



# HEALTH RIGHTS COMMISSION ACT 1991

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Queensland



## **Health Rights Commission Act 1991**

### **Act No. 88 of 1991**

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

*[Assented to 11 December 1991]*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

## **PART 1—PRELIMINARY**

### **Short title**

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

### **Commencement**

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

### **Definitions**

- 3.(1) In this Act—

“**action**” includes further action;

“**authorised person**” means—

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

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

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

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

“**conciliation**” means the process of conciliation under Part 6;

“**conciliator**” means a person appointed as a conciliator under section 75;

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

“**detriment**” includes—

- (a) injury, damage or loss; or
- (b) intimidation or harrassment; or



(c) discrimination, disadvantage or adverse treatment in relation to career, profession, employment, trade, or business; or

(d) threats of detriment;

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

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

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

**“health service”** means—

(a) a service provided to an individual for, or purportedly for, the benefit of human health—

(i) including services specified in Part 1 of Schedule 1; but

(ii) excluding services specified in Part 2 of Schedule 1; or

(b) an administrative service directly related to a health service; or

(c) a decision or action mentioned in subsection (3);

**“health service complaint”** means a complaint mentioned in section 58;

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

**“inquiry”** means an inquiry that the Minister has directed the Commissioner under section 33 to conduct;

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

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

**“investigate”** includes examine, consider or take action;

**“notice”** means written notice;

**“obstruct”** includes—

(a) assault, threaten, abuse, insult, intimidate or hinder; or

(b) attempt to obstruct;

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

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

**“premises”** includes any—

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

**“provider”** means—

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

**“record”** includes—

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

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

**“registered provider”** means a person registered by a registration board;

**“register”** includes—

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

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

**“reprisal”** means conduct causing detriment;

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

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

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

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

as if it were a health service.

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

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

## **Objectives**

4. The principal objectives of this Act are—

(a) to provide for oversight, review and improvement of health services by establishing an accessible, independent facility that will—

- (i) preserve and promote health rights; and
- (ii) receive and resolve health service complaints; and
- (iii) enable users and providers to contribute to the review and improvement of health services; and
- (iv) provide education and advice in relation to health rights and responsibilities and the resolution of complaints about health services, whether or not made under this Act; and
- (v) assist users and providers to resolve health service complaints; and

(b) to provide for the development of a Code of Health Rights and Responsibilities; and

(c) to provide for the appointment, functions and powers of a Health Rights Commissioner; and

(d) to provide for the establishment, functions and operation of a Health Rights Advisory Council.

**Crown bound**

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

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

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

**Report after 2 years**

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

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

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

**PART 2—HEALTH RIGHTS COMMISSION****Establishment of Commission**

**7.(1)** A facility called the Health Rights Commission is established.

**(2)** The Health Rights Commission is to comprise—

- (a) the Health Rights Commissioner; and
- (b) officers of the Commission.

**Application of various public sector Acts**

**8.** The Commission is—

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

**Appointment of Commissioner**

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

**Commissioner's functions**

**10.** The functions of the Commissioner are—

- (a) to identify and review issues arising out of health service complaints; and
- (b) to suggest ways of improving health services and of preserving and increasing health rights; and
- (c) to provide information, education and advice in relation to—
  - (i) health rights and responsibilities; and
  - (ii) procedures for resolving health service complaints; and
- (d) to receive, assess and resolve health service complaints; and
- (e) to encourage and assist users to resolve health service complaints directly with providers; and
- (f) to assist providers to develop procedures to effectively resolve health service complaints; and
- (g) to conciliate or investigate health service complaints; and
- (h) to inquire into any matter relating to health services at the Minister's request; and

- (i) to advise and report to the Minister on any matter relating to health services or the administration of this Act; and
- (j) to provide advice to the Council; and
- (k) to provide information, advice and reports to registration boards; and
- (l) to perform functions and exercise powers conferred on the Commissioner under any Act.

### **Commissioner's independence**

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

### **Qualifications for appointment**

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

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

**(2)** In this section—

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

- (a) Aborigines and Torres Strait Islanders; and
- (b) persons with disabilities; and
- (c) persons who—
  - (i) cannot communicate in English; or

- (ii) have difficulty in communicating in English; or
- (iii) have a cultural background significantly different to that which generally applies in the community.

### **Disqualifications from appointment**

**13.(1)** A person who is—

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

is not qualified to be appointed as Commissioner.

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

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

### **Terms and conditions of appointment**

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

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

### **Period of appointment**

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

### **Preservation of rights**

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

**(2)** The person—

- (a) retains all rights that have accrued to the person because of employment as an officer of the public service; and

(b) is entitled to all rights that would accrue in the future to the person if the person's service as Commissioner were service as an officer of the public service.

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

(a) the person is entitled to be appointed to an office in the public service at a salary level not less than the salary level, at that time, of an office equivalent to the one the person held before being appointed as Commissioner; and

(b) the person's service as Commissioner is to be regarded as service in the public service for the purpose of determining the person's rights as an officer of the public service.

### **Vacancy in Commissioner's office**

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

(a) dies; or

(b) resigns office by signed notice given to the Minister; or

(c) becomes a registered provider or a member of a professional association of health service providers mentioned in section 13(1)(b); or

(d) is removed from office under section 18.

### **Removal or suspension of Commissioner**

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

(a) becomes bankrupt or takes advantage, as a debtor, of the laws relating to bankrupt or insolvent debtors; or

(b) is convicted in Queensland of an indictable offence or is convicted elsewhere in respect of an act or omission that, if it happened in Queensland, would constitute an indictable offence; or

(c) is guilty of misconduct, neglect of duty or incompetence; or

(d) becomes mentally or physically incapable of performing satisfactorily the duties of office.



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

### **Grant of leave to Commissioner**

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

### **Acting Commissioner**

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

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

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

### **Crown and Commissioner**

21. The Commissioner represents the Crown.

### **Staff and assistance**

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

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

**Commissioner's power to delegate**

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

**Commissioner may appoint authorised persons**

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

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

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

**(3)** An authorised person is to be—

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

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

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

**Commissioner may issue identity card**

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

**(2)** The identity card is to—

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

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

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

### **Committees**

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

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

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

### **Co-operation with interested organisations**

**27.** The Commissioner is to—

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

### **Assistance to providers**

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

**Commissioner's general power**

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

**Commissioner is the chief executive**

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

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

**Commissioner's procedures informal**

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

- (a) is to proceed with as little formality and technicality, and with as much expedition, as is practicable; and
- (b) is not bound by rules or the practice of any court or tribunal as to evidence or procedure.

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

**Minister's directions**

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

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

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

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

### **Minister may direct inquiry**

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

(a) consisting in a health service complaint, including one made by the Minister; or

(b) concerning the provision of a health service; or

(c) concerning the use of premises for the reception, care or treatment of—

(i) aged persons; or

(ii) persons with a mental or physical illness; or

(iii) persons with a disability; or

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

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

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

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

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

(a) the exclusion of a power under Part 7 from being used for the purpose of the inquiry; or

(b) the fixing of a day by which a report of the progress of the inquiry is to be provided to the Minister; or

(c) the fixing of a day by which the inquiry is to be finished or a final report is to be given to the Minister.

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

### **Annual report**

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

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

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

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

### **Special report**

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

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

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

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

### **Response to adverse comment**

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

- (a) to make submissions to the Commissioner in relation to the

comment; and

(b) to give a written statement to the Commissioner in relation to the comment.

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

## **PART 3—DEVELOPMENT OF CODE**

### **Code of Health Rights and Responsibilities**

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

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

### **Consultation on code**

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

(a) consult with the Council; and

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

### **Content of code**

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

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

(a) may have regard to all matters relevant to the provision and use of health services; and

(b) is to have regard to the principles mentioned in subsection (3).

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

(a) that an individual should be entitled to participate effectively in decisions about the individual's health; and

(b) that an individual should be entitled to take an active role in the individual's health care; and

(c) that an individual should be entitled to be provided with health services in a considerate way that takes into account the individual's background, needs and wishes; and

(d) that an individual who—

(i) provides a health service; or

(ii) provides care for another individual receiving a health service;

should be given consideration and recognition for the contribution the individual makes to health care; and

(e) that the confidentiality of information about an individual's health should be preserved; and

(f) that an individual should be entitled to reasonable access to records concerning the individual's health; and

(g) that an individual should be entitled to reasonable access to procedures for the redress of grievances with respect to the provision of health services.

## **PART 4—HEALTH RIGHTS ADVISORY COUNCIL**



**Establishment of Council**

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

**Council's functions**

**41.** The functions of the Council are—

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

**Commissioner to report to Council**

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

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

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

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

- (a) if the Minister considers that the report should not be provided to

the Council for a reason mentioned in subsection (2)(a) to (e), the Minister is to direct the Commissioner in writing not to provide the report; and

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

### **Council's general power**

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

### **Membership of Council**

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

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

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

### **Public service legislation not to apply to membership**

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

### **Vacation of member's office**

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

- (a) if the member's term of office expires; or
- (b) if the member dies; or
- (c) if the member resigns by signed notice given to the Minister; or
- (d) if—

- (i) the member is absent, without reasonable cause, from 3 consecutive meetings of the Council after being given notice of the meetings; and
  - (ii) is not, within 6 weeks after the last meeting, excused by the Council for the absence; or
- (e) if the member is removed from office under section 47.

**Removal of member from office**

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

**President**

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

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

**Vacation of President's office**

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

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

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

**Removal of President from office**

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

**Minister to appoint to vacancies**

**51.** If a vacancy in the office of a member or the President happens, the Minister is to appoint a person to the vacancy so that the Council is constituted as required by sections 44 and 48.

## **Council Meetings**

**52.(1)** The procedure—

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

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

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

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

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

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

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

## **Minister may call meeting**

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

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

## **Minutes**

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

## **Dissenting opinion to be reported**

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

- (a) recorded in the minutes of the meeting; and
  - (b) reported in writing to the Minister when the advice is provided.
- (2) The Council is to comply with the requirement.

### **Disclosure of interests**

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

- (2) The disclosure is to be made—
- (a) as soon as practicable after the relevant facts come to the member's knowledge; and
  - (b) at a meeting of the Council.

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

- (4) Unless the Council otherwise determines, the member is not—
- (a) to be present at the deliberations of the Council concerning the matter; or
  - (b) to take part in the Council's decision in relation to the matter.

(5) In this section—

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

Maximum penalty—20 penalty units.

### **Fees and allowances**

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

## **PART 5—COMPLAINTS**

### **Health service complaint**

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

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

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

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

### **Who may complain**

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

- (a) the user; or

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

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

### **Representative complaints**

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

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

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

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

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

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

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



**Oral complaints to be confirmed in writing**

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

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

**Complainant to reveal identity**

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

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

unless subsection (3) applies.

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

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

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

**Further information from complainant**

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

**Commissioner may require affidavit**

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

**Initial receipt and consideration**

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

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

**Notice of initial rejection**

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

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

**Notices of decision to assess complaint**

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

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

**Assessment of complaint**

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

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

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

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

taken or for the opportunity mentioned in paragraph (b) to be given.

### **Notice of assessment decision**

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

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

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

### **Action on acceptance of complaint**

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

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

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

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

### **Time limit on assessment**

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

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

**(2)** If the Commissioner considers—

(a) that a health service complaint is too complex to allow the Commissioner to assess the complaint within 28 days of deciding under section 66 to accept the complaint for assessment ; or

(b) that a health service complaint can be satisfactorily resolved otherwise than under Part 6, 7 or 8;

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

### **Information and local resolution**

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

(a) exercise powers under section 62, 64 and 65; and

(b) seek and obtain information the Commissioner considers appropriate; and

(c) attempt by whatever means the Commissioner considers appropriate to resolve the complaint, including for example by requesting any person the Commissioner considers is in a position to do so to assist the resolution of the complaint.

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

### **Decisions not to take action**

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

(a) is frivolous, vexatious or trivial; or

(b) is misconceived or lacking in substance; or

(c) has been adequately dealt with by the Commission or another public authority.

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

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

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

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

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

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

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

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

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

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

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

(10) In this section—

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

## **PART 6—CONCILIATION**

### **Appointment of conciliator**

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

### **Conciliators functions exclusive**

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

### **Conciliation to be separately performed**

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

### **Conciliation function**

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

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

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

**Public interest**

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

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

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

**(4)** The conciliator is to report to the Commissioner any issue involving the public interest that the conciliator considers is raised by the health service complaint, unless the issue has already been identified by the Commissioner.

**Progress reports from conciliator**

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

**Results report from conciliator**

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

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

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

(a) may recommend the action the Commissioner should take under section 84(2); or

(b) make no recommendation.

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

to the Commissioner.

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

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

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

### **Enforceable agreement**

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

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

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

### **Commissioner may end conciliation**

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

**(2)** The Commissioner may then—

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



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

### **Conciliation privileged**

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

- (a) is not admissible as evidence in a proceeding before a court or tribunal; and
- (b) cannot be used by the Commissioner as a ground for investigation or inquiry.

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

### **Confidentiality of conciliation**

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

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

unless the disclosure is authorised under this Part.

Maximum penalty—40 penalty units

### **Professional mentor**

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

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

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

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

Maximum penalty for contravention of this subsection—40 penalty units

## **PART 7—INVESTIGATION**

### *Division 1—Commissioner's Investigations*

#### **Commissioner's investigations**

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

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

#### **Notice to provide information or a record**

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

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

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

produce the record.

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

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

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

### **Oral information on oath**

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

(2) An authorised person may administer the oath.

### **Retention and copying of provided record**

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

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

(a) may take extracts from and make copies of the record; but

(b) is to allow the record to be inspected or copied at any reasonable time by a person who would be entitled to inspect or copy it if it were not in the authorised person's possession.

**Offence not to provide**

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

Maximum penalty—10 penalty units

**Allowances**

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

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

**Reference to another authority for investigation**

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

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

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

**Investigation by other authority**

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

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

**(3)** The person or body may provide the Commissioner with written

reports of the progress and results of the investigation that the person or body considers appropriate.

(4) The Commissioner may request the person or body at any time to provide the Commissioner with reasonable reports of the progress and results of the investigation.

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

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

### **Commissioner's powers not affected by reference**

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

## ***Division 2—Inquiry hearing***

### **Powers**

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

### **Oral hearings**

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

(a) to give evidence; and

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

in relation to the inquiry matter.

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

under—

- (a) section 101 or Division 4; or
- (b) Chapter 16 of the Criminal Code;

involving the giving of the evidence or the production of the record.

### **Failure of witness to attend**

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

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

Maximum penalty—10 penalty units

### **Refusal of witness to co-operate**

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

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

Maximum penalty—10 penalty units

### **Contempt of inquiry**

**101.(1)** A person is not to—

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

Maximum penalty—30 penalty units

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

### **Application of Criminal Code**

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

### **Allowances**

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

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

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

## *Division 3—Premises powers*

### **Power limitation**

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

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

### **Identity card to be produced**

**105.** An authorised person, other than a police officer in uniform, is not entitled to exercise a power under this Division in relation to a person unless the authorised person first produces to the person the authorised person's identity card.

**Police officer called in aid**

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

**(2)** The police officer—

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

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

**Entry and search**

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

(a) in relation to an inquiry matter mentioned in section 33(1)(c)—that there is on premises a person mentioned in that paragraph—

(i) who cannot, practically or otherwise, exercise an absolute right of egress from the premises; and

(ii) whose health or safety may be at risk; or

(b) in any case—that there is on premises a particular record or thing that may afford evidence;

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

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

(a) the authorised person may seize the evidence;

(b) the authorised person may keep the evidence for 60 days or, if a prosecution in which the evidence is relevant is instituted within that period, until the completion of the prosecution and of any appeal from a decision in relation to the prosecution;

(c) if the evidence is a record—while the authorised person has possession of the record, the authorised person may take extracts from



and make copies of the record but is to allow the record to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised person's possession.

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

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

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

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

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

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

(6) The notice is to be given to—

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

### **General powers of authorised person in relation to premises**

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

- (a) to search any part of the premises;
- (b) to inspect or examine anything on the premises;

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

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

Maximum penalty—20 penalty units.

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

## **Warrants**

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

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

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

(b) a particular record or thing that may afford evidence.

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

(4) The warrant is to specify—

(a) that the authorised officer, with necessary and reasonable force and assistance, may—

(i) enter the premises; and

(ii) exercise the powers set out in section 108 ; and

(iii) seize evidence in accordance with section 107; and

(b) whether the entry is authorised to be made at any time of the day or night or during specified hours ; and

(c) a day no later than 7 days after the issue of the warrant on which the warrant ceases to have effect; and

(d) the purpose for which the warrant is issued.

#### *Division 4—False or misleading information*

### **Application**

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

(a) under section 89(1), 98 or 108; or

(b) as a witness at an inquiry hearing.

### **False or misleading information**

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

(a) give information that the person knows is false or misleading in a material particular; or

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

Maximum penalty—20 penalty units

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

### **False or misleading record**

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

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

Maximum penalty—20 penalty units

## ***Division 5—Privilege***

### **Application**

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

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

### **Witness privilege**

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

prosecution for an offence in the Supreme Court.

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

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

### **Claim of unjustifiable exercise of power**

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

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

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

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

### **Supreme Court applications**

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

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

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

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

example—

(a) by excusing a person from giving or producing, or ordering a person to give or produce, the whole or part of the information or record; or

(b) by amending the notice or order by which the information or record was required to be given or produced.

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

### *Division 6—Action on investigation*

#### **Interpretation**

117. In this division—

“**investigation**” includes an inquiry;

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

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

#### **Commissioner’s reports**

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

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

#### **To whom reports may be given**

119. The Commissioner may give a report to—

(a) the complainant; or

(b) the provider; or

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

### **Response to adverse comment**

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

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

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

## **PART 8—REGISTRATION BOARDS**

### **Reference of complaint to registration board**

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

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

the Commissioner may refer the complaint to the registration board.

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

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

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

### **Duty of registration board**

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

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

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

### **Reference by registration board**

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

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

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



**Information from registration board**

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

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

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

**Notice of action decision to registration board**

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

**(2)** The notice is to provide details of—

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

**Notice of further decision to registration board**

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

**Information to registration board**

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

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

### **Report to registration board of results of investigation**

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

(2) The report may contain—

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

### **Report to Commissioner by registration board**

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

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

### **Commissioner may intervene in disciplinary proceedings**

**130.(1)** The Commissioner, at any stage, may intervene in a disciplinary proceeding before a registration board taken against a registered provider for matters in relation to or arising out of a health service complaint or an inquiry matter.

(2) On intervention, the Commissioner becomes a party to the proceedings.

## **PART 9—GENERAL**

### **Obstruction**

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

Maximum penalty—20 penalty units

### **Record copy**

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

### **Dispensing with notice**

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

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

if the Commissioner considers this would—

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

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

### **Investigation despite proceedings**

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

**Giving of information protected**

**135.(1)** This section applies to a person who, in good faith, gives information or a record (in this section called “**the information**”) to the Commissioner, an authorised person or a Commission officer—

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

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

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

**(4)** For example, a person —

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

is taken not to have—

- (c) committed an offence against the Act; or
- (d) breached the oath, rule of law or practice or a law relevant to the oath, rule of law or practice; or
- (e) rendered the person liable to disciplinary action;

merely because the person has given the information.

**Reports privileged**

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

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

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

## **Evidence**

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

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

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

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

is evidence of those matters.

(4) Judicial notice is to be taken of—

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

## **Preservation of confidentiality**

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

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

Maximum penalty—40 penalty units

(2) A person is not required—

- (a) to disclose confidential information to a court or tribunal; or

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

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

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

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

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

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

(5) In this section—

“**confidential information**” includes—

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

### **Unlawful reprisal**

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

- (a) has made or may make a health service complaint; or

(b) has provided or may provide assistance to the Commissioner, an authorised person or other person or body conducting an investigation or inquiry for the purpose of this Act.

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

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

(4) A ground mentioned in subsection (1) as the ground for a taking of an unlawful reprisal is the unlawful ground for the reprisal.

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

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

Maximum penalty— 50 penalty units

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

(a) the person had other just and reasonable grounds for engaging in the conduct; and

(b) the person had taken a significant step towards engaging in the conduct before acting on the unlawful ground.

## **Indemnity**

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

(a) acts done, or omitted to be done, by the person without negligence under this Act; and

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

**Proceedings for offences**

**141.(1)** Proceedings for an offence against this Act are to be taken in a summary way under the *Justices Act 1886*.

(2) The proceedings are to be taken by an authorised person.

(3) The proceedings are to start—

(a) within 6 months after the commission of the offence; or

(b) within 6 months after the offence comes to the knowledge of the Commissioner;

which ever period is the longer.

**Regulations**

**142.(1)** The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

(a) is required or permitted to be prescribed by this Act; or

(b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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

(a) requiring providers of a specified class to give to the Commissioner returns of information concerning complaints about health services; and

(b) offences against the regulations punishable by fines of no more than 10 penalty units.

**Amendment of the Parliamentary Commissioner Act**

**143.(1)** The *Parliamentary Commissioner Act 1974* is amended as set out in this section .

(2) At the end of section 13(5)—

*insert—*

‘(h) by a person in a capacity as a conciliator under the *Health Rights Commission Act 1991*.’.



**Transitional**

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

(a) the complaint relates to a matter arising more than 1 year before the commencement of this section; and

(b) the complainant became aware of the matter of complaint more than 1 year before the commencement of this section.

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

(a) that were made before the commencement of this section to the Health Complaints Unit; and

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

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

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

**SCHEDULE 1****Part 1—Declared Health Services**

1. Hospital, health institution or nursing home services.
2. Medical, dental, pharmaceutical, paramedical, mental health, community health, environmental health, specialised health or allied services.
3. Services provided in association with the use of premises for the care, treatment or accomodation of persons who are aged or have a physical or

mental illness.

4. Laboratory services provided in support of health services.
5. Laundry, cleaning, catering or other support services provided to a hospital, health institution, nursing home or premises mentioned in item 3, if the services affect the care or treatment of patients or residents.
6. Social work, welfare, recreational or leisure services, if provided as part of a health service.
7. Ambulance services.
8. Services provided by registered providers.
9. Services provided by dietitians, audiologists, audiometrists, prosthetists, optical dispensers, radiographers, child guidance therapists, psychotherapists, therapeutic counsellors and services provided by other professional, technical and operational persons that directly contribute to the provision of a health service.
10. Services provided by practitioners of massage, naturopathy, acupuncture or in other natural or alternative health care or diagnostic fields.
11. Services provided in relation to health promotion, education and information.

## **Part 2—Services Declared Not To Be Health Services**

1. An opinion of a provider, or a decision made, for the purpose of a claim under the *Workers Compensation Act 1990*.
2. An opinion of a provider, or a decision made, for the purpose of a notice, order, or appeal under the *Workplace Health and Safety Act 1989*.
3. Services provided by an officer of the Corrective Services Commission or of a department (other than the department in which this Act is administered), excluding services provided by an officer who—
  - (a) is a registered provider ; and
  - (b) provides the services in the course of performing duties in a position for which registration as such a registered provider is a

requirement.

4. Services provided by the State Emergency Service and by volunteers in emergency situations, including first aid and life support services, for example services provided by lifesavers, coastal rescue groups, teachers, teachers aides and school administrative staff.

5. Health services provided by a public authority of the Commonwealth.

## **SCHEDULE 2**

### **Declared Registration Boards**

- 1. Chiropractors and Osteopaths Board of Queensland.*
- 2. Dental Board of Queensland.*
- 3. Dental Technicians and Dental Prosthetists Board of Queensland.*
- 4. Medical Board of Queensland.*
- 5. Nurses Registration Board of Queensland.*
- 6. Occupational Therapists Board of Queensland.*
- 7. Optometrists Board of Queensland.*
- 8. Pharmacy Board of Queensland.*
- 9. Physiotherapists Board of Queensland.*
- 10. Podiatrists Board of Queensland.*
- 11. Psychologists Board of Queensland.*
- 12. Speech Therapists Board of Queensland.*