

1992-1993

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

HEALTH COMPLAINTS BILL 1993

EXPLANATORY MEMORANDUM

**Circulated by the authority of
the Minister for Health
Wayne Berry MLA**

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OUTLINE

The *Health Complaints Bill* provides for oversight, review and improvement of public and private health services by establishing an accessible, independent facility that will: (i) preserve and promote the health rights of public and private users; (ii) receive and resolve health service complaints; (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 encourage the resolution of complaints about health services.

The Bill provides for the:

- (i) appointment, functions and powers of a Commissioner for Health Complaints who will be a statutory officer;
- (ii) development of a Code of Health Rights and Responsibilities for users and providers of public and private health services;
- (iii) establishment, functions and operation of a Health Rights Advisory Council which will advise the Minister and the Commissioner for Health Complaints in relation to the redress of grievances relating to health services or their provision.

Penalties may be applied for: breaching confidentiality; refusing to verify information, documents or a record by statutory declaration; failure to respond to a notice made as a result of an investigation; obstructing, hindering or resisting the Commissioner for Health Complaints without reasonable excuse; and penalising a person who has or is about to make a complaint.

FINANCIAL CONSIDERATIONS

At the time of initial agreement to the development of the legislation, an annual budget of \$200 000 was agreed upon.

It is expected that the improvement of health service delivery, both in the public and private sectors, will lead to greater efficiency and effectiveness. There will not be a charge to the user or complainant when a complaint is lodged.

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CLAUSE NOTES

PART I - PRELIMINARY

Clause 1: Short title

The legislation may be referred to as the *Health Complaints Act 1993*.

Clause 2: Commencement

Subclause (1) provides that this clause and Clause 1 will commence on the day the Bill is notified in the *Gazette*.

Subclause (2) provides the remaining clauses will commence on a day or days to be fixed by the Minister and notified in the *Gazette*.

Subclause (3) provides that if a provision referred to in subclause (2) has not commenced before the end of six months from the date of notification of this Act in the *Gazette* that provision will commence on the first day after the end of that period.

Clause 3: Objects

This clause defines the objectives of the legislation which include:

- (a) the provision of an independent and accessible facility which both users and providers of health services can access in order to resolve complaints;
- (b) to improve the delivery of health services and give users and providers the opportunity to have a say in the review and improvement of those services;
- (c) to promote the rights and entitlements of users of health services; and
- (d) to encourage users to be aware of their rights and responsibilities, for example, to provide all relevant information to a health service provider and to ask questions of the health service provider.

Clause 4: Interpretation

Subclause (1) provides for the interpretation of the Bill.

Subclause (2) allows each part of a complaint to be considered separately.

Clause 5: Reasonableness of providers' actions

This clause determines what the Commissioner must consider in determining whether a provider has acted unreasonably. This includes: (a) the Code of Health Rights and Responsibilities; (b) until such time as the Code is approved, any principles detailed in subclause 55 (2); (c) after the Code has been approved, principles set out in subclause 55 (2) which are not dealt with by the Code; and (d) the generally accepted standard of health service delivery when determining whether a provider has acted unreasonably.

PART II - HEALTH COMPLAINTS UNIT

Division 1 - Establishment and Control

Clause 6: Establishment

Subclause (1) provides for the establishment of the Health Complaints Unit.
Subclause (2) provides for the Unit to consist of the Commissioner and staff.

Clause 7: Control

This clause establishes that the Commissioner shall control the Unit.

Division 2 - Appointment and Functions of Commissioner

Clause 8: Appointment

Subclause (1) provides for the Executive of the Government to appoint in writing a Commissioner for Health Complaints.
Subclause (2) provides for the terms and conditions of the appointment.

Clause 9: Functions

In addition to discretionary powers conferred on the Commissioner by this Act, the Commissioner also has the following functions:

- (a) to encourage and assist both users and providers in the resolution of health complaints, for example, where appropriate, by encouraging both parties to discuss the issues involved;
- (b) to collect and publish information about the operation of this Act in the Annual report or any other relevant request;
- (d) to identify, inquire into and review issues relating to the provision of health services and report to or advise the Minister or other appropriate persons, for example, the Coroner, Community Advocate and health registration Boards;
- (e) to inquire into and report on any matter the Health Rights Advisory Council has referred to the Commissioner;
- (f) to encourage and help providers respond more appropriately to user's complaints, for example, listening to, and where appropriate being responsive to what a user has to say;
- (g) to maintain and publish statistical information relating to complaints;
- (h) to provide information and advice to the Health Rights Advisory Council or a health professional Board as can be legally provided;
- (i) to circulate information about this Act, the Code of Health Rights and Responsibilities, the operation of the Health Complaints Unit, and the processes involved in making a complaint, that is, how to make a complaint;
- (j) to perform any other functions as may be required by any other law.

Clause 10: Independence

This clause establishes that the Commissioner is not subject to the direction of any other person in the course of discharging his or her duties under this Act, except where the Act specifies this is so.

Clause 11: Minister's directions

Subclause (1) requires the Commissioner to comply with the Minister's written direction, to inquire into and report on any specified matter relating to the provision of a health service.

Subclause (2) allows for the specification of a period of time and the manner in which the direction is to be carried out.

Subclause (3) provides that the Minister may give the Commissioner a written direction to participate in a proceeding before a Board.

Subclause (4) requires the Commissioner to comply with a direction under this subclause.

Subclause (5) provides that where a direction is given under (3) the Commissioner becomes a party to the proceeding and may present any evidence and submissions which, in the view of the Commissioner, will assist a Board to reach a just decision.

Clause 12: Powers

Provides for the Commissioner to have the power to do all things necessary for the performance of his or her functions.

Clause 13: Staffing arrangements

Subclause (1) provides for staff of the Health Complaints Unit to be public servants.

Subclause (2) allows the Commissioner to make arrangements with an Administrative Head within the Public Service, or Territory authority, for work to be done on behalf of the Commissioner.

Clause 14: Contract work

Subclauses (1) and (2) provides for the Commissioner to engage consultants and determine the terms of employment in writing.

Clause 15: Informality of procedures

Subclause (1) requires the Commissioner to consider the rules of natural justice when performing any function under this Act.

Subclause (2)(a) requires the Commissioner to proceed with minimal formality and technicality, and with speed and efficiency when dealing with any issue under the Act.

Subclause (2)(b) states that in performing his or her functions the Commissioner is not bound by the rules of evidence and may inform himself or herself of any matter in any manner he or she thinks appropriate.

Clause 16: Acting Commissioner

Subclause (1)(a) provides that the Executive of the Government may appoint in writing an Acting Commissioner during a vacancy or absence from that office, for any reason, for a period of not more than 12 months.

Subclause (2) provides that a Conciliator is not eligible to be appointed under sub-clause (1).

Subclause (3) determines the validity of an acting appointment.

Division 3 - Terms of appointment of Commissioner

Clause 17: Tenure of office

This clause provides that a person may be appointed to the position of Commissioner for a period of no more than 5 years, but is eligible for re-appointment.

Clause 18: Salary and allowances

Subclause (1) provides for the Commissioner to be paid remuneration and allowances as are prescribed.

Subclause (2) notes that subclause (1) does not apply if other subsisting determinations apply.

Subclause (3) defines "determination" as a determination of the Commonwealth Remuneration Tribunal.

Clause 19: Resignation

Provides for the resignation of the Commissioner by written notice to the Minister.

Clause 20: Termination or suspension of appointment

Subclause (1) provides that the Executive of the Government may terminate or suspend the appointment of the Commissioner on the grounds of physical or mental incapacity, misbehaviour, or if he or she has failed to act impartially in the discharge of a function under this Act.

Subclause (2) provides that the executive of the Government may terminate the appointment of the Commissioner if he or she (a) becomes bankrupt or applies to take the benefit of any laws relating to bankruptcy, or (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

Clause 21: Who may complain

This clause defines the categories of persons who may make a health service complaint including the user, or where it is difficult or impossible for the user to make a complaint, the following people -

- (a) where the user is 18 years of age or older, he or she may appoint a representative to make the complaint for them;
- (b) where the user is under 18 years of age, a parent or guardian may make the complaint on their behalf;
- (c) a person who has been given the control of the user's affairs under any law or order of a court. For example, where the affairs of a person have been placed under the control of the Community Advocate, the Community Advocate would have the right to lodge a complaint on the user's behalf;
- (d) a person on behalf of the user who has been approved by the Commissioner.

Clause 22: Grounds for complaint

Defines under what circumstances a person referred to in clause 21 may complain. These include:

- (a) if a health service provider has acted unreasonably by not providing a health service, for example, by not only refusing to treat a person who is HIV positive but also refusing to refer them on to another appropriate provider;
- (b) if a health service provider provides services in whole or in part which were unnecessary;
- (c) if a health service provider was unreasonable when providing a health service, for example, was rude or did not give the user sufficient information;
- (d) if a health service provider unreasonably denies or restricts a user's access to his or her health records which are in the possession of the provider;
- (e) if a health service provider acts unreasonably by disclosing information about the user to another person; or
- (f) the provider failed to take appropriate action on a complaint made to him or her by the user.

Subclause (2) defines unreasonableness of a provider's manner as referred to in subclause 1(c) as including the provider's failure to:

- (a) exercise due care and skill;
- (b) be sensitive to a user's needs, wishes or background;
- (c) respect a user's privacy or dignity - for example, did not have a private area in which the user could undress;
- (d) provide the user with-
 - (i) sufficient information about health services in terms which are understandable by the user so that person could make an informed choice;
 - (ii) a reasonable opportunity to make an informed choice - for example, the advice given was timely and gave the user sufficient opportunity to make an informed choice;
 - (iii) necessary information on the availability of further advice about his or her condition or relevant education programmes;
 - (iv) information on treatment or services received by the user; or
 - (v) any prognosis that it would have been reasonable for the user to be provided with.

Division 2 - Assessment of complaints**Clause 23: Assessment**

Subclause (1) defines the actions the Commissioner may take after a complaint has been assessed - for example, refer it to the Ombudsman, a relevant health Registration Board or any other relevant person or body, or refer it for conciliation.

Subclause (2) provides that the reference in (1) includes complaints which have been referred to the Commissioner from the Ombudsman or a Board.

Subclause (3) provides for exceptions for referral to conciliation - for example, a significant matter of public safety or interest.

Clause 24: Enquiries

Subclause (1) enables the Commissioner to obtain information necessary to assess a complaint made under clause 23 - for example, the Commissioner may seek information about standards of practice.

Subclause (2) does not permit the Commissioner to use powers of Investigation under Part V.

Clause 25: Splitting of complaints

Subclause (1) details a range of criteria which allows for a complaint to be split - for example, where a complaint deals with more than one set of circumstances.

Subclause (2) states that the Commissioner may make a decision to split a complaint only if the splitting of the complaint will not adversely affect a conciliation proceeding.

Clause 26: Formal requirements of complaints

Subclause (1) provides that a complaint should be in writing, signed by the complainant and provide details of the complainant's name and address.

Subclause (2) allows for the Commissioner to accept a complaint that is not in writing or does not contain all the particulars detailed in subclause (1). This would allow for action to commence on a complaint, the details of which have not yet been confirmed in writing.

Subclause (3) - further to subclause (2), this clause allows the Commissioner to exercise discretion as to whether an oral complaint needs to be verified in writing. The onus is on the complainant to show good reason why the complaint should not be verified in writing. Subclause (4) enables the Commissioner to request details of changes of a complainant's name or address.

Subclause (5) provides that the Commissioner may request the complainant to provide further information or documents, or to verify the complaint by statutory declaration.

Subclause (6) defines the time period in which the Commissioner can require the complainant to respond to any issues which arise under this section of the Act.

Clause 27: Confidentiality of user's and complainant's particulars

Subclause (1) allows the Commissioner to withhold identifying details of a user or complainant from a provider if the Commissioner has reasonable grounds to believe that disclosure would put at risk the health or safety of any person, be detrimental or prejudicial to the user or complainant; or be detrimental to the assessment of the complaint.

Subclause (2) provides that when the Commissioner has invoked subclause (1) and believes the reasons for doing so no longer apply, the Commissioner has the discretion to revoke it and provide identifying information to the provider.

Clause 28: No further action

Subclause (1) defines under what circumstances the Commissioner shall take no further action on a complaint - for example, the complaint is found to lack is frivolous or was not made in good faith, or the user did not make the for more than 24 months after the incident occurred which gave rise to the complaint.

Subclause (2) provides for an exemption to subclause (1) (c) by allowing the Commissioner to exercise discretion in determining if the complainant has valid grounds for not having made the complaint within a 24 month period from the date of the incident. Subclause (3) defines under what circumstances the Commissioner may take no further action on a complaint.

Clause 29: Withdrawal of complaint

Subclause (1) allows for a complainant to withdraw a complaint at any time by notifying the Commissioner in writing. They are not required to give reasons.

Subclause (2) states that if a provider has been notified of a complaint being lodged against them, then the Commissioner shall be responsible for notifying the provider within 14 days of the complaint being withdrawn. It also determines that the Commissioner will take no further action on a complaint once it has been withdrawn.

Clause 30: Advice of disposal of complaint

Subclause (1) provides that once the Commissioner has assessed a complaint and made a decision under subclause 23(1), to refer it to another person or body, he or she shall provide in writing, within 14 days, the details and reasons for the decision to the complainant and, if the provider has been notified of the complaint being lodged, to the provider.

Subclause (2) restricts the provision of identifying information about the complainant or user being provided to the provider if clause 27, confidentiality of users' and complainants' particulars, has been invoked by the Commissioner.

Clause 31: Action on referral of complaints

Subclause (a) determines that where the Commissioner has referred a complaint to another person or body, the Commissioner shall provide all documentation relating to the complaint to that person or body.

Subclause (b) determines that the Commissioner shall take no further action unless the complaint is referred back by that person or body.

PART IV - CONCILIATION OF COMPLAINTS

Clause 32: Appointment of conciliators

Permits the Commissioner to appoint a person to be a Conciliator for the purposes of this Act.

Clause 33: Function of conciliators

Outlines the functions of a Conciliator as -

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

Clause 34: Representation at conciliation

Provides that neither a complainant nor a provider may be represented in the conciliation process unless the Commissioner is satisfied that representation is likely to assist in the achievement of a successful outcome.

Clause 35: Reports by conciliators

Subclause (1) makes it mandatory for a Conciliator to report on the progress of a conciliation when requested by the Commissioner.

Subclause (2) defines under what other circumstances a Conciliator shall report to the Commissioner, including when a complaint has been finalised or when it becomes obvious that no agreement can be reached.

Subclause (3) details what should be included in a report made under subclause (2) from a Conciliator to the Commissioner including any progress towards a solution and can include recommendations as to what action the Commissioner should take after receiving the report.

Subclause (4) requires the Conciliator to provide a copy of any report, made under subclause (2), to the complainant and provider as soon as possible after the report has been provided to the Commissioner.

Clause 36: Enforceable agreements

Subclause (1) provides that any agreement reached between the parties in conciliation may be incorporated into a binding written agreement.

Subclause (2) determines that an agreement is not enforceable unless it is in writing and that there has been a "cooling off" period of fourteen days prior to the signing of it.

Subclause (3) determines that subclauses (1) and (2) do not affect any other agreements reached outside of the conciliation process.

Subclause (4) provides that a Conciliator shall not be a party to any agreement made in conciliation.

Clause 37: Unsuccessful conciliation

This clause provides that after a Conciliator has given the Commissioner a report which has been requested under subclause 35 (1), the Commissioner may decide to terminate conciliation proceedings.

Subclause (2) defines categories of action the Commissioner may take if he or she decides, after receiving a report, to terminate conciliation proceedings. The Commissioner may also decide to take no further action if it is apparent that agreement cannot be reached.

Clause 38: Professional mentor

Subclause (1) provides for the appointment of a professional mentor to a Conciliator.

Subclause (2) enables the Conciliator to seek the mentor's advice on any issues arising out of the conciliation process.

Subclause (3) does not allow a mentor to be appointed as a Conciliator or to investigate or assist in the investigation of a complaint under this Act.

Clause 39: Confidentiality and privilege

Subclause (1) determines that the Conciliator will not give any information concerning a user or provider given during the conciliation process to anyone except in a report to the Commissioner or to his or her mentor. Any breach may incur a penalty of \$5000.

Subclause (2) prohibits a Conciliator's mentor from disclosing any information acquired from a Conciliator. A penalty of \$5000 is applicable.

Subclause (3) prohibits a person involved in conciliation proceedings from breaching confidentiality of that conciliation process. It should be noted that a Conciliator and/or his or her mentor are prevented from disclosing information gained during the conciliation process under subclause (1) and (2) of this section.

Subclause (4) prohibits the use as evidence of anything said or admitted during conciliation proceedings from being admissible evidence in proceedings before any court, tribunal or a Board. It also prohibits the Commissioner from using any information gained within the conciliation process as a basis for further action under clause 23 (1) - which provides the action(s) the Commissioner may take after assessing a complaint.

PART V - INVESTIGATIONS**Division 1 - Commencement****Clause 40: Matters that may be investigated**

Subclause (1) defines when the Commissioner may commence investigating a matter, including when it has been referred by the Minister; when the Commissioner has used a discretionary power and decided to investigate, or when there appears to be concern for public interest or safety.

Subclause (2) allows an investigation to be carried out regardless of whether specific criteria have been met - for example, whether the complaint has been accepted or withdrawn.

Clause 41: Investigation of complaints and issues arising out of complaints

Subclause (1) provides that the Commissioner shall use his or her best endeavours to determine whether an unresolved complaint is justified.

Subclause (2) allows the Commissioner to continue to investigate any matter even if the complaint which gave rise to the matter has been resolved. For example the care of elderly residents in a nursing home where the original complaint dealt with one nursing home but has wider implications for other similar facilities.

Division 2 - Conduct**Clause 42: Use of material already at hand**

Provides that the Commissioner may make use of any document or information, excluding that gained during conciliation, for the purposes of resolving or investigating a complaint under this Part of the Act.

Clause 43: Conduct of investigation

Subclause (1) provides for the Commissioner to conduct an investigation in such a manner as he or she thinks fit.

Subclause (2) provides that a Conciliator cannot investigate a complaint or act as a delegate of the Commissioner.

Clause 44: Representation

Determines that a person required to appear or produce documents under this Part may be represented by another person and includes legal representation.

Clause 45: Power to obtain information and documents

Subclause (1) empowers the Commissioner to obtain any information and or documents, relevant to the investigation, by a notice in writing.

Subclause (2) empowers the Commissioner to require a person to attend and provide information and answer questions relevant to an investigation.

Subclause (3) defines the powers of the Commissioner in respect of documents or records produced as a result of a requirement under this clause.

Subclause (4) states that Part V has effect subject to Division 2, Part III, of the *Health Act 1993* which deals with confidentiality and evidentiary matters of Quality Assurance Committees.

Clause 46: Power to examine witnesses

Subclause (1) empowers the Commissioner or his or her delegate to take evidence under oath or affirmation in relation to information which has been obtained after a person has been served a notice requiring them to appear before the Commissioner.

Subclause (2) empowers the Commissioner to require any information, document or record produced under this Part; or any statement that is made that a person has no or no more relevant information, documents or records to be verified by statutory declaration.

Subclause (3) provides for a penalty of \$5000 fine for non-compliance with subclause (2) of this section.

Clause 47: Failure to provide information

Subclause (1) provides that a person may not refuse, or fail to be sworn, or refuse to make an affirmation, or to provide information without reasonable excuse. A penalty of a \$5000 fine is attached to this clause.

Subclause (2) provides that the Commissioner may apply to the Supreme Court for an order should a person fail to comply with a notice to provide information or documents as required under clause 45.

Subclause (3) protects a person from being liable to any penalty under any other Act because they may have provided information, produced a document or record, or answered a question when required to do so under this Act.

Clause 48: Determination of fees and expenses of witnesses

This clause provides for fees and expenses of witnesses required to appear before the Commissioner to be set by the Minister for Health and to be published in the ACT *Gazette*.

Clause 49: Warrants

Subclause (1) allows the Commissioner, or his or her delegate, to apply to a Magistrate for the issue of a warrant to enter premises and where necessary remove documents or evidence if reasonable grounds can be shown that this action is necessary. The Magistrate has the right to issue a warrant authorising a specific person to enter the premises in order to carry out an inspection, search for specific items or inspect, seize or copy necessary material.

Subclause (2) states that a Magistrate shall not issue a warrant unless the Magistrate is satisfied that the grounds are relevant and reasonable and any other supporting information the Magistrate has requested has been supplied.

Subclause (3) details what information a warrant should contain - for example, including for what purpose it is being issued and that the warrant ceases to have effect seven days after the date it was issued.

Clause 50: Access to and return of seized records

Subclause (a) determines that the maximum length of time a record or document may be retained by the Commissioner when seized as a result of a warrant being executed under clause 49, is a period not exceeding two months.

Subclause (b) allows a person who would be entitled to inspect or make copies of the document or record, seized under clause 49, to do so at all reasonable times.

Division 3 - CompletionClause 51: Reports

Subclause (1) provides that the Commissioner may, at any stage during an investigation and at its completion, prepare a report of his or her findings and conclusions.

Subclause (2) requires that where the Minister has directed the Commissioner to inquire into a matter under subclause 40(1)(a) the Commissioner must provide a copy of an Investigation report to the Minister.

Subclause (3) provides that where the Commissioner has used discretionary powers to investigate a matter, a copy of the Investigation report must be given to the complainant, the provider and the relevant Board.

Subclause (4) gives discretionary powers to the Commissioner to determine to whom he or she may give a copy of an Investigation report.

Subclause (5) defines the use of "provider" in this clause.

Clause 52: Notice of action to providers

Subclause (1) details the action the Commissioner may take after investigating a complaint if he or she determines that the complaint is justified but cannot be resolved.

Subclause (2) determines the contents of a notice including why it is being served and what action may be appropriate to resolve the complaint.

Subclause (3) gives the provider 45 days in which to respond to the notice giving details of what action has or is to be taken in order to resolve the complaint. A penalty of \$5000 is applicable for non-compliance.

Subclause (4) allows the Commissioner to grant an extension of no more than 15 days to the 45 days allowed under subclause (3) for the provider to report.

PART VI - CODE OF HEALTH RIGHTS AND RESPONSIBILITIES

Clause 53: Approval

This clause provides that the Minister may by instrument approve the Code or any variation of the Code.

Clause 54: Disallowance

Determines the Code, or a variation, is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Clause 55: Contents

Sets out the guiding principles to be implemented by the Code, for example, including that a person who is able to, is included in the decision making process about his or her health.

PART VII - RELATIONSHIP BETWEEN COMMISSIONER FOR HEALTH COMPLAINTS AND BOARDS

Clause 56: Interpretation

Defines "proceeding" as a reference to the *Health Professions Boards (Procedures) Act 1981*.

Clause 57: Referral of complaints to Commissioner

Subclause (1) requires a health registration Board to notify the Commissioner on receipt of a health service complaint and to provide the Commissioner with a copy of the complaint, and if requested to refer the complaint to the Commissioner.

Subclause (2) provides that on referral of a health service complaint to the Commissioner the Board is not required to take action unless the Commissioner refers the complaint back to the Board under specific clauses of this Act, or a report concerning that complaint is given to the Board under clause 51.

Clause 58: Complaints referred after assessment

Outlines the responsibilities of a Board concerning notification in writing to the Commissioner on proposed proceedings or actions after receipt of a health service complaint referred by the Commissioner. The responsibilities of a Board include telling

the Commissioner whether or not it intends to take any action and if it does, the details of that action.

Clause 59: Action on investigation reports

Subclause (1) requires a Board to notify the Commissioner in writing about any action it has taken, in relation to an investigation report, made under clause 51, forwarded to the Board by the Commissioner.

Subclause (2) requires a Board, on taking action under subclause (1), to advise the Commissioner in writing about any result or finding it has made, or any action taken or proposed.

Clause 60: Proceedings of Boards

Enables the Commissioner to be a party to Board proceedings.

PART VIII - HEALTH RIGHTS ADVISORY COUNCIL

Clause 61: Establishment of Council

Provides for the establishment of a Health Rights Advisory Council

Clause 62: Functions

Defines the functions of the Council including -

- (a) provision of advice about the resolution of health service complaints to both the Minister and the Commissioner;
- (b) provision of advice to the Minister about the ways in which the public can be told how to make a complaint, the operation of this Act, any other issue about which the Minister may request advice and refer relevant issues to the Commissioner for him or her to deal with.

Clause 63: Membership

Establishes that the membership of the Council will be appointed by the Minister and consist of one chairperson, two user representatives and two provider representatives.

Clause 64: Terms of appointment

Defines that the term of office of Council members will be no longer than three years but that members are able to be re-appointed.

Clause 65: Remuneration and allowances

Subclause (1) provides for members of the Council to be paid remuneration and allowances as prescribed.

Subclause (2) defines when the provisions in (1) will not apply.

Subclause (3) defines "determination" as being that made by the Remuneration Tribunal of the Commonwealth.

Clause 66: Disclosure of interests

Subclause (1) requires a member of the Council to reveal a pecuniary and/or personal interest in a matter before the Council.

Subclause (2) specifies the interest is to be recorded in the Minutes.

Subclause (3) determines if the member is to be permitted to take part in, or be present during, any deliberation.

Subclause (4) determines that a member of the Council referred to in (1) cannot be present during nor play a role in, the Council's decision making process.

Subclause (5) determines that a person who does not abide by subclause (3) or (4) is guilty of an offence. A penalty of \$2000 is applicable.

Clause 67: Resignation

Provides for resignation of Council member by written notice to the Minister.

Clause 68: Termination of appointment

Defines under what conditions the Minister may terminate a member appointment to the Council including bankruptsy, or being convicted of an offence punishable by imprisonment of 12 months or longer.

Clause 69: Convening meetings

Subclause (1) specifies the frequency of Council meetings as being not less than four per year.

Subclause (2) allows the Council to determine the date, time and place of Council meetings.

Subclause (3) allows the Chairperson to convene meetings of the Council as he or she considers necessary, and when requested in writing by not less than three members of the Council.

Subclause (4) sets out the conditions the Chairperson must fulfil when calling a Council meeting - for example, the Chairperson must provide in writing to each member of the Council the date, time and place of the meeting.

Subclause (5) provides that the Minister may convene a meeting of the Council by a written notice to each of the members.

Clause 70: Procedure at meetings

Subclause (1) requires that the Chairperson shall chair all meetings of the Council at which he or she is present.

Subclause (2) provides that where the Chairperson is absent, the members present shall elect one of their members to chair the meeting.

Subclause (3) provides that the member chairing a meeting of the Council may give directions regarding the meeting procedure to be followed.

Subclause (4) defines that three members of the Council will be a quorum.

Subclause (5) provides that a decision shall be reached by a majority vote of the members present and voting.

Subclause (6) provides that the member chairing the Council meeting not only has a deliberative vote but also a casting vote when necessary.

Subclause (7) provides that the Council shall keep a written record of its proceedings.

Clause 71: Dissenting opinions to be reported

Subclause (1) requires that when the Council provides advice to the Minister and the advice is not unanimous, the member(s) who do not agree with advice may request that the objection and associated reasons be recorded in the Minutes and a report be made in writing to the Minister.

Subclause (2) requires the Council to comply with a request under subclause (1).

PART IX - MISCELLANEOUS

Clause 72: Offences

Provides for a penalty in the event that a person obstructs the Commissioner's functions, or provides information which is false or misleading. A fine of \$5000 is applicable.

Clause 73: Persons not to be penalised

Subclause (1) provides that a person shall not by threat or intimidation persuade, or attempt to persuade, another person to refrain from making a complaint, to withdraw a complaint, or to fail to cooperate with or provide information to a person who is performing a function under this Act.

Subclause (2) provides that a person shall not be refused employment, dismissed from employment or penalised or discriminated against in their employment because they intend to, or have already, make a complaint under this Act.

Subclause (3) defines categories of defence to a prosecution for a breach of this clause - for example, the person gave a reasonable excuse for their actions.

A fine of \$5000 is applicable.

Clause 74: Protection from civil actions

Provides that no proceedings can be taken against a person as a result of specific acts done in good faith under this Act - for example, making a complaint and/or providing evidence to the Commissioner in relation to a complaint.

Clause 75: Indemnity against costs

Indemnifies all staff of the office, current or past, against any claim or costs made in respect of exercise of this Act.

Clause 76: Delegation by Commissioner

Provides that the Commissioner may, in writing, delegate any or all of his or her powers to any staff member of the Unit, except a Conciliator.

Clause 77: Annual report

Subclause (1) requires the Commissioner to prepare an annual report for the Minister to present to the Assembly during each financial year.

Subclause (2) requires that the annual report shall include the general text of every direction given to the Commissioner by the Minister, under clause 11, for that period. Subclause (3) requires the Commissioner to report on specified matters as directed by the Minister.

Clause 78: Adverse comment in reports

Subclause (1) provides that the Commissioner may only include an adverse comment in a report if the person or body, about which the report is concerned, has been given the opportunity to make a submission and to provide the Commissioner with a written statement in relation to the comment(s). A time limit of not more than 28 days and not less than 14 days after the date on which the report is written is allowed for a provider to submit his or response to any adverse comments.

Subclause (2) allows the Commissioner to extend, by not more than 28 days of the time period detailed in subclause (1).

Subclause (3) provides that a person or body may request the Commissioner to include any response, to an adverse report provided by a person or body, or a summary of it, in a report.

Subclause (4) provides that the Commissioner may not follow this section if it would be likely to result in persons being placed at risk, receiving a lower standard of health care or it would prejudice the assessment, examination, inquiry or investigation of a complaint by the Commissioner.

Clause 79: Secrecy

Subclause (1) provides that this clause has effect subject to clause 39 which deals with confidentiality and privilege during the conciliation process.

Subclause (2) defines to whom secrecy provisions of the Act apply including all staff of the Unit (past or present), contract staff or a member of the Council.

Subclause (3) requires that, subject to subclause (4), persons mentioned in (2) shall not divulge or communicate to any person any information gained, including documents, as a result of their position. A fine of \$5000 applies.

Subclause (4) provides exceptions to the secrecy provision.

Subclause (5) defines "court".

Clause 80: Regulations

Provides that the Executive of the Government may make regulations under the Act giving effect to this Act.

SCHEDULE

HEALTH SERVICES

PART I

Services that are health services

The schedule determines services that are considered to be health services.

PART II

Services that are not health services

The schedule determines services that are not considered to be health services.