

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Health Complaints Bill 1993

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**SCHEDULE
HEALTH SERVICES**

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Health Complaints Bill 1993

A BILL FOR

**An Act relating to the rights and responsibilities of
users and providers of health services and to provide
for the resolution of complaints arising out of the
provision of those services**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Health Complaints Act 1993*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
(2) The remaining provisions commence on a day, or respective days,
10 fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

5 Objects

3. The objects of this Act are—

- (a) to provide an independent, fair and accessible mechanism for the resolution of complaints between users and providers of health services;
- 10 (b) to improve the provision of health services and enable users and providers to contribute to the review and improvement of the provision of health services;
- (c) to promote the rights of users of health services; and
- 15 (d) to encourage an awareness of the rights and responsibilities of users and providers of health services;

and this Act shall be construed and administered accordingly.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“Board” means—

- 20 (a) the Chiropractic Board;
- (b) the Dental Board;
- (c) the Dental Technicians and Dental Prosthetists Board;
- (d) the Medical Board;
- (e) the Nurses Board;
- 25 (f) the Optometrists Board;
- (g) the Pharmacy Board;
- (h) the Physiotherapists Board; or
- (i) a prescribed body;

30 “Code” means the Code of Health Rights and Responsibilities approved under section 53 as varied from time to time;

“Commissioner” means the Commissioner for Health Complaints appointed under section 8;

- “complainant”, in relation to a complaint, means the person who makes the complaint;
- “conciliator” means a person appointed under section 32;
- 5 “Council” means the Health Rights Advisory Council established by section 61;
- “health service” means a service provided or to be provided in the Territory for, or purportedly for, the benefit of the health of a person and includes a service specified in Part I of the Schedule, but not a service specified in Part II of the Schedule;
- 10 “Ombudsman” means the Australian Capital Territory Ombudsman appointed under the *Ombudsman Act 1989*;
- “provider” means a person who—
- (a) holds himself or herself out as being able to provide a health service; or
- 15 (b) provides a health service;
- and includes the employer of a provider;
- “registered provider” means a provider registered by a Board;
- “relevant Board”, in relation to a registered provider, means the Board that has registered the provider;
- 20 “Unit” means the Health Complaints Unit established by section 6;
- “user” means a person who seeks, uses or receives a health service or to whom a health service is administered.
- (2) Where the Commissioner makes a determination under subsection 25 (1), a reference in this Act to a complaint shall be read as including a reference to each subject matter, set of circumstances, allegation or part that is the subject of the determination.

Reasonableness of providers' actions

5. In determining, for the purposes of this Act, whether a provider has acted unreasonably, the Commissioner shall have regard to—
- 30 (a) the Code;
- (b) until the approval of the Code—the principles set out in subsection 55 (2);
- (c) after the approval of the Code—such of the principles set out in that subsection as have not been dealt with by the Code; and

- (d) the generally accepted standard of health service delivery expected of a provider of that kind.

PART II—HEALTH COMPLAINTS UNIT

Division 1—Establishment and control

5 Establishment

6. (1) There is established by this section an office by the name of Health Complaints Unit.

(2) The Unit shall consist of the Commissioner and the members of the staff of the Unit.

10 Control

7. The Commissioner shall control the Unit.

Division 2—Appointment and functions of Commissioner

Appointment

8. (1) The Executive may, by instrument, appoint a person to be
15 Commissioner for Health Complaints.

(2) The Commissioner holds office on such terms and conditions (if any) in respect to matters not provided for in this Act as are specified in the instrument of appointment.

Functions

20 9. In addition to the other functions conferred on the Commissioner by this Act, the Commissioner has the following functions:

- (a) to encourage and assist users and providers to resolve complaints;
- (b) to collect information concerning the operation of this Act and to publish such information from time to time;
- 25 (c) to identify, inquire into and review issues relating to—
 - (i) the provision of health services in the Territory; and
 - (ii) the causes of complaints received by the Commissioner;and report to, or advise, the Minister or other appropriate persons thereon;
- 30 (d) to inquire into and report to the Minister on any matter that the Minister has, under this Act, directed the Commissioner to inquire into and report on;

- (e) to inquire into and report to the Council on any matter that the Council has referred to the Commissioner;
- (f) to encourage and assist providers to develop and improve procedures for responding to users' complaints;
- 5 (g) to compile and publish statistical records relating to complaints and responses to complaints;
- (h) to provide such information and advice to the Council or a Board as may lawfully be provided;
- (i) to disseminate information about—
 - 10 (i) this Act;
 - (ii) the Code;
 - (iii) the operation of the Unit; and
 - (iv) the procedures for making complaints;
- 15 (j) to discharge such other functions as may be conferred on the Commissioner by any other law.

Independence

10. Except as provided by this Act, the Commissioner is not subject to the direction of any other person in relation to the performance of a function under this Act.

20 Minister's directions

11. (1) The Minister may direct the Commissioner, in writing, to inquire into and report to the Minister on a specified matter relating to the provision of a health service.

(2) A direction under subsection (1) may specify—

- 25 (a) the time within which; and
- (b) the manner in which;

the direction is to be complied with.

30 (3) The Minister may direct the Commissioner, in writing, to participate in a proceeding under the *Health Professions Boards (Procedures) Act 1981*.

(4) The Commissioner shall comply with a direction under this section.

(5) Where a direction under subsection (3) is given, the Commissioner—

- (a) is, by virtue of this paragraph, a party to the proceeding referred to in the direction; and
- (b) subject to this and any other Act, may present such evidence and make such submissions as, in the view of the Commissioner, are likely to assist the Board in reaching a just decision.

Powers

12. The Commissioner has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

Staffing arrangements

13. (1) The staff of the Unit shall be public servants.

(2) The Commissioner may make an arrangement with an administrative head or other appropriate person for the use of the services of the staff or facilities of an administrative unit of the Public Service or of a Territory authority.

Contract work

14. (1) The Commissioner may, on behalf of the Territory, engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Commissioner.

(2) The terms and conditions of engagement of persons engaged under subsection (1) are as the Commissioner, in writing, determines.

Informality of procedures

15. (1) In the performance of a function, the Commissioner shall have regard to the rules of natural justice.

(2) Subject to subsection (1), the Commissioner—

- (a) shall proceed with as little formality and technicality and with as much expedition as the requirements of this or any other Act and a proper consideration of the matter permit; and
- (b) is not bound by rules of evidence but may inform himself or herself of any matter in any manner that he or she thinks appropriate.

Acting Commissioner

16. (1) The Executive may, in writing, appoint a person to act as Commissioner—

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to that office; or

- (b) during any period, or during all periods, when the Commissioner is, or is expected to be, absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;

5 but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

- (2) A conciliator is not eligible to be appointed under subsection (1).

(3) Anything done by or in relation to a person purporting to act in the office of Commissioner is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- 10 (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Division 3—Terms of appointment of Commissioner

15 **Tenure of office**

17. Subject to this Act, the Commissioner holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

Salary and allowances

20 18. (1) The Commissioner shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply to—

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Commissioner; or
- 25 (b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the Commissioner.

(3) In subsection (2)—

30 “determination” means a determination of the Remuneration Tribunal of the Commonwealth.

Resignation

19. The Commissioner may resign from office by signed notice given to the Minister.

Termination or suspension of appointment

20. (1) The Executive may terminate or suspend the appointment of the Commissioner on the ground—

- (a) of physical or mental incapacity;
 - 5 (b) of misbehaviour; or
 - (c) that the Commissioner has failed to act impartially in the discharge of a function under this Act.
- (2) The Executive shall terminate the appointment of the Commissioner if the Commissioner—
- 10 (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - 15 (b) is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any 12 months.

PART III—HEALTH SERVICES COMPLAINTS***Division 1—Making complaints*****Who may complain**

20 21. A complaint to the Commissioner about a health service sought, used or received by, or administered to, a user may be made by the user or, where it is difficult or impossible for the user to make a complaint, or to make a complaint that complies with subsection 26 (1)—

- (a) where the user has attained the age of 18 years—by a person appointed by the user to make the complaint on the user's behalf;
- 25 (b) where the user has not attained the age of 18 years—by a parent or guardian of the user;
- (c) where a person, under any other law or an order of a court, has the care of the affairs of the user—by that person; or
- 30 (d) by a person approved by the Commissioner to make the complaint on the user's behalf.

Grounds for complaint

22. (1) A person referred to in section 21 may complain to the Commissioner that—

- (a) a provider acted unreasonably by not providing a health service;

- (b) the provision of a health service or part of a health service was not necessary;
- (c) a provider acted unreasonably in the manner of providing a health service;
- 5 (d) a provider acted unreasonably by denying or restricting a user's access to records relating to the user that were in the provider's possession;
- (e) a provider acted unreasonably in disclosing information in relation to the user; or
- 10 (f) where a person has made to a provider a complaint that could have been made to the Commissioner under this Act—the provider failed without reasonable cause to investigate fairly the complaint or take other proper action in relation to it.
- (2) The reference in paragraph (1) (c) to a provider's acting unreasonably in the manner of providing a health service shall be read as including a reference to the provider's failure—
- 15 (a) to exercise due care and skill;
- (b) to treat a user in a considerate way that took into account the user's needs, wishes or background;
- 20 (c) to respect a user's privacy or dignity; or
- (d) to provide the user with—
 - (i) information on treatment or health services available, in language and terms understandable to the user, sufficient to enable the user to make an informed decision;
 - 25 (ii) a reasonable opportunity to make an informed choice of the treatment or services available;
 - (iii) reasonably necessary information on the availability of further advice on his or her condition or of relevant education programs;
 - 30 (iv) adequate information on treatment or services received; or
 - (v) any prognosis that it would have been reasonable for him or her to be provided with.

Division 2—Assessment of complaints

Assessment

- 35 23. (1) The Commissioner shall assess a complaint received and shall—

- (a) if of the opinion that it relates to a matter that falls within the functions conferred by a law of the Territory, the Commonwealth, a State or another Territory on—
- 5 (i) the Ombudsman;
- (ii) a relevant Board; or
- (iii) any other person or body;
- refer it to the Ombudsman, the relevant Board or that other person or body (as the case requires); or
- (b) in any other case—
- 10 (i) refer it to a conciliator for conciliation under Part IV;
- (ii) investigate it under Part V; or
- (iii) in accordance with section 28, take no further action.
- (2) The reference in subsection (1) to a complaint received by the Commissioner shall be read as including a reference to a complaint that has
- 15 been referred, or referred back, to the Commissioner by the Ombudsman or by a Board.
- (3) The Commissioner shall not refer a complaint to a conciliator if—
- (a) the complaint appears to the Commissioner to indicate—
- 20 (i) the existence of a significant issue of public safety or public interest; or
- (ii) a significant question as to the practice of a provider; or
- (b) section 27 would prevent the Commissioner from disclosing to the provider information that would enable the user to be identified.

Enquiries

- 25 **24. (1)** In order to give effect to section 23, the Commissioner shall make such enquiries and endeavour to obtain such information as to the Commissioner seem necessary.
- (2) Subsection (1) does not authorise the exercise of a power under Part V.

30 Splitting of complaints

- 25. (1)** Where a complaint—
- (a) deals with more than 1 subject matter;
- (b) deals with more than 1 set of circumstances;

(c) makes allegations against more than 1 provider;
 (d) makes more than 1 allegation against a provider; or
 (e) for any reason is susceptible to being dealt with in separate parts;
 the Commissioner—

- 5 (f) may if it is administratively convenient to do so; and
 (g) shall if it is in the interest of the user that the Commissioner do so;
 determine that any subject matter, set of circumstances, allegation or part (as
 the case requires) be treated as a separate complaint.

- 10 (2) The Commissioner shall not make a determination under
 subsection (1) unless he or she is satisfied that any attempt at conciliation is
 not likely to be prejudiced by the making of the determination.

Formal requirements for complaints

26. (1) Subject to this section, a complaint—

- (a) shall be in writing;
 15 (b) shall be signed by the complainant; and
 (c) shall disclose the name and address of the complainant.

(2) The Commissioner may accept a complaint that does not comply
 with subsection (1).

- 20 (3) Where the Commissioner accepts an oral complaint, he or she
 shall, unless satisfied that there are good reasons for not doing so, require
 that the complaint be put in writing and be signed by the complainant.

- (4) Where the Commissioner becomes aware that a complainant has
 changed his or her name or address without notifying the Commissioner,
 the Commissioner shall require the complainant to provide his or her name
 25 or address.

(5) The Commissioner may, at any time, require a complainant—

- (a) to provide further information or documents; or
 (b) to verify all or any part of the complaint by statutory declaration.

- 30 (6) When making a requirement under this section the Commissioner
 shall fix a reasonable period of time within which the requirement is to be
 satisfied and may extend that period, whether before or after its expiry.

Confidentiality of user's and complainant's particulars

27. (1) The Commissioner shall not disclose to a provider
 information that would enable a user or a complainant to be identified if the

Commissioner believes, on reasonable grounds, that the disclosure would, directly or indirectly—

- (a) put at risk the health or safety of any person;
- 5 (b) occasion the receipt by a person of a health service of a lower standard than he or she would otherwise have received; or
- (c) prejudice the assessment of a complaint or an investigation by the Commissioner.

10 (2) Where the Commissioner has failed to provide information to a provider in pursuance of subsection (1), he or she shall provide that information upon ceasing to hold the belief by virtue of the holding of which the information had not been provided.

No further action

28. (1) The Commissioner shall take no further action on a complaint upon becoming satisfied that—

- 15 (a) the complainant is not a person referred to in section 21;
- (b) the complaint does not disclose a ground referred to in section 22;
- (c) the user became aware of the circumstances that gave rise to the complaint more than 24 months before the complaint was made;
- 20 (d) the complainant has failed, without good reason, to take reasonable steps to resolve with the provider the grievance on which the complaint is based;
- (e) all the issues arising out of the subject matter of the complaint have been adjudicated upon by a court, tribunal, Board or other person or body established by a law of the Territory, the Commonwealth, 25 a State or another Territory;
- (f) a court has commenced to hear a proceeding that relates to the subject matter of the complaint;
- (g) the complainant has been given reasonable explanations and information and there would be no further benefit in entertaining the complaint further; 30
- (h) the complaint lacks substance;
- (i) the complaint is frivolous, vexatious or was not made in good faith; or
- (j) the complaint has been resolved.

35 (2) Paragraph (1) (c) does not apply where the Commissioner is satisfied that the complainant has good grounds for not having made the

complaint within 24 months of becoming aware of the circumstances that gave rise to it.

(3) The Commissioner may take no further action on a complaint if—

- 5 (a) a requirement under section 26 is unsatisfied and the period of time for satisfying the requirement under that section has expired;
- (b) the Commissioner has notified the complainant in writing that the Commissioner may decide to take no further action on the complaint unless the outstanding requirement is satisfied within 14 days of the date of service of the notice; and
- 10 (c) the requirement remains unsatisfied at the expiry of the period of 14 days and is unsatisfied when the Commissioner decides to take no further action.

Withdrawal of complaint

15 29. (1) A complainant may, at any time, withdraw a complaint by notifying the Commissioner in writing.

(2) Where a complaint is withdrawn the Commissioner shall—

- (a) if the provider has been notified of the receipt of the complaint—notify the provider of the withdrawal within 14 days; and
- 20 (b) subject to section 40, take no further action in relation to the complaint.

Advice of disposal of complaint

30. (1) Where the Commissioner makes a decision under subsection 23 (1), he or she shall, within 14 days, provide details, and the reasons for, the decision in writing to—

- 25 (a) the complainant; and
- (b) if the provider has been notified of the receipt of the complaint—the provider.

(2) Paragraph (1) (b) has effect subject to section 27.

Action on referral of complaints

30 31. Where the Commissioner has referred a complaint to another person or body under this Division, he or she shall—

- (a) give to the person or body all documents and information in his or her possession that relate to the complaint; and
- 35 (b) take no further action in relation to that complaint unless it is referred back to the Commissioner.

PART IV—CONCILIATION OF COMPLAINTS

Appointment of conciliators

32. The Commissioner may appoint a person, in writing, to be a conciliator for the purposes of this Act.

5 Function of conciliators

33. The function of a conciliator is to encourage the settlement of a health service complaint by—

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

Representation at conciliation

15 34. A complainant or provider shall not be represented by another person in the conciliation process unless the Commissioner is satisfied that such representation is likely to assist substantially in resolving the complaint.

Reports by conciliators

20 35. (1) A conciliator shall report on the progress of a conciliation whenever requested to do so by the Commissioner.

(2) When a conciliator is satisfied that—

- (a) the complainant and the provider have reached agreement on all issues raised by a complaint; or
- 25 (b) it is not possible for agreement to be reached on all or some of the issues;

he or she shall report accordingly to the Commissioner.

(3) In a report under subsection (2) a conciliator—

- (a) shall provide details of any agreement reached;
- 30 (b) shall provide details of progress towards agreement on any issue in respect of which agreement has not been reached; and
- (c) may recommend the action that the Commissioner should take on receipt of the report.

(4) The conciliator shall give a copy of a report under subsection (2) to the complainant and the provider as soon as possible after the report has been given to the Commissioner.

Enforceable agreements

5 36. (1) Where agreement is reached between a complainant and a provider in the course of the conciliation process the agreement may be put in a form that is binding on them in accordance with subsection (2).

(2) An agreement referred to in subsection (1) is not enforceable unless—

- 10 (a) the agreement is reduced to writing; and
(b) the written agreement is entered into at least 14 days after the first agreement has been reached.

(3) Subsections (1) and (2) do not affect the effectiveness of any agreement reached outside the conciliation process.

15 (4) A conciliator shall not be a party to any agreement between a complainant and a provider that deals with a matter that has been dealt with in a process of conciliation.

Unsuccessful conciliation

20 37. (1) Upon receiving a report under subsection 35 (1), the Commissioner may terminate the process of conciliation if satisfied that it is not likely to be successful in bringing about agreement between the complainant and the provider.

(2) Upon—

- (a) taking action under subsection (1); or
25 (b) receiving a report under paragraph 35 (2) (b);

the Commissioner shall dispose of the complaint in accordance with subsection 23 (1).

Professional mentor

30 38. (1) The Commissioner may appoint a person who, in the Commissioner's view, has expertise in the field of dispute resolution, to be a professional mentor to a conciliator.

(2) A conciliator may discuss any issue arising out of the performance of his or her functions with his or her professional mentor and seek the professional mentor's advice.

(3) A person appointed under subsection (1) is not eligible, during the currency of the appointment, to be appointed conciliator or to assist the Commissioner in the investigation of a complaint.

Confidentiality and privilege

5 **39. (1) A conciliator shall not, except—**

- (a) in a report required to be made under this Division; or
- (b) to his or her professional mentor;

disclose any information relating to a user or a provider acquired during the course of a process of conciliation.

10 Penalty: \$5,000.

(2) A professional mentor shall not disclose any information acquired from a conciliator by virtue of paragraph (1) (b).

Penalty: \$5,000.

15 (3) A person, other than a conciliator or a professional mentor, shall not divulge or communicate to any person any information relating to a user or provider acquired during the course of a process of conciliation.

Penalty: \$5,000.

(4) Evidence of anything said or admitted during a process of conciliation—

- 20 (a) is not admissible in proceedings before a court, tribunal or Board; and
- (b) may not be used by the Commissioner as a ground for taking action under subsection 37 (2).

PART V—INVESTIGATIONS

25 **Division 1—Commencement**

Matters that may be investigated

40. (1) The Commissioner may investigate, by exercising the powers conferred by this Part—

- 30 (a) any matter specified in a direction under subsection 11 (1);
- (b) a complaint that, under subparagraph 23 (1) (b) (ii), the Commissioner has decided to investigate;
- (c) where a complaint received by the Commissioner appears to the Commissioner to indicate—

- (i) the existence of a significant issue of public safety or public interest; or
 - (ii) a significant question as to the practice of a provider; that issue or question; or
- 5 (d) of his or her own motion, any other matter relating to the provision of health services in the Territory.
- (2) An investigation under paragraph (1) (c) may be carried out whether or not—
- (a) the relevant complaint has been accepted;
 - 10 (b) the process of assessment of the relevant complaint has been completed;
 - (c) any process of conciliation of the relevant complaint has been completed;
 - (d) the relevant complaint has been withdrawn; or
 - 15 (e) the Commissioner has decided to take no further action on the relevant complaint;

but shall not be exercised in so far as it may interfere with a process of conciliation.

20 Investigation of complaints and issues arising out of complaints

41. (1) While investigating an unresolved complaint, or an issue or matter arising out of such a complaint, the Commissioner shall use his or her best endeavours to determine whether the complaint is justified.
- 25 (2) The Commissioner is not required to cease conducting an investigation under paragraph 40 (1) (b) or (c) solely because, during the course of the investigation, the relevant complaint has been resolved.

Division 2—Conduct

Use of material already at hand

- 30 42. (1) Subject to this section, where the Commissioner has obtained any document or information under this Act, he or she may make use of that document or information for the purposes of this Part.
- (2) Subsection (1) does not apply to a conciliator's report.

Conduct of investigation

- 35 43. (1) An investigation shall be conducted in such manner as the Commissioner thinks fit.

(2) A person to whom a complaint had been referred under subparagraph 23 (1) (b) (i) is not eligible, on the investigation of that complaint or of an issue or question arising out of it—

- (a) to act as delegate of the Commissioner; or
- 5 (b) to perform any function in relation to the investigation.

Representation

44. A person required to appear or to produce documents under this Part may be represented by another person.

Power to obtain information and documents

- 10 45. (1) Where the Commissioner has reason to believe that a person is capable of providing information or producing a document or other record relevant to the subject matter of an investigation, the Commissioner may, by notice in writing served on the person, require the person, at such place and within such period of time or on such day and at such time, as are specified
- 15 in the notice—

- (a) to provide to the Commissioner, by writing signed by that person or, in the case of a body corporate, by an officer of the body corporate, any such information;
- 20 (b) to produce to the Commissioner such document or other record as is specified in the notice; or
- (c) to provide to the Commissioner any such information and to produce to the Commissioner such document or other record as is specified in the notice.

- 25 (2) Where the Commissioner has reason to believe that a person is able to give information relevant to an investigation, the Commissioner may, by notice in writing served on the person, require the person to attend before a person specified in the notice, on such day and at such time and place as are specified in the notice, to answer questions relevant to the investigation.

- 30 (3) Where a document or other record is produced in accordance with a requirement under this section, the Commissioner—

- (a) may take possession of, make copies of, or take extracts from, the document or record;
- 35 (b) may retain possession of the document or record for such period not exceeding 2 months as is necessary for the purposes of the investigation to which it relates; and
- (c) during that period shall permit a person who would be entitled to inspect or make copies of the document or record if it were not in

the possession of the Commissioner, to do so at all reasonable times.

(4) This section has effect subject to Division 2 of Part III of the *Health Act 1993*.

5 Power to examine witnesses

46. (1) The Commissioner, or a person who is to receive information under subsection 45 (2), may administer an oath or affirmation to a person required to attend before him or her under this Part and may examine the person on oath or affirmation.

10 (2) The Commissioner may require that—

- (a) any information, document or record produced under this Part; or
- (b) a statement that a person has no relevant information, documents or records, or no more relevant information, documents or records (as the case requires);

15 be verified by statutory declaration.

(3) A person shall comply with a requirement under subsection (2).

Penalty: \$5,000.

Failure to provide information

20 47. (1) A person shall not refuse or fail, without reasonable excuse—

- (a) to be sworn or make an affirmation;
- (b) to answer a question;
- (c) to provide information; or
- (d) to produce a document or record;

25 when so required under this Part.

Penalty: \$5,000.

30 (2) Where a person fails to comply with a requirement made by the Commissioner by notice under section 45 to provide information, to produce documents or other records or to attend to answer questions, the Commissioner may make an application to the Supreme Court for an order directing that person to provide the information, to produce the documents or other records, or to attend to answer questions, before such person, at such place and within such period, or on such day and at such time, as are specified in the order.

(3) A person is not liable to any penalty under the provisions of any other Act because of the person's having furnished information, produced a document or other record or answered a question when required to do so under this Act.

5 Determination of fees and expenses of witnesses

48. The Minister may, by notice in the *Gazette*, determine—

- (a) the fees and expenses payable to witnesses appearing before the Commissioner; or
- (b) matters connected with those fees and expenses.

10 Warrants

49. (1) Where an information on oath is laid before a magistrate alleging that there are reasonable grounds for—

- (a) believing that entry and inspection of premises are necessary to enable the Commissioner to carry out an investigation under this Part; or
- (b) suspecting that there may be on any premises a thing of a particular kind relevant to a matter that the Commissioner is investigating under this Part;

and the information sets out those grounds, the magistrate may issue a search warrant authorising a person named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (c) to enter and inspect the premises;
- (d) to search those premises for things of that kind; and
- (e) to inspect, seize and make copies of, any thing of that kind.

25 (2) A magistrate shall not issue a warrant under subsection (1) unless—

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

30 (3) A warrant shall—

- (a) state the purpose for which it is issued;

- (b) specify the nature of the matter in relation to which the exercise of the powers under subsection (1) is authorised;
- (c) specify particular hours during which entry is authorised or state that entry is authorised at any time of day or night;
- 5 (d) include a description of the kinds of things in relation to which the warrant is issued; and
- (e) specify a day, not being later than 7 days after the day of issue of the warrant, on which the warrant ceases to have effect.

Access to and return of seized records

- 10 50. Where a record or document is seized under section 49, the Commissioner—
 - (a) may retain possession of the document or record for such period not exceeding 2 months as is necessary for the purposes of the investigation to which it relates; and
 - 15 (b) during that period shall permit a person who would be entitled to inspect or make copies of the document or record if it were not in the possession of the Commissioner, to do so at all reasonable times.

Division 3—Completion

20 **Reports**

- 51. (1) The Commissioner—
 - (a) may at any time during the course of an investigation; and
 - (b) shall at its completion;
 prepare a true report of his or her findings and conclusions.
- 25 (2) The Commissioner shall submit a report of an investigation under paragraph 40 (1) (a) to the Minister.
- (3) The Commissioner shall give a copy of a report of an investigation under paragraph 40 (1) (b) to the complainant, the provider and the relevant Board.
- 30 (4) The Commissioner may give a copy of any report of an investigation to—
 - (a) the Minister;
 - (b) a provider mentioned in the report;

- (c) any person or body having, by virtue of a law of the Territory, the Commonwealth, a State or another Territory, a function exercisable in relation to a matter raised in the report; or
- 5 (d) in the case of a report of an investigation under paragraph 40 (1) (c)—the complainant.

(5) In this section—

“provider” does not include a provider’s employer.

Notice of action to providers

- 10 52. (1) Where, after investigating a complaint under paragraph 40 (1) (b), the Commissioner forms the view that the complaint is justified but appears to be incapable of being resolved, the Commissioner may—

- (a) give to the provider a notice under this section; and
(b) advise the complainant of the giving of the notice.

(2) A notice under this section shall set out—

- 15 (a) the particulars of the complaint;
(b) the reasons for making the decision under subsection (1); and
(c) any action that the Commissioner considers the provider ought to take in order to remedy each unresolved grievance disclosed by the complaint.

- 20 (3) A provider to whom a notice under this section is given shall, before the end of the period of 45 days after the giving of the notice or such longer period as the Commissioner allows under subsection (4), advise the Commissioner, in writing, of what action he or she has taken in order to remedy the grievances referred to in the notice.

25 Penalty: \$5,000.

(4) The Commissioner may extend by not more than 15 days the period of 45 days referred to in subsection (3) upon the receipt, before the end of that period, of a written request to do so from the provider.

30 PART VI—CODE OF HEALTH RIGHTS AND RESPONSIBILITIES

Approval

53. The Minister may, by instrument, approve—

- (a) a code to be known as the Code of Health Rights and Responsibilities; or

- (b) a variation of the Code.

Disallowance

- 5 54. The Code or a variation approved under section 53 is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Contents

- 10 55. (1) The Code shall deal with the implementation of the principles referred to in subsection (2) and may deal with any other matter relevant to the provision or use of a health service.
- 10 (2) For the purposes of subsection (1), the principles to be dealt with by the Code are—
- 15 (a) that a person is entitled to receive appropriate health services of a high standard;
- 15 (b) that a person is entitled to be informed and educated about health matters that may be relevant to him or her and about available health services;
- (c) that a person who is capable of doing so is entitled to participate effectively in the making of a decision dealing with his or her health;
- 20 (d) that a person who is capable of doing so is entitled to participate actively in his or her health care;
- (e) that a person is entitled to be provided with health services in a considerate way that takes into account his or her background, needs and wishes;
- 25 (f) that—
- (i) a provider; or
- (ii) a person who provides care for a user;
- should be given consideration and recognition for his or her contribution to health care;
- 30 (g) that the confidentiality of information about a person's health should be preserved;
- (h) that a person should be entitled to reasonable access to information about his or her health; and
- 35 (i) that a person is entitled to reasonable access to procedures for the redress of grievances about the provision of health services.

PART VII—RELATIONSHIP BETWEEN COMMISSIONER AND BOARDS

Interpretation

- 5 **56.** In this Part, a reference to a proceeding shall be read as a reference to a proceeding under the *Health Professions Boards (Procedures) Act 1981* conducted as a consequence of—

- (a) the referral of a complaint to a Board under this Act; or
- (b) the receipt by a Board of a report under section 51.

Referral of complaints to Commissioner

- 10 **57. (1)** A Board that receives a complaint that appears to be made by a person referred to in section 21 and to disclose a ground referred to in section 22 shall—

- (a) notify the Commissioner;
- 15 (b) provide the Commissioner with a copy of the complaint and of all documents in its possession that relate to the complaint; and
- (c) if the Commissioner so requests, refer the complaint to the Commissioner.

- 20 **(2)** Notwithstanding the provisions of any other Act, a Board that has referred a complaint to the Commissioner under subsection (1) shall not take any action in respect of any matter disclosed, alleged or dealt with by the complaint unless the Commissioner refers the complaint back to the Board under subparagraph 23 (1) (a) (ii) or a report concerning that complaint is given to the Board under section 51.

Complaints referred after assessment

- 25 **58.** A Board to which the Commissioner has referred a complaint under this Act shall notify the Commissioner, in writing, of—

- (a) whether or not it intends to conduct a proceeding; and
- (b) whether or not it has taken or proposes to take any other action and, if it proposes to do so, the details of such action.

Action on investigation reports

- 30 **59. (1)** Where a report under section 51 recommends that a Board perform a function, the Board shall, as soon as it is practicable to do so, notify the Commissioner, in writing, of whether or not it intends to perform it.

(2) Where a Board performs a function referred to in subsection (1) it shall, as soon as it is practicable to do so, advise the Commissioner, in writing, of—

- (a) the result of the performance;
- 5 (b) any finding it has made; and
- (c) any other action taken or proposed to be taken.

Proceedings of Boards

60. (1) The Commissioner and each relevant provider is a party to a proceeding.

- 10 (2) Where a party to a proceeding so requests, the Chairperson of a Board shall exercise his or her powers under subsection 28 (2) of the *Health Professions Boards (Procedures) Act 1981* in respect of a person.

PART VIII—HEALTH RIGHTS ADVISORY COUNCIL

Establishment of Council

- 15 61. The Health Rights Advisory Council is hereby established.

Functions

62. The functions of the Council are—

- (a) to advise the Minister and the Commissioner in relation to the redress of grievances relating to health services or their provision;
- 20 (b) to advise the Minister on—
 - (i) the means of educating and informing users, providers and the public on the availability of means for making health service complaints or expressing grievances in relation to health services or their provision;
 - 25 (ii) the operation of this Act; and
 - (iii) any other matter on which the Minister requests the advice of the Council; and
- (c) to refer to the Commissioner any matter that may properly be dealt with by the Commissioner under this Act and that, in the view of
- 30 the Council, should be so referred.

Membership

63. The Council shall consist of 5 members appointed by the Minister by instrument of whom—

- (a) 1 shall be appointed the Chairperson of the Council;
- (b) 2 shall be persons who, in the opinion of the Minister, are qualified, by reason of experience and expertise, to represent the interest of users; and
- 5 (c) 2 shall be persons who, in the opinion of the Minister, are qualified, by reason of experience and expertise, to represent the interest of providers.

Terms of appointment

- 10 64. Subject to this Part, a member of the Council holds office for such period not exceeding 3 years as is specified in the instrument of appointment and is eligible for re-appointment.

Remuneration and allowances

65. (1) The members of the Council shall be paid such remuneration and allowances as are prescribed.
- 15 (2) Subsection (1) does not apply—
- (a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the members; or
 - (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be
- 20 paid to members.
- (3) In subsection (2)—
- “determination” means a determination of the Remuneration Tribunal of the Commonwealth.

Disclosure of interests

- 25 66. (1) A member of the Council who has a personal interest or a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council shall, as soon as practicable after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Council.
- 30 (2) A disclosure shall be recorded in the minutes of the meeting.
- (3) Unless the Council otherwise determines, a member referred to in subsection (1) shall not—
- (a) be present during any deliberation of the Council with respect to that matter; or
 - 35 (b) take part in any decision of the Council with respect to that matter.

(4) A member referred to in subsection (1) shall not—

(a) be present during any deliberation of the Council for the purpose of considering whether to make a determination under subsection (3) in relation to that member; or

5 (b) take part in the making by the Council of such a determination.

(5) A person who contravenes subsection (3) or (4) is guilty of an offence punishable on conviction by a fine not exceeding \$2,000.

Resignation

10 67. A member of the Council may resign his or her office by signed writing delivered to the Minister.

Termination of appointment

68. (1) The Minister may terminate the appointment of a member of the Council for misbehaviour or physical or mental incapacity.

(2) If a member of the Council—

15 (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for the benefit of those creditors;

20 (b) is absent, without the permission of the Chairperson, from 3 consecutive meetings of the Council;

(c) fails, without reasonable excuse, to comply with an obligation imposed by section 66; or

(d) is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 12 months or longer;

25 the Minister shall terminate the appointment of the member.

Convening meetings

69. (1) The Council shall meet not less than 4 times a year.

(2) A meeting of the Council shall be held on such date and at such time and place as the Council determines.

30 (3) Subject to this section, the Chairperson—

(a) may convene such meetings of the Council as the Chairperson considers necessary for the efficient performance of its functions; and

35 (b) shall, on receipt of a request in writing signed by not less than 3 other members of the Council, convene a meeting of the Council.

(4) Where the Chairperson proposes to convene a meeting of the Council, the Chairperson shall, not less than 5 days before the date of the proposed meeting, give to each member of the Council a notice in writing specifying—

- 5 (a) the date, time and place of the meeting; and
 (b) the matters to be considered at the meeting.

(5) The Minister may convene a meeting of the Council by notice in writing given to each of the members.

Procedure at meetings

- 10 70. (1) The Chairperson shall preside at all meetings of the Council at which he or she is present.

(2) Where the Chairperson is absent from a meeting of the Council, the members present shall elect 1 of their number to preside at the meeting.

- 15 (3) The member presiding at a meeting of the Council may give directions regarding the procedure to be followed in connection with the meeting.

(4) At a meeting of the Council 3 members constitute a quorum.

(5) Questions arising at a meeting of the Council shall be decided by a majority of the votes of members present and voting.

- 20 (6) The member presiding at a meeting of the Council has, in addition to a deliberative vote, a casting vote exercisable in the event of an equality of votes.

(7) The Council shall keep a written record of its proceedings.

Dissenting opinions to be reported

- 25 71. (1) Where—

- (a) the Council decides to give advice to the Minister; and
(b) the decision on the terms of the advice is not a unanimous decision of all the members of the Council;

- 30 a member who was present at the meeting at which the decision on the terms of the advice was taken and who objects to those terms may request that his or her objection and the reasons for the objection be—

- (c) recorded in the minutes of the meeting; and
(d) reported in writing to the Minister when the advice is provided.
(2) The Council shall comply with a request under subsection (1).

PART IX—MISCELLANEOUS

Offences

72. A person shall not—

- 5 (a) wilfully obstruct, hinder or resist the Commissioner or any other person in the exercise of a function under this Act without reasonable excuse; or
- (b) provide information or make a statement to the Commissioner knowing that it is false or misleading in a material particular.

Penalty: \$5,000.

10 Persons not to be penalised

73. (1) A person shall not, without reasonable excuse, by threat or intimidation, persuade or attempt to persuade another person—

- (a) to refrain from making, to the Commissioner or any other person, a complaint on a ground referred to in section 22;
- 15 (b) to withdraw such a complaint; or
- (c) to fail to co-operate with, or provide information to, a person who is performing a function under this Act.

(2) A person shall not—

- (a) refuse to employ;
- 20 (b) dismiss from employment; or
- (c) in the course of employment, penalise or discriminate against;

another person because the other person intends to make, or has made, a complaint under this Act or is co-operating with, or providing information to, a person who is performing a function under this Act.

25 (3) It is a defence to a prosecution for a breach of this section that—

- (a) the defendant had another ground for engaging in the conduct alleged; and
- (b) that ground is a reasonable one.

Penalty: \$5,000.

30 Protection from civil actions

74. Proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person as a result of any of the following done in good faith:

- (a) the making of a complaint under this Act;
- (b) the making of a statement, or the giving of a document or information, for the purposes of this Act, to the Commissioner, a conciliator or a person authorised to receive the document or information;
- (c) the making, in accordance with the provisions of this Act, of a report that, under this Act, a person is required or permitted to make;
- (d) the giving of a copy of a report to a person to whom, under this Act, it may be given;
- (e) doing, or omitting to do, anything in the performance of a function under this Act.

Indemnity against costs

75. A person who is or has been a Commissioner, conciliator, member of the staff of the Unit or engaged under section 14 is entitled to be indemnified by the Territory against any costs incurred in contesting any action, claim or demand brought or made in respect of any act done or omitted to be done in good faith in the performance or exercise, or purported performance or exercise, of any function under this Act.

20 Delegation by Commissioner

76. The Commissioner may, by signed writing, delegate to a member of his or her staff, other than a person appointed to be conciliator, any of his or her powers under this Act, other than the power to appoint a person to be a conciliator.

25 Annual report

77. (1) The Commissioner shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the operation of this Act during each financial year.

- (2) The annual report shall set out the text of every direction given by the Minister under section 11 that had application during the financial year dealt with by the report.

- (3) Where the Minister has directed the Commissioner to report on a specified matter, or to provide specified information, in the annual report, the annual report shall deal with that matter or provide the information (as the case requires).

Adverse comment in reports

78. (1) The Commissioner shall not include in a report under this Act (including an annual report) a comment adverse to a person or body

identifiable from the report unless he or she has, prior to the making of the report, given to the person or body a copy of the proposed comment and a written notice advising that, within a specified period, being not more than 28 days and not less than 14 days after the date of the notice, the person or body may—

5

(a) make a submission to the Commissioner in relation to the proposed comment; or

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

10

(2) The Commissioner may extend, by not more than 28 days, the period of time specified in a notice under subsection (1).

(3) Where the person or body so requests, the Commissioner shall include in the report the statement given under paragraph (1) (b) or a fair summary of it.

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(4) The Commissioner is not required to comply with this section if the Commissioner believes, on reasonable grounds, that awareness of the proposed comment by any person would be likely to result in—

(a) the health or safety of any person being put at risk;

(b) the provision to a person of a health service of a lower standard than would otherwise have been provided; or

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(c) action that would prejudice the fair assessment of a complaint or an investigation under this Act.

Secrecy

79. (1) This section has effect subject to section 39.

(2) This section applies to every person who is or has been—

25

(a) the Commissioner;

(b) a member of the staff of the Unit;

(c) engaged under section 14;

(d) a person to whom information is given under Division 2 of Part V; or

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(e) a member of the Council.

(3) Subject to subsection (4), a person to whom this section applies shall not, either directly or indirectly—

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(a) make a record of, divulge or communicate to any person, any information concerning another person acquired by the first-mentioned person by reason of—

- (i) holding an office or appointment;
- (ii) being employed or engaged; or
- (iii) performing or exercising a function;

under this Act; or

- 5 (b) produce to any person, or give access to any person to, a document furnished for the purposes of this Act.

Penalty: \$5,000.

(4) Subsection (3) does not apply to a person—

- (a) in the performance of a function under this Act;
- 10 (b) in so far as the person is required or authorised by any other Act to divulge information or produce a document;
- (c) in so far as the person is required to divulge information or produce a document to a court in the course of proceedings—
 - 15 (i) between the parties to a complaint made to the Commissioner, being proceedings that arise out of the circumstances that gave rise to the complaint; or
 - (ii) against the Commissioner or a delegate of the Commissioner, being proceedings arising out of the administration of this Act;
- 20 (d) if the person to whom information or a document relates has expressly authorised the first-mentioned person to divulge the information or produce or give access to the document; or
- (e) except in the case of information provided during the course of a process of conciliation—if the Minister has certified that it is
25 necessary in the public interest that specified information should be divulged, or that a specified document should be produced, to a specified person.

(5) In this section—

- 30 “court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

Regulations

- 35 80. The Executive may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act.

SCHEDULE

HEALTH SERVICES

Section 4

PART I

SERVICES THAT ARE HEALTH SERVICES

1. A service provided at a hospital, health institution or nursing home.
2. A medical, dental, pharmaceutical, paramedical, mental health, community health, environmental health or specialised health service or a service related to such a service.
3. A service provided in association with the use of premises for the care, treatment or accommodation of persons who are aged or have a physical disability or mental dysfunction.
4. A laboratory service provided in support of a health service.
5. A laundry, dry cleaning, catering or other support service provided to a hospital, health institution, nursing home or premises referred to in item 3, if the service affects the care or treatment of a patient or a resident.
6. A social work, welfare, recreational or leisure service, if provided as part of a health service.
7. An ambulance service.
8. Any other service provided by a registered provider for, or purportedly for, the care or treatment of another person.
9. A service provided by—
 - (a) an audiologist, audiometrist or optical dispenser;
 - (b) a child guidance therapist, dietitian, prosthetist, psychotherapist, radiographer or therapeutic counsellor; or
 - (c) a dental hygienist, dental therapist or dental prosthetist;or any other service of a professional or technical nature provided for, or purportedly for, the care or treatment of another person or in support of a health service.
10. A service provided by a practitioner of massage, naturopathy or acupuncture or in another natural or alternative health care or diagnostic field.
11. The provision of information relating to the promotion or provision of health care or to health education.

PART II

SERVICES THAT ARE NOT HEALTH SERVICES

The provision of an opinion or the making of a decision for the purposes of a claim under the *Workers' Compensation Act 1951*.