) The details must not include information that identifies a complainant, health service provider or individual to whom a health service was provided.

## **291 Approved forms**

The health ombudsman may approve forms for use under this Act.

## **292 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may provide for categories of health service complaints for the purpose of dealing with them under this Act.

## **Part 21 Savings and transitional**

### **Division 1 Savings and transitional provisions for Act No. 36 of 2013**

#### **Subdivision 1 Preliminary**

##### **293 Definitions for div 1**

In this division—

*commencement* means the time of commencement of the provision in which the term appears.

*former chief executive* means the chief executive officer of the Office of the Health Quality and Complaints Commission holding office under the repealed HQCC Act immediately before the commencement.

*former commission* means the Health Quality and Complaints Commission in existence under the repealed HQCC Act immediately before the commencement.

*former commissioner* means the Health Quality and Complaints Commissioner holding office under the repealed HQCC Act immediately before the commencement.

*repealed HP(DP) Act* means the repealed *Health Practitioners (Disciplinary Proceedings) Act 1999*.

*repealed HQCC Act* means the repealed *Health Quality and Complaints Commission Act 2006*.

##### **294 Power to make requirements not limited**

- (1) This division provides for particular requirements applying under the repealed HQCC Act before the commencement (*outstanding requirements*) to continue in force.
- (2) A provision of this division that continues an outstanding requirement in force does not limit a power of the health



ombudsman, an authorised person or another entity under this Act to make a requirement about the same matter.

## **Subdivision 2      Application of Act to pre-commencement matters**

### **295      Pre-commencement matters may be dealt with**

- (1) A health service complaint about a matter may be made under this Act even if the matter happened or arose before the commencement.
- (2) A matter may be dealt with under this Act even if the matter happened or arose before the commencement.

### **296      Request for information may relate to pre-commencement matters**

A request for information by the health ombudsman, Minister or parliamentary committee under a provision of this Act may relate to a matter that happened or arose before the commencement.

### **297      Steps before appointing health ombudsman**

A reference in section 246(1) to the Minister doing a thing includes the Minister doing the thing before the commencement.

## **Subdivision 3      Former commission and commissioner**

### **298      Health ombudsman is legal successor of former commission**

- (1) The health ombudsman is the successor in law of the former commission.

- (2) Subsection (1) is not limited by another provision of this division.

### **299 Assets, liabilities and information of former commission**

On the commencement—

- (a) the assets and liabilities of the former commission immediately before the commencement become assets and liabilities of the health ombudsman; and
- (b) the documents and other information held by the former commission under the repealed HQCC Act immediately before the commencement become documents and other information held by the health ombudsman under this Act; and
- (c) any contracts, undertakings or other arrangements to which the former commission, former commissioner or former chief executive was a party immediately before the commencement—
  - (i) are taken to have been entered into by the health ombudsman; and
  - (ii) may be enforced against or by the health ombudsman.

### **300 Proceedings not yet started**

If, immediately before the commencement, a proceeding could have been started by or against the former commission within a particular period, the proceeding may be started by or against the health ombudsman within the period.

### **301 Current proceedings**

- (1) This section applies to a proceeding that, immediately before the commencement, had not ended and to which the former commission was a party.

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- (2) On the commencement, the health ombudsman becomes a party to the proceeding in place of the commission.

**302 References to former commission, commissioner or chief executive**

In an Act or document, a reference to the former commission, former commissioner or former chief executive is, if the context permits, taken to be a reference to the health ombudsman.

## **Subdivision 4 Complaints and other matters**

**303 Current complaints**

- (1) This section applies if a health complaint was made under the repealed HQCC Act and, immediately before the commencement, it had not been finally dealt with.
- (2) The health ombudsman may deal with the complaint as if it were a health service complaint made under this Act.
- (3) As soon as practicable after the commencement, the health ombudsman must decide the most appropriate way to deal, or further deal, with the complaint under this Act.

*Example—*

Immediately before the commencement, the former commission was conducting a preliminary assessment of a health complaint under the repealed HQCC Act, section 49B. The health ombudsman may decide to continue the assessment under part 5 of this Act or facilitate local resolution of the complaint under part 6 of this Act.

- (4) If the health ombudsman decides to take no further action in relation to the complaint, or to take relevant action to deal with the complaint that is not equivalent to action that was being taken under the repealed HQCC Act immediately before the commencement, the health ombudsman must give notice of the decision to the complainant and relevant health service provider under section 278.

### **304 Outstanding requirements to give information and other matters**

- (1) This section applies if—
  - (a) the former commission made a requirement of an entity under the repealed HQCC Act to—
    - (i) give a particular report or record or other particular information to the former commission; or
    - (ii) verify a health complaint or information by oath or statutory declaration; and
  - (b) immediately before the commencement, the entity had not yet complied with the requirement.
- (2) The requirement continues in force under this Act as if it had been made by the health ombudsman.
- (3) A person does not commit an offence only by a failure, after the commencement, to comply with a requirement mentioned in this section.

### **305 Confidentiality generally**

- (1) This section applies to a person who, under the repealed HQCC Act, section 214(4) and (5), gained confidential information through involvement in the administration of that Act or the repealed *Health Rights Commission Act 1991*.
- (2) Despite its repeal, the repealed HQCC Act, section 214 continues to apply to the person.
- (3) However, if section 272 applies to the person, the person may disclose the confidential information to the extent permitted by that section.

### **306 Privilege and confidentiality for conciliation**

- (1) Sections 149 and 150 apply to a conciliation under the repealed HQCC Act and, for that purpose, a reference in the sections to a conciliator includes a conciliator under the repealed HQCC Act.

- (2) Despite its repeal, the repealed HQCC Act, section 84(4) continues to apply in relation to information gained by a conciliator under that Act during conciliation under that Act that the conciliator has communicated to the conciliator's professional mentor.

### **307 Preservation of rights as public service officer**

- (1) Despite its repeal, the repealed HQCC Act, section 167(3) applies to a person who stopped being a commission officer and became a public service officer on the repeal of that Act.
- (2) Despite its repeal, the repealed HQCC Act, section 185(3) applies to a person who stopped being the chief executive officer of the Office of the Health Quality and Complaints Commission and became a public service officer on the repeal of that Act.

## **Subdivision 5 Matters relating to authorised persons**

### **308 Investigations**

- (1) This section applies if—
  - (a) immediately before the commencement, the former commission was investigating a matter under the repealed HQCC Act, chapter 7; and
  - (b) the health ombudsman decides to continue the investigation under part 8 of this Act.
- (2) Without limiting section 295(2), an authorised person may exercise powers under part 15 for the purpose of the investigation.

### **309 Outstanding requirements for information**

- (1) This section applies if—

- (a) an authorised person made a requirement of another person under the repealed HQCC Act to give particular information to the authorised person; and
  - (b) immediately before the commencement, the other person had not yet complied with the requirement.
- (2) The requirement continues in force as if it had been made by the authorised person under this Act.
- (3) The other person does not commit an offence only by a failure, after the commencement, to comply with the requirement.

### **310 Seized things**

This Act applies in relation to a thing that was seized by an authorised person under the repealed HQCC Act before the commencement as if the thing had been seized under this Act.

## **Subdivision 6 Continuing appointments**

### **311 Authorised persons**

- (1) This section applies in relation to each person who, immediately before the commencement, held an appointment as an authorised person under the repealed HQCC Act.
- (2) The person continues to hold office as an authorised person under this Act on the same conditions until the person's office as an authorised person ends under this Act.

### **312 Conciliators**

- (1) This section applies in relation to each person who, immediately before the commencement, was a conciliator under the repealed HQCC Act.
- (2) The person continues as a conciliator under this Act, as if the person had been appointed by the health ombudsman under

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section 286, until the health ombudsman or the person, by notice, ends the appointment.

## Subdivision 7      Disciplinary matters

### 313      Panels of assessors

- (1) From the commencement—
  - (a) the public panel of assessors under the repealed HP(DP) Act immediately before the commencement (the *former public panel*) continues as the public panel of assessors under section 117; and
  - (b) an appointment of a person under the repealed HP(DP) Act, section 40 as a member of the former public panel that was in force immediately before the commencement continues as an appointment of the person under section 118 as a member of the public panel of assessors; and
  - (c) each professional panel of assessors under the repealed HP(DP) Act, section 398ZL(2) immediately before the commencement (a *former professional panel*) continues as the corresponding professional panel of assessors under section 117; and
  - (d) an appointment of a person under the repealed HP(DP) Act, section 40 as a member of a former professional panel that was in force immediately before the commencement continues as an appointment of the person under section 118 as a member of the corresponding professional panel of assessors; and
  - (e) an appointment of a person under the repealed HP(DP) Act, section 40A as a member of a former professional panel that was in force immediately before the commencement continues as an appointment of the person under section 119 as a member of the corresponding professional panel of assessors.

- (2) For subsection (1), the dental hygienists, dental therapists and oral health therapists panel of assessors is the professional panel of assessors corresponding to the dental auxiliaries panel of assessors under the repealed HP(DP) Act.

### **314 Proceedings before QCAT**

- (1) This section applies to a matter for which QCAT had jurisdiction under the repealed HP(DP) Act before the repeal of that Act.
- (2) If, immediately before the commencement, a proceeding for the matter had been started but not been decided, QCAT may continue to hear and decide the matter under the repealed HP(DP) Act as if that Act had not been repealed.

### **315 QCAT's jurisdiction to review pre-commencement decisions**

- (1) This section applies to a decision of QCAT if, immediately before the commencement, QCAT had jurisdiction under the repealed HP(DP) Act to review the decision on or after a particular time.
- (2) QCAT continues to have jurisdiction to review the decision on or after the relevant time and, for that purpose, the repealed HP(DP) Act continues to apply as if that Act had not been repealed.

### **316 Appeals to Court of Appeal from pre-commencement decisions**

- (1) This section applies to a decision of QCAT if, immediately before the commencement, the Court of Appeal had jurisdiction under the repealed HP(DP) Act to hear an appeal against the decision.
- (2) The Court of Appeal continues to have jurisdiction to hear an appeal against the decision and, for that purpose, the repealed HP(DP) Act continues to apply as if that Act had not been repealed.



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**317 Complaints, disciplinary proceedings, secretary and other matters**

- (1) The repealed HP(DP) Act, as in force immediately before the repeal, continues to apply in relation to a transitional matter, and to a proceeding relating to a transitional matter, as if that Act had not been repealed.
- (2) Without limiting subsection (1)—
  - (a) a person may be appointed as secretary under the repealed HP(DP) Act, section 23(1); and
  - (b) the secretary may establish a professional conduct review panel under the repealed HP(DP) Act to perform functions under the repealed HP(DP) Act in relation to a transitional matter; and
  - (c) a professional conduct review panel that, immediately before the repeal, was performing its functions under the repealed HP(DP) Act in relation to a transitional matter continues in existence for the purpose of completing the performance of the functions.
- (3) An appointment of a person as secretary under the repealed HP(DP) Act that was in force immediately before the repeal continues in force until the Governor in Council, by notice to the person, ends the appointment.
- (4) For this section, a reference in the repealed HP(DP) Act to a professional panel of assessors or public panel of assessors is taken to be a reference to the corresponding panel under this Act.
- (5) In this section—

***repeal*** means the repeal of the *Health Practitioners (Disciplinary Proceedings) Act 1999*.

***transitional matter*** means a complaint or other matter to which the repealed HP(DP) Act, part 13, division 5, 6 or 7 applied immediately before the repeal.

**318 Assessors' entitlements about remuneration and allowances**

The entitlements that were in force under the repealed HP(DP) Act, section 45A immediately before the commencement continue in force under section 125.

**Subdivision 8 Disclosure of confidential information to health ombudsman**

**319 Confidential information under the National Law**

- (1) This section applies until the health ombudsman becomes a co-regulatory authority under the National Law.
- (2) For the National Law, section 216(2)(b)(ii), it is declared that information to which that section applies may be disclosed to the health ombudsman.

**320 Confidential information under HQCC Act**

- (1) This section applies until the *Health Quality and Complaints Commission Act 2006* is repealed by this Act.
- (2) For section 214(1)(b) of that Act, information to which that section applies may be disclosed to the health ombudsman.

**Division 2 Transitional provisions for Public Health (Childcare Vaccination) and Other Legislation Amendment Act 2015**

**320A Power of authorised person to require attendance under s 228**

- (1) Section 228, as amended by the amendment Act, applies in relation to an offence, or a matter being investigated by the

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health ombudsman, even if the offence was committed, or the matter happened or arose, before the commencement.

(2) In this section—

*amendment Act* means the *Public Health (Childcare Vaccination) and Other Legislation Amendment Act 2015*.

### **320B Effect of particular notices given before the commencement**

- (1) This section applies if, before the commencement, an authorised person gave a notice to a person that purported to—
  - (a) be given under pre-amended section 228; and
  - (b) require the person to attend before the authorised person at a stated time and place to answer questions.
- (2) The notice has effect, and is taken to have had effect since it was given, to the same extent as it would have if—
  - (a) amended section 228 were in force when the notice was given; and
  - (b) the notice were given under that section.
- (3) However, to remove any doubt, it is declared that the person is not taken to have committed an offence under section 229 or 229A by failing to do a thing mentioned in section 229A(1)(a) to (d) before the commencement.
- (4) Without limiting subsection (2)—
  - (a) information obtained as a result of the giving of the notice is taken to have been as lawfully obtained by the authorised person under this Act as it would have been in the circumstances mentioned in subsection (2)(a) and (b); and
  - (b) any decision made or other action taken by the health ombudsman in reliance on the information, before or after the commencement, is taken to be as lawful as it would be in the circumstances mentioned in subsection (2)(a) and (b).

(5) In this section—

*amended section 228* means section 228 as in force immediately after the commencement.

*information* includes a document.

*pre-amended section 228* means section 228 as in force from time to time before the commencement.

## **Division 3                      Transitional provisions for Health Transparency Act 2019**

### **Subdivision 1            General provisions**

#### **320C Existing complaints or other matters**

- (1) This section applies to a health service complaint or other matter that—
  - (a) the health ombudsman started, but has not finished, dealing with under this Act before the commencement;  
or
  - (b) the director of proceedings refers to the health ombudsman under section 320F.
- (2) The health ombudsman must deal with the complaint or matter under this Act as in force after the commencement to the greatest practicable extent.
- (3) Without limiting subsection (2)—
  - (a) section 35A applies in relation to a health service complaint made before the commencement if, on the commencement, the health ombudsman has not given notice of a decision under section 35 in relation to the complaint; and
  - (b) part 8A applies to a health practitioner (other than in the person's capacity as a registered health practitioner) the subject of an investigation under part 8—

- (i) completed before the commencement; or
  - (ii) started before the commencement and completed after the commencement; and
- (c) part 9, division 1 applies in relation to the health ombudsman deciding whether or not to refer a health service complaint or other matter to the National Agency if, on the commencement, the health ombudsman has not referred the complaint or matter to the National Agency.

### **320D Existing immediate action**

- (1) Section 90H applies to an interim prohibition order made before the commencement that is still in effect on the commencement.
- (2) Sections 186, 203 and 228 as in force after the commencement apply to immediate action taken under part 7 before the commencement if the immediate action is still in effect on the commencement.

## **Subdivision 3 Additional provisions about other health practitioners**

### **320F Existing referrals to director of proceedings**

- (1) This section applies to a health service complaint or other matter about a health practitioner, other than in the person's capacity as a registered health practitioner—
  - (a) that the health ombudsman referred to the director of proceedings under part 10, division 2 before the commencement; and
  - (b) that, on the commencement, the director has not started, or has started but not finished, dealing with under part 10, division 2.

- (2) The director must refer the complaint or matter to the health ombudsman to deal with under this Act as in force after the commencement.

### **320G Existing proceedings for prohibition orders**

- (1) This section applies if—
  - (a) before the commencement, a matter concerning a health practitioner other than a registered health practitioner was referred to QCAT by the director of proceedings on the health ombudsman’s behalf under section 103; and
  - (b) on the commencement, QCAT has not finally dealt with the matter.
- (2) QCAT may deal, or continue to deal, with the matter under this Act as in force before the commencement as if the *Health Transparency Act 2019*, part 6, division 2 had not been enacted.
- (3) If QCAT makes a prohibition order under subsection (2), this Act as in force before the commencement continues to apply to any appeal or other proceeding relating to the making of the prohibition order as if the *Health Transparency Act 2019*, part 6, division 2 had not been enacted.
- (4) Sections 90P and 90Q apply to a prohibition order made under subsection (2) as if a reference to a prohibition order in the sections included a reference to a prohibition order made under subsection (2).

### **320H Existing prohibition orders**

- (1) This section applies to a prohibition order made under this Act as in force before the commencement that is still in effect on the commencement.
- (2) The prohibition order continues in effect.
- (3) This Act as in force before the commencement applies, or continues to apply, to any appeal or other proceeding relating to the making of the prohibition order as if the *Health*

*Transparency Act 2019*, part 6, division 2 had not been enacted.

- (4) Sections 90P and 90Q apply to the prohibition order as if a reference to a prohibition order in the sections included a reference to a prohibition order continued under subsection (2).

## **Part 22                      Repeals**

### **321      Repeal of Acts**

The following Acts are repealed—

- the Health Practitioners (Disciplinary Proceedings) Act 1999, No. 58
- the Health Quality and Complaints Commission Act 2006, No. 25
- the Health Practitioner Registration and Other Legislation Amendment Act 2013, No. 13.

## Schedule 1 Dictionary

### section 6

***Agency Fund*** see the National Law, section 5.

***approved form*** means a form approved under section 291.

***Australian Human Rights Commission*** means the commission of that name established by the *Australian Human Rights Commission Act 1986* (Cwlth).

***Australian Privacy Commissioner*** means the Privacy Commissioner appointed under the *Australian Information Commissioner Act 2010* (Cwlth), section 14.

***authorised person*** means a person who holds office under part 15 as an authorised person.

***complaint*** means a health service complaint.

***conciliator*** means a conciliator appointed under section 286.

***co-regulatory authority*** see the National Law, section 5.

***co-regulatory jurisdiction*** see the National Law, section 5.

***corresponding interstate interim order*** means an order prescribed to be a corresponding interstate interim order under section 77.

***corresponding interstate order*** means an order prescribed to be a corresponding interstate order under section 90O.

***director*** means the director of proceedings.

***director of proceedings*** means the director of proceedings appointed under section 258.

***disciplinary proceeding*** means a proceeding for which QCAT has jurisdiction under section 94(1) or (2).

***disposal order***, for part 15, see section 225(2).

***education provider*** see the National Law, section 5.



**electronic document** means a document of a type under the *Acts Interpretation Act 1954*, section 36, definition *document*, paragraph (c).

**employer**, for part 19, see section 277.

**former owner**, for part 15, see section 222(1).

**government entity** means—

- (a) a government entity under the *Public Service Act 2008*, section 24; or
- (b) an office, held by an individual, that is established under an Act for a public purpose; or
- (c) an entity or office of the Commonwealth or another State that is equivalent to an entity mentioned in paragraph (a) or office mentioned in paragraph (b).

**health, conduct or performance action** see the National Law, section 5.

**health ombudsman** means the health ombudsman appointed under section 245.

**health practitioner** see section 8(a).

**health profession** see the National Law, section 5.

**health service** see section 7.

**health service complaint** see section 31.

**health service complaints management system** means the system, established under this Act and the National Law, for dealing with complaints and other matters relating to—

- (a) the health, conduct or performance of health practitioners who provide health services in Queensland; and
- (b) the services provided by health service organisations in Queensland.

**health service organisation** see section 8(b).

**health service provider** see section 8.

***hospital*** includes any premises providing medical or surgical treatment, and nursing care, for ill or injured persons.

***identifies***, in relation to a person, see section 289.

***identity card***, for a provision about authorised persons, means an identity card issued under section 192(1).

***immediate action***, in relation to a health practitioner, means—

- (a) for a registered health practitioner—immediate registration action; or
- (b) for a health practitioner other than a registered health practitioner—the issue of an interim prohibition order.

***immediate registration action*** see section 57.

***impairment***—

- (a) for a registered health practitioner—see the National Law, section 5; or
- (b) for another health practitioner—means a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect the practitioner’s capacity to provide the health services ordinarily provided by the practitioner.

***information notice***, about a decision under part 15, means a notice stating the following—

- (a) the decision;
- (b) the reasons for it;
- (c) that the person to whom the notice is given may apply to the health ombudsman for a review of the decision within 20 business days after the person receives the notice;
- (d) how to apply for a review.

***inquiry member***, for an inquiry, means the health ombudsman or another person appointed under section 153(1) as an inquiry member for the inquiry.

***interim prohibition order*** see section 67.

**investigation report** see section 86.

**local resolution**, of a complaint, means resolution of the complaint under part 6.

**National Agency** see the National Law, section 5.

**National Board** see the National Law, section 5.

**National Law** means the Health Practitioner Regulation National Law (Queensland).

**national panel** means a panel under the National Law.

**notice** means written notice.

**occupier**, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

**of**, a place, includes at or on the place.

**official** means any of the following persons—

- (a) the health ombudsman;
- (b) a staff member of the Office of the Health Ombudsman;
- (c) an authorised person;
- (d) a conciliator;
- (e) a member of a committee or panel established under section 29.

**owner**, of a thing that has been seized under part 15, includes a person who would be entitled to possession of the thing had it not been seized.

**paramount guiding principle** means the main principle for administering this Act stated in section 4.

**parliamentary committee** means—

- (a) if the Legislative Assembly resolves that a particular committee of the Assembly is to be the parliamentary committee under this Act—that committee; or
- (b) if paragraph (a) does not apply and the standing rules and orders state that the portfolio area of a portfolio committee includes the health ombudsman—that committee; or
- (c) otherwise—the portfolio committee whose portfolio area includes the department, or the part of a department, in which this Act is administered.

***person in control***, of a thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in possession or control of the thing.

***place*** includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where a building or structure, or a group of buildings or structures, is situated.

***portfolio area*** see the *Parliament of Queensland Act 2001*, schedule.

***portfolio committee*** see the *Parliament of Queensland Act 2001*, schedule.

***premises*** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

**prescribed conduct document** see section 288.

**principal registrar** means the principal registrar under the QCAT Act.

**professional misconduct** see the National Law, section 5.

**professional panel of assessors** means a professional panel of assessors established under section 117(b).

**prohibition order** see section 90B.

**public panel of assessors** means the public panel of assessors established under section 117(a).

**public place** means—

- (a) a place, or part of the place—
  - (i) the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or
  - (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or
- (b) a place that is a public place under another Act.

**reasonably believes**, for part 15, means believes on grounds that are reasonable in the circumstances.

**reasonably suspects**, for part 15, means suspects on grounds that are reasonable in the circumstances.

**registered health practitioner** means a registered health practitioner or student under the National Law.

**registration**, in relation to a health practitioner, means registration under the National Law.

**relevant action** see section 38.

**relevant health service provider**, in relation to a health service complaint, means the health service provider to whom the complaint relates.

**relevant National Board**, in relation to a registered health practitioner, means the National Board established for the health profession in which the practitioner is registered.

***standing rules and orders*** see the *Parliament of Queensland Act 2001*, schedule.

***support service***, for a health service, means a service providing business support, clinical support, corporate support or other support to the health service.

*Examples of a business support service—*

- a catering, cleaning or laundry service
- a service to maintain medical equipment

*Examples of a clinical support service—*

- a pathology service
- a blood management service

*Examples of a corporate support service—*

- a human resource management service
- an information and communication technology support service

***tribunal***, for part 10, means QCAT.

***unprofessional conduct*** see the National Law, section 5.

***unsatisfactory professional performance*** see the National Law, section 5.

***witness requirement notice*** see section 161.