



New South Wales

Health Legislation Amendment (Complaints) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The following Bills are cognate with this Bill:

Health Registration Legislation Amendment Bill 2004,

Nurses and Midwives Amendment (Performance Assessment) Bill 2004.

Overview of Bill

The object of this Bill is to amend the *Health Care Complaints Act 1993* (***the Principal Act***):

- (a) to enable the Health Care Complaints Commission (***the Commission***) to focus on dealing with serious complaints concerning health practitioners, health service providers and the provision of health services, and
- (b) to establish the Health Conciliation Registry as a separate unit within the Commission to deal with the conciliation of complaints, and
- (c) to enable the Commission, in appropriate circumstances, to deal with complaints through alternative dispute resolution procedures, and
- (d) to require the Commission to appoint a member of staff as Director of Proceedings to exercise the function of the Commission of determining whether a complaint should be prosecuted before a disciplinary body.

The Bill also amends:

- (a) the *Freedom of Information Act 1989* consequent on the establishment of the Health Conciliation Registry as a unit within the Commission and to protect certain documents provided by the Commission to registration authorities, and
- (b) the *Health Administration Act 1982* to formalise the procedures for appointing root cause analysis teams to look into particular incidents involving the provision of health services by an area health service (and certain other health services organisations) and to give certain protections to those teams, and
- (c) the *Health Services Act 1997* to place certain duties on chief executive officers of public health organisations to report possible professional misconduct or unsatisfactory professional conduct of visiting practitioners and employees.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Health Care Complaints Act 1993* set out in Schedules 1–3.

Clause 4 is a formal provision that gives effect to the amendments to other Acts set out in Schedule 4.

Schedule 1 Amendments to Health Care Complaints Act 1993 relating to complaints

Schedule 1 [1] replaces section 3 of the Principal Act so as to make it clear that the primary object of that Act is to establish the Commission as an independent body for the purposes of receiving and assessing complaints relating to health services and health service providers, investigating and prosecuting serious complaints and resolving or overseeing the resolution of complaints. The proposed section also provides that, when exercising functions under the Principal Act, the primary object of the Commission is the protection of the health and safety of the public.

Schedule 1 [2] inserts proposed section 3A into the Principal Act which provides an outline of the roles of the Commission, the Director-General of the Department of Health, public health organisations under the *Health Services Act 1997* and health profession registration authorities in connection with the health care system.

Schedule 1 [3] and [4] update a reference to mental health services and include a reference to forensic pathology services in the definition of *health service* in the Principal Act.

Schedule 1 [6] substitutes section 13 of the Principal Act dealing with the action that can be taken following consultation between the Commission and registration authorities concerning complaints. The new provisions include the options of referring a complaint that neither the Commission nor the appropriate registration authority considers is appropriate to investigate for consideration by the registration authority as to the taking of action under the relevant health registration Act. Such action may include performance assessment or impairment assessment. (However, it is noted that only the *Medical Practice Act 1992* currently contains provisions relating to performance assessment. Similar provisions are also proposed to be inserted into the *Nurses and Midwives Act 1991* by the *Nurses and Midwives Amendment (Performance Assessment) Bill 2004*.) If investigation or referral to the appropriate registration authority is not suitable, the complaint may be referred for conciliation. Under amendments made by Schedule 1 [18], the Commission may, if none of those options are appropriate, deal with the complaint under proposed Division 9 of Part 2 which contains provisions relating to alternative dispute resolution procedures.

Schedule 1 [7] substitutes section 16 of the Principal Act to provide that notice of a complaint is to be given to the person against whom the complaint is made not later than 14 days after the complaint is assessed by the Commission for the purpose of determining the action to be taken by the Commission. At present, the initial notice under section 16 is to be given within 14 days after the receipt of the complaint by the Commission.

Existing section 16 enables the Commission to withhold any such notice in certain circumstances where it believes on reasonable grounds that a person would be at risk or the investigation would be prejudiced if the notice were given. However, notice must be given no later than 60 days after the complaint is received. The new provisions remove the requirement to give the notice within that 60-day period but require the Commission to keep under review a decision to withhold giving notice. The Commission will also be placed under an obligation to give the notice regardless of the circumstances if it considers on reasonable grounds that it is essential on the grounds of natural justice or to investigate the complaint effectively or it is otherwise in the public interest (the *Protected Disclosures Act 1994* places a similar obligation on public authorities dealing with protected disclosures to give notice to a person who is the subject of the disclosure).

Schedule 1 [8], [9], [15], [16] and [35] make minor law revision amendments.

Schedule 1 [12] requires the Commission, as part of its assessment of a complaint and as soon as practicable after commencing the assessment, to identify the specific allegations comprising the complaint and the person or persons whose conduct appears to be the subject of the complaint and to use its best endeavours to confirm those matters with the persons who provided the information.

Schedule 1 [13] imposes a duty on the Commission to keep under review its assessment of a complaint while dealing with the complaint. It also enables the Commission to revise its assessment of a complaint at any time (after consulting with

the appropriate registration authority) and take appropriate action in relation to the revised assessment. If the Commission revises its assessment of a complaint, it must give certain notices to the persons who are the subject of the complaint. **Schedule 1 [34]** makes a consequential amendment.

Schedule 1 [14] extends the power of the Commission under proposed section 34A to obtain documents during the investigation of a complaint to obtaining documents for the purposes of assessing whether a complaint should be investigated (but only in respect of hospital and medical records and documents relating to a health practitioner's practice).

Schedule 1 [17] removes the requirement that a complainant must verify a complaint by statutory declaration. However, **Schedule 1 [5]** includes a note that indicates that the provision of false or misleading information under the Principal Act to the Commission or staff of the Commission is an offence.

Schedule 1 [18] substitutes section 24 of the Principal Act (currently dealing with referral of complaints to the Health Conciliation Registry for conciliation) to provide that the Commission must refer a complaint for conciliation if required by section 13 of the Principal Act or if it decides to do so under proposed section 20A and to enable the Commission, in appropriate circumstances, to deal with a complaint under proposed Division 9 of Part 2 of the Principal Act (see Schedule 2 [9]) relating to alternative dispute resolution procedures).

Schedule 1 [19] and [20] amend section 25 of the Principal Act which requires the Commission to notify the Director-General of the Department of Health if it appears to the Commission that a complaint involves a possible breach of certain specified Acts so as to include the *Anatomy Act 1977*, the *Health Records and Information Privacy Act 2002* and the *Human Tissue Act 1983*.

Schedule 1 [21] enables the Commission to refer a complaint to the Director-General of the Department of Health if the Commission is of the opinion that the complaint relates to a matter that could be the subject of an inquiry by the Director-General under section 71 of the *Public Health Act 1991* or section 123 of the *Health Services Act 1997* (proposed section 25A). A complaint may only be so referred if the Director-General consents. The Commission is not prevented from continuing to deal with a complaint in so far as it concerns the professional conduct of a health practitioner or a health service which affects the clinical management or care of an individual client. **Schedule 1 [10]** makes a consequential amendment.

Schedule 1 [21] also inserts proposed section 25B into the Principal Act which enables the Commission (after consultation) to refer a complaint to the appropriate registration authority for the taking of action (such as performance assessment or impairment assessment) under the relevant health registration Act. If the Commission makes such a referral, it is to discontinue dealing with the complaint. **Schedule 1 [11]** makes a consequential amendment.

Schedule 1 [22] substitutes section 26 of the Principal Act to enable the Commission to refer a complaint to a public health organisation for resolution at a local level if the public health organisation consents.

Schedule 1 [23] enables the Commission to discontinue dealing with a complaint if it has actually been referred to another person or body for appropriate action. Currently, section 27 (1) (d) of the Principal Act provides that the Commission can discontinue dealing with a complaint if it raises issues that are required to be investigated by another person or body.

Schedule 1 [24] substitutes section 28 of the Principal Act and inserts a new section 28A to provide for the following:

- (a) that the Commission's notice to the parties to a complaint of the action it proposes to take after assessment is to be given within 14 days,
- (b) to enable the Commission to give notice of the investigation of a complaint against a health practitioner to a person who currently employs or engages the health practitioner,
- (c) to ensure that the Commission gives notice despite certain exemptions if it is essential on the ground of natural justice and certain other grounds,
- (d) to require reviews of decisions to withhold notice,
- (e) to remove the obligation of the Commission to review its assessment of a complaint if the request from the complainant is not made within 28 days,
- (f) to require the Commission, if possible, to give notification of the outcomes of the assessment of a complaint to a client whose treatment is the subject of the complaint and who is not otherwise required to receive a notification under the Principal Act,
- (g) to require the Commission, if possible, to give notification of the outcomes of the assessment of a complaint, in a case where the client was treated in a hospital or health care facility, to the recorded contact person for the client if the client is deceased or the client is incapable of understanding the notification and the authorised representative of the client (within the meaning of the *Health Records and Information Privacy Act 2002*) consents,
- (h) to enable the Commission to give notification of the outcomes of the assessment of a complaint to other persons associated with a client whose treatment is the subject of the complaint if the client is deceased or the client is incapable of understanding the notification and the authorised representative of the client (within the meaning of the *Health Records and Information Privacy Act 2002*) consents.

Schedule 1 [25] requires the Commission, when seeking expert advice from a person concerning a complaint, to give the person all the relevant information that it possesses concerning the complaint.

Schedule 1 [26] prevents the Commission or the Commissioner from being compelled to produce, or give evidence on, a report of any such expert advice in certain proceedings.

Schedule 1 [27] extends the current power contained in section 33 of the Principal Act that enables an authorised person to enter premises used by a person against whom a complaint has been made in connection with the matter with which the complaint is concerned so that the authorised person may enter any premises if it is necessary for the investigation of the complaint. Under section 32, the power cannot be exercised except with the consent of the owner or occupier of the premises or with the authority of a search warrant. **Schedule 1 [28]** makes a consequential amendment.

Schedule 1 [29] inserts proposed section 34A into the Principal Act which enables the Commission to require information or documents (including medical records) during the investigation of a complaint from the complainant, the person against whom the complaint was made or a health service provider.

Schedule 1 [30] extends the current offence of furnishing false or misleading information to an authorised person to ensure that it covers the situations outlined above in relation to Schedule 1 [29] where information is given to the Commissioner or a member of staff of the Commission.

Schedule 1 [31] omits an offence of a person improperly disclosing information obtained during the exercise of investigation functions under the Principal Act. **Schedule 1 [38]** re-enacts that offence but extends it to information obtained in exercising any function under the Principal Act.

Schedule 1 [32] deals with issues of self-incrimination in relation to the giving of information or the production of documents under the amendments made by Schedule 1 [29].

Schedule 1 [33] amends section 39 of the Principal Act to include, as one of the options that the Commission has on concluding an investigation into a complaint, referring the complaint to the appropriate registration authority for consideration that the health practitioner be referred for performance assessment or impairment assessment.

Schedule 1 [36] omits the function of the Commission of investigating the frequency, type and nature of allegations made in legal proceedings of malpractice by health practitioners.

Schedule 1 [37] protects a person making a complaint, or reporting any matter that could give rise to a complaint, to the Commission or a registration authority from personal liability if the person's actions were done in good faith.

Schedule 1 [39] notes the provisions of the *Ombudsman Act 1974* dealing with the powers of the Ombudsman to investigate the conduct of certain public authorities including the Commission. The provision ensures that the provisions of the Principal Act or any other Act do not prevent the Commission from providing information to the Ombudsman.

Schedule 1 [40] enables regulations to be made of a savings or transitional nature consequent on the enactment of the proposed Act and the proposed *Health Registration Legislation Amendment Act 2004*.

Schedule 1 [41] contains specific provisions dealing with certain savings and transitional matters consequent on the enactment of the proposed Act and the proposed *Health Registration Legislation Amendment Act 2004*.

Schedule 1 [42] restricts the operation of the privative clause contained in Schedule 5 (Special provisions relating to Walker Special Commission of Inquiry).

Schedule 2 Amendments to Health Care Complaints Act 1993 relating to complaints resolution

Schedule 2 [9] substitutes Division 8 of Part 2 of the Principal Act which deals with the conciliation of complaints and inserts a new Division 9 of Part 2 into the Principal Act relating to other complaints resolution procedures that may be carried out by the Commission.

Proposed Division 8 re-enacts (with certain modifications) the repealed Division and contains the following provisions:

- (a) proposed section 46 which provides for the appointment of a conciliator to conciliate a complaint referred to the Health Conciliation Registry (*the Registry*),
- (b) proposed section 47 which requires the Registrar to give notice of the referral of a complaint for conciliation,
- (c) proposed section 48 which provides that participation in the conciliation process under the proposed Division is voluntary,
- (d) proposed section 49 which sets out the role of conciliators,
- (e) proposed section 50 which provides that the parties to a complaint are not entitled to be legally represented during conciliation of the complaint but may, in certain circumstances, be assisted by another person who is not a legal practitioner,
- (f) proposed section 51 which prevents anything said or documents prepared in connection with the conciliation of a complaint from being used in proceedings without the consent of the persons concerned,

- (g) proposed section 52 which provides that the conciliation process is concluded when either party terminates it, the parties reach agreement or the conciliator terminates it for specified reasons,
- (h) proposed section 53 which requires the conciliator to give a report to the Registrar on the conclusion of the conciliation process and the Registrar to give a copy of the report to the Commission, the parties to the complaint and the appropriate registration authority,
- (i) proposed section 54 which requires conciliators to furnish certain information to the Registrar for the purposes of proposed section 55,
- (j) proposed section 55 which requires the Registrar to make six-monthly reports to the registration authorities providing specified information about the complaints dealt with by way of conciliation,
- (k) proposed section 56 which enables the Commission to investigate a complaint that has been dealt with under the proposed Division, but only in limited circumstances,
- (l) proposed section 57 which states that a member of staff of the Commission employed in the Registry or a conciliator is not subject to the direction and control of the Commissioner in relation to dealing with any particular complaint,
- (m) proposed section 58 which makes it an offence for a conciliator or a member of staff of the Commission employed in the Registry to disclose information obtained during the conciliation of a complaint except in specified circumstances,
- (n) proposed section 58A which ensures that a conciliator is not liable to be proceeded against under section 316 of the *Crimes Act 1900* (dealing with offences for concealing information relating to a serious indictable offence) in relation to information obtained in connection with the conciliation process.

Proposed Division 9 contains the following provisions:

- (a) proposed section 58B which sets out the objects of the Commission when dealing with complaints under the proposed Division,
- (b) proposed section 58C which sets out the function of the Commission under the proposed Division, being to take appropriate measures to assist in the resolution of complaints,
- (c) proposed section 58D which provides that participation in the complaints resolution process under the proposed Division is voluntary.

Schedule 2 [10] extends the functions of the Parliamentary Joint Committee on the Health Care Complaints Commission to include the function of monitoring and reviewing the exercise of functions by the Health Conciliation Registry.

Schedule 2 [12] substitutes Part 6 of the Principal Act to convert the Health Conciliation Registry from a statutory corporation to a unit of the Commission.

Schedule 2 [1]–[8], [11], [13] and [14] make consequential amendments.

Schedule 3 Amendments to Health Care Complaints Act 1993 relating to Director of Proceedings

Schedule 3 [5] inserts proposed Part 6A into the Principal Act which establishes a position of Director of Proceedings within the Commission. The proposed Part contains the following provisions:

- (a) proposed section 90A requires the Commission to appoint a member of its staff as Director of Proceedings,
- (b) proposed section 90B provides that the Director is to exercise the functions of the Commission relating to the determination of whether a complaint should be prosecuted before a disciplinary body and requires the Director to consult with the appropriate registration authority (if any) before making any such determination,
- (c) proposed section 90C requires the Director to take certain matters into account when making such a determination, including the protection of public health and safety and any submissions received in accordance with the Principal Act from the health practitioner concerned,
- (d) proposed section 90D provides that the Director is not subject to the direction and control of the Commissioner when dealing with any particular complaint.

Schedule 3 [1]–[4] contain consequential amendments.

Schedule 4 Amendment of other Acts

Schedule 4.1 amends the *Freedom of Information Act 1989* as a consequence of the amendments made in relation to the Health Conciliation Registry. The amendments also make documents provided by the Commission to a registration authority in relation to a complaint exempt documents under that Act.

Schedule 4.2 [1] amends the *Health Administration Act 1982* as a consequence of the amendments made in relation to the Health Conciliation Registry.

Schedule 4.2 [2] inserts proposed Division 6C into Part 2 of that Act which contains provisions for the appointment of a root cause analysis team (*RCA team*) for area health services, and for statutory health corporations and affiliated health organisations prescribed by the regulations (*relevant health services organisations*). The relevant health services organisation is to appoint members to constitute the RCA team when a reportable incident (to be identified through regulations) occurs that involves the organisation. A RCA team is required to notify the relevant health services organisation of certain matters and report on its findings. Information given to a RCA team and reports made by it are protected and the members of the team are also protected from personal liability for actions done in good faith as a member.

Regulations may be made with respect to the functions, procedure, constitution and membership of RCA teams, the furnishing of reports and information by those teams and enabling a RCA team to be appointed by a relevant health services- organisation for a reportable incident at another such organisation.

Schedule 4.3 amends the *Health Services Act 1997* to require the chief executive officers of public health organisations to report conduct of visiting practitioners and employees that they reasonably suspect may constitute professional misconduct or unsatisfactory professional conduct to the relevant registration authorities.



New South Wales

Health Legislation Amendment (Complaints) Bill 2004

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New South Wales

Health Legislation Amendment (Complaints) Bill 2004

No. , 2004

A Bill for

An Act to amend the *Health Care Complaints Act 1993* in relation to the procedure for dealing with complaints and the conciliation or resolution of complaints; to amend various other health Acts with respect to complaints and the reporting of unsatisfactory professional conduct; and for other purposes.

See also *Health Registration Legislation Amendment Bill 2004*, *Nurses and Midwives Amendment (Performance Assessment) Bill 2004*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Legislation Amendment (Complaints) Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Health Care Complaints Act 1993 No 105

The *Health Care Complaints Act 1993* is amended as set out in Schedules 1–3.

4 Amendment of other Acts

Each Act specified in Schedule 4 is amended as set out in that Schedule.

Schedule 1 Amendments to Health Care Complaints Act 1993 relating to complaints

(Section 3)

[1] Section 3

Omit the section. Insert instead:

3 Object of this Act

- (1) The primary object of this Act is to establish the Health Care Complaints Commission as an independent body for the purposes of:
 - (a) receiving and assessing complaints under this Act relating to health services and health service providers in New South Wales, and
 - (b) investigating and assessing whether any such complaint is serious and if so, whether it should be prosecuted, and
 - (c) prosecuting serious complaints, and
 - (d) resolving or overseeing the resolution of complaints.
- (2) In exercising its functions under this Act, the Commission is to have as its primary object the protection of the health and safety of the public.

[2] Section 3A

Insert after section 3:

3A Outline of role of Commission and related government agencies in health care system

- (1) This section provides an outline of the Commission's role in relation to government agencies with functions in connection with the health care system.
- (2) **Health Care Complaints Commission**
The Commission is an independent body with responsibility for dealing with complaints under this Act, with particular emphasis on the investigation and prosecution of serious complaints in consultation with relevant registration authorities.

(3)	Director-General of the Department of Health	1
	The Director-General is responsible for:	2
(a)	facilitating the achievement and maintenance of adequate standards of patient care within public hospitals and in relation to other services provided by the public health system, and	3 4 5 6
(b)	inquiring into the administration, management and services of public health organisations and arranging, as appropriate, inspection of such organisations, and	7 8 9
(c)	developing and overseeing the implementation of health policy and regulation and responding to policy and regulatory issues as they emerge.	10 11 12
(4)	Public health organisations conducting health services	13
	Public health organisations have the functions set out in Chapter 2 of the <i>Health Services Act 1997</i> . They are responsible for achieving and maintaining adequate standards of patient care and services, which may include a role in resolving complaints at a local level. Their role involves liaising with the Commission and registration authorities.	14 15 16 17 18 19
(5)	Registration authorities	20
	Registration authorities are responsible for the registration of health professionals and the management of complaints in conjunction with the Commission. The registration authorities are also responsible for protecting the public through promoting and maintaining professional standards.	21 22 23 24 25
(6)	This section is explanatory only and does not affect any other provision of this Act, or any other Act, or any instrument made under this or any other Act.	26 27 28
[3]	Section 4 Definitions	29
	Omit paragraph (c) of the definition of <i>health service</i> . Insert instead:	30
	(c) mental health services,	31
[4]	Section 4, definition of “health service”	32
	Insert after paragraph (k):	33
	(k1) forensic pathology services,	34

[5] Section 9 How is a complaint made?

Insert “It is an offence under section 99 to furnish information to the Commission for the purposes of this Act that is false or misleading in a material particular and under section 35 to furnish such information to the Commissioner or staff of the Commission.” after “writing.” in the note to the section.

[6] Section 13

Omit the section. Insert instead:

13 The outcomes of consultation

(1) If either the Commission or the appropriate registration authority is of the opinion that a complaint (or any part of a complaint) should be investigated, it must be investigated.

(2) If:

(a) neither the Commission nor the appropriate registration authority is of the opinion that the complaint (or part) should be investigated, but

(b) either is of the opinion that it should be referred to the registration authority for consideration as to whether the registration authority should take any action under the relevant health registration Act (such as performance assessment or impairment assessment),

it must be referred to the registration authority under section 25B.

(3) If:

(a) neither the Commission nor the appropriate registration authority is of the opinion that the complaint (or part) should be investigated or referred to the registration authority, but

(b) either is of the opinion that it should be referred for conciliation and the Registrar considers that it is appropriate for conciliation,

the Commission is to refer the complaint for conciliation under Division 8.

Note. Only the *Medical Practice Act 1992* and the *Nurses and Midwives Act 1991* contain provisions relating to performance assessment.

[7] Section 16

Omit the section. Insert instead:

16 Person against whom complaint made to be notified of complaint

- (1) The Commission must give written notice of the making of a complaint, the nature of the complaint and the identity of the complainant to the person against whom the complaint is made. The notice must be given not later than 14 days after the Commission's assessment of the complaint under Division 4.
- (2) If the Commission has assessed the complaint, the notice is to include the notice required to be given to the person under section 28.
- (3) The Commission may give a copy of the complaint to the person against whom the complaint is made.
- (4) This section does not require the Commission to give notice under this section if it appears to the Commission, on reasonable grounds, that the giving of the notice will or is likely to:
 - (a) prejudice the investigation of the complaint, or
 - (b) place the health or safety of a client at risk, or
 - (c) place the complainant or another person at risk of intimidation or harassment.
- (5) Despite subsection (4), the Commission must give the notice if the Commission considers on reasonable grounds that:
 - (a) it is essential, having regard to the principles of natural justice, that the notice be given, or
 - (b) the giving of the notice is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.
- (6) If the Commission decides that subsection (4) applies to a complaint but that some form of notice could be given of the complaint without affecting the health or safety of a client or putting any person at risk of intimidation or harassment, the Commission may give such a form of notice.
- (7) On the expiration of each consecutive period of 60 days after the complaint is assessed, the Commission must undertake a review of a decision not to give notice under this section (or to give notice in some other form as referred to in subsection (6)) unless notice under this section has already been given or the Commission has discontinued dealing with the complaint.

[8] Section 18 Can a complaint be withdrawn?	1
Omit “provides” from section 18 (2) (c).	2
Insert instead “, if substantiated, would provide”.	3
[9] Section 18 (2) (d)	4
Omit “involves”. Insert instead “, if substantiated, would involve”.	5
[10] Section 20 The purpose of assessment	6
Insert “or 25A” after “section 25”.	7
[11] Section 20	8
Omit “for investigation in accordance with section 26”.	9
Insert instead “in accordance with section 25B or 26”.	10
[12] Section 20 (2)	11
Insert at the end of section 20:	12
(2) Unless the Commission decides to decline to entertain a complaint, the Commission is, as part of its assessment of the complaint and as soon as practicable after commencing its assessment:	13
(a) to identify the specific allegations comprising the complaint and the person or persons whose conduct appears to be the subject of the complaint, and	14
(b) to use its best endeavours to confirm with the complainant and with any other person who provided relevant information in relation to the complaint that the matters so identified accord with the information provided by them.	15
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[13] Section 20A	24
Insert after section 20:	25
20A Duty of Commission to review assessment of complaint	26
(1) The Commission is to keep under review its assessment of a complaint while it is dealing with the complaint.	27
	28
(2) At any time while dealing with a complaint (including during or at the end of the investigation of a complaint) and after consultation with the appropriate registration authority, the Commission may revise its assessment of the complaint and take any of the following actions:	29
(a) deal with the complaint under Division 9,	30
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	(b) refer the complaint for conciliation,	1
	(c) investigate the complaint,	2
	(d) refer the complaint to the Director-General in accordance with section 25 or 25A,	3 4
	(e) refer the complaint to another person or body in accordance with section 25B or 26,	5 6
	(f) change the person whose conduct appears to be the subject of the complaint or include another person as a person whose conduct appears to be the subject of the complaint,	7 8 9
	(g) add to, substitute, amend or delete any of the specific allegations comprising the complaint (including add an allegation arising out of an investigation of the complaint that may not be the particular object of the complaint).	10 11 12 13
	Note. Section 56 limits the Commission's power to investigate a matter that has been dealt with under Division 8.	14 15
(3)	If the Commission revises its assessment of a complaint to include another person as referred to in subsection (2) (f), sections 16 and 28 apply to the giving of notice to that person as if a reference in those sections to the assessment of the complaint were a reference to the revision of the assessment under this section.	16 17 18 19 20 21
(4)	If the Commission revises its assessment of a complaint and as a result determines that the conduct of a person previously being investigated by the Commission will no longer be investigated or that different conduct of the person will be investigated, the Commission is to give the person notice in writing that the person's conduct is no longer under investigation or that other conduct of the person is now under investigation (as appropriate).	22 23 24 25 26 27 28
(5)	In this section, <i>complaint</i> includes any part of a complaint.	29
[14] Section 21A		30
	Insert after section 21:	31
21A Commission may obtain certain medical and other documents		32
(1)	For the purposes of the assessment, the Commission may exercise the powers conferred on it by section 34A in connection with the investigation of a complaint to obtain hospital and medical records and documents relating to a health practitioner's practice.	33 34 35 36 37

(2)	A reference in this Act to a requirement under section 34A includes a reference to such a requirement that arises under this section.	1 2 3
[15] Section 23 Investigation of complaint		4
	Omit “provides” from section 23 (1) (b) (iii).	5
	Insert instead “if substantiated, would provide”.	6
[16] Section 23 (1) (b) (iv)		7
	Omit “involves”. Insert instead “if substantiated, would involve”.	8
[17] Section 23 (3)		9
	Omit the subsection.	10
[18] Section 24		11
	Omit the section. Insert instead:	12
24 Referral of complaints for conciliation or complaint resolution		13
(1)	The Commission must refer a complaint for conciliation under Division 8 if it is required to do so under section 13 (3) or if it decides to do so under section 20A.	14 15 16
(2)	The Commission may deal with a complaint under Division 9 if the complaint is not required to be investigated, referred to a registration authority under section 25B or referred for conciliation.	17 18 19 20
(3)	The Commission may at any time during the assessment of a complaint take any action referred to in section 58C with respect to the complaint without the need for consultation with the appropriate registration authority.	21 22 23 24
(4)	However, subsection (3) does not affect the requirement in section 12 (1) for the Commission to consult with the appropriate registration authority before making a determination on how a complaint should be dealt with as a result of an assessment of the complaint.	25 26 27 28 29
[19] Section 25 Notification of certain complaints to the Director-General		30
	Insert “, or specified provisions of Acts,” after “Acts” in section 25 (1).	31

[20] Section 25 (1)	1
Insert in alphabetical order of Act name:	2
• <i>Anatomy Act 1977</i>	3
• <i>Health Records and Information Privacy Act 2002</i> , section 68, 69 or 70	4 5
• <i>Human Tissue Act 1983</i>	6
[21] Sections 25A and 25B	7
Insert after section 25:	8
25A Reference of complaints to be dealt with under inquiry powers of Director-General	9 10
(1) The Commission may, with the consent of the Director-General, refer a complaint (or part of a complaint) to the Director-General if the Commission is of the opinion that the complaint (or part) relates to a matter that could be the subject of an inquiry by the Director-General under section 71 of the <i>Public Health Act 1991</i> or section 123 of the <i>Health Services Act 1997</i> .	11 12 13 14 15 16
(2) Despite section 27 (3), the Commission must discontinue dealing with a complaint (or part) under that section that has been referred to the Director-General under this section.	17 18 19
(3) However, the Commission may continue dealing with a complaint (or any part of a complaint) in so far as it concerns:	20 21
(a) the professional conduct of a health practitioner, or	22
(b) a health service which affects the clinical management or care of an individual client.	23 24
25B Reference of complaints to be dealt with by registration authorities	25
(1) Following the assessment, the Commission may refer a complaint to the appropriate registration authority (after consultation with that authority) if it appears that the complaint (or part) should be referred to the registration authority for consideration as to whether the registration authority should take any action under the relevant health registration Act, such as performance assessment or impairment assessment.	26 27 28 29 30 31 32
Note. Section 13 (2) requires the Commission to refer a complaint to the registration authority if either the Commission or the registration authority is of the opinion that it should be referred.	33 34 35
(2) Despite section 27 (3), the Commission must discontinue dealing with a complaint (or part) under that section that has been referred to a registration authority under this section.	36 37 38

Note. Registration authorities are required in certain circumstances under the relevant health registration Acts to deal with matters as complaints that have been dealt with under performance assessment or impairment assessment provisions. (See, for example, section 86M of the *Medical Practice Act 1992* which requires a matter arising from a performance review to be treated as a complaint if the Performance Review Panel considers the matter raises a significant issue of public health or safety.)

[22] Section 26

Omit the section. Insert instead:

26 Reference of complaint to another person or body for investigation or other action

- (1) Following the assessment, the Commission may refer a complaint (or any part of a complaint):
 - (a) to an appropriate public health organisation if it appears that the complaint (or part) may be capable of resolution at a local level and the public health organisation consents, or
 - (b) to any person or body (other than a public health organisation or registration authority) if it appears that the complaint (or part) raises issues which require investigation by the other person or body.
- (2) However, the Commission must continue to deal with the matter the subject of the complaint (or part) if it appears to the Commission that:
 - (a) the matter raises a significant issue of public health or safety, or
 - (b) the matter raises a significant question as to the appropriate care or treatment of a client by a health service provider, or
 - (c) the matter, if substantiated, would provide grounds for disciplinary action against a health practitioner.
- (3) A public health organisation to which a complaint (or part) is referred under this section may refer the complaint (or part) back to the Commission if it is unable to resolve it or the public health organisation considers that the matter is appropriate to be dealt with under Division 8 or 9.
- (4) If a complaint (or part) has been referred back to the Commission under subsection (3), the Commission must assess the complaint (or part) again in accordance with this Division.
- (5) The Commission may not refer a complaint (or part) to the Director-General under this section.

Health Legislation Amendment (Complaints) Bill 2004

Schedule 1 Amendments to Health Care Complaints Act 1993 relating to complaints

Note. The Commission may refer a complaint to the Director-General under section 25 or 25A but only with the consent of the Director-General.		1 2 3
(6)	In this section, <i>public health organisation</i> has the same meaning as in the <i>Health Services Act 1997</i> .	4 5
[23]	Section 27 Circumstances in which Commission may discontinue dealing with complaint	6 7
	Omit section 27 (1) (d). Insert instead:	8
	(d) the complaint (or part) has been referred by the Commission to another person or body for investigation or for consideration of other action (including, for example, performance assessment or impairment assessment under a health registration Act),	9 10 11 12 13
[24]	Sections 28 and 28A	14
	Omit section 28. Insert instead:	15
	28 Notice of action taken or decision made following assessment	16
	(1) The Commission must give the parties to the complaint notice in writing of the action taken or decision made by the Commission following its assessment of the complaint. The notice is to be given within 14 days after the Commission takes that action or makes that decision.	17 18 19 20 21
	(2) If the Commission decides to investigate a complaint against a health practitioner, the Commission must give notice in writing of the decision:	22 23 24
	(a) if the health practitioner has provided the health service in respect of which the complaint is made under a contract or agreement with a person who is, or who conducts, a hospital or other health care facility, to the person, or	25 26 27 28
	(b) if the health practitioner has provided the health service in the capacity of an employee, to the health practitioner's employer.	29 30 31
	(3) If the Commission decides to investigate a complaint against a health practitioner, the Commission may give notice in writing of the decision to a person who currently employs or engages the health practitioner as a health practitioner.	32 33 34 35
	(4) This section does not require the Commission to give notice of action taken or a decision made to investigate a complaint if it appears to the Commission, on reasonable grounds, that the giving of the notice will:	36 37 38 39

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| (a) | prejudice the investigation of the complaint, or | 1 |
| (b) | place the health or safety of a client at risk, or | 2 |
| (c) | place the complainant or another person at risk of
intimidation or harassment, or | 3
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| (d) | unreasonably prejudice the employment of the health
practitioner in the case of a health practitioner who has
provided the health service in the capacity of an employee. | 5
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| (5) | Despite subsection (4), the Commission must give the notice if
the Commission considers on reasonable grounds that: | 8
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| (a) | it is essential, having regard to the principles of natural
justice, that the notice be given, or | 10
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| (b) | the giving of the notice is necessary to investigate the
matter effectively or it is otherwise in the public interest to
do so. | 12
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| (6) | If the Commission decides that subsection (4) applies to a
complaint but that some form of notice could be given of the
complaint without affecting the health or safety of a client or
putting any person at risk of intimidation or harassment, the
Commission may give such a form of notice. | 15
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| (7) | On the expiration of each consecutive period of 60 days after the
Commission has decided to investigate a complaint, the
Commission must undertake a review of a decision not to give
notice under this section (or to give notice in some other form as
referred to in subsection (6)), unless notice under this section has
already been given or the Commission has discontinued dealing
with the complaint. | 20
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| (8) | The Commission's notice to the complainant must include: | 27 |
| (a) | advice that the complainant may ask the Commission to
review the decision made after assessing the complaint if
the decision is: | 28
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| (i) | not to investigate the complaint, or | 31 |
| (ii) | to refer the complaint to the Director-General under
section 25 or 25A, or | 32
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| (iii) | to refer the complaint to another person or body
under section 25B or 26, or | 34
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| (iv) | to discontinue dealing with the complaint under
section 27, and | 36
37 |
| (b) | the reasons for the decision. | 38 |
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- (9) The Commission may review a decision made after assessing a complaint if requested to do so by the complainant, and must do so if the request is made within 28 days after the complainant is notified of the decision.

Note. A complainant also has the right under section 41 (3) to request a review of a decision made by the Commission under section 39 at the end of its investigation of a complaint.

28A Notification of other persons following assessment

- (1) The Commission is to use its best endeavours to give notification of the outcomes of the assessment of a complaint to a client whose treatment is the subject of the complaint and who is not required to be given notice under section 28 unless the client:
- (a) is deceased, or
 - (b) is incapable of understanding the notification.
- (2) If a complaint relates to the treatment of a client at a hospital or other health care facility, the Commission is to use its best endeavours to give notification of the outcomes of the assessment of the complaint to any person recorded by the hospital or health care facility as being a contact for the client.
- (3) Without affecting the Commission's obligations under subsections (1) and (2), the Commission may, if it thinks it appropriate and it is practicable to do so, give notification of the outcomes of the assessment of a complaint to any person who is associated with a client whose treatment is the subject of the complaint (including a legal representative of the client or of the estate of the client).
- (4) The Commission may only give notification to a person under subsection (2) or (3) if the client concerned:
- (a) is deceased, or
 - (b) is incapable of understanding the notification and the client's authorised representative (as defined in section 8 of the *Health Records and Information Privacy Act 2002*) has consented to the Commission giving the notification.
- (5) On request by the Commission, a person who is, or who conducts, a hospital or health care facility is to supply the Commission with any information in its possession that is necessary for the Commission to fulfil its obligations under subsections (1) and (2). The information may be provided to the Commission despite any other Act or law.

[25] Section 30 Expert assistance	1
Insert after section 30 (2):	2
(2A) If the Commission seeks to obtain a report from a person under this section in relation to a complaint, the Commission is to provide the person with all relevant information concerning the complaint that is in the possession of the Commission.	3 4 5 6
[26] Section 30 (5)	7
Insert “, the Commission or the Commissioner” after “obtained”.	8
[27] Section 33 Powers of entry, search and seizure	9
Omit section 33 (a). Insert instead:	10
(a) at any reasonable time, enter and inspect any premises if the authorised person reasonably believes it is necessary to enter those premises for the purpose of investigating the matter with which the complaint is concerned,	11 12 13 14
[28] Section 33, note	15
Omit the note.	16
[29] Section 34A	17
Insert after section 34:	18
34A Power of Commission to obtain information, records and evidence	19
(1) If the Commission is investigating a complaint and is of the opinion that a person is capable of giving information, producing documents (including medical records) or giving evidence that would assist in the investigation, the Commission may, by notice in writing given to the person, request the person to do any one or more of the following:	20 21 22 23 24 25
(a) to give the Commission, by writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and within such time as is reasonable, and in the manner, specified in the notice, any such information of which the person has knowledge,	26 27 28 29 30
(b) to produce to the Commission, in accordance with the notice, any such documents,	31 32
(c) to appear before the Commissioner or a member of staff of the Commission authorised by the Commissioner at a time and place specified in the notice that is reasonable and give any such evidence, either orally or in writing, and produce any such documents.	33 34 35 36 37

	(2)	A person to whom a request is made under subsection (1) may comply with the request, but is not required to comply with it unless the person is:	1 2 3
	(a)	the complainant, or	4
	(b)	a person against whom the complaint was made, or	5
	(c)	a health service provider.	6
	(3)	Information and documents may be given or provided to the Commission in compliance with this section despite any other Act or law (but not despite a provision of Division 8 of this Part or Division 6B or 6C of Part 2 of the <i>Health Administration Act 1982</i>).	7 8 9 10 11
	(4)	A person who is required to comply with a request under subsection (1) must not, without reasonable excuse, fail to comply with the request.	12 13 14
		Maximum penalty: 20 penalty units.	15
		Note. Failure of a health practitioner to comply with a request under subsection (4) may constitute unsatisfactory professional conduct under the relevant health registration Act.	16 17 18
[30]	Section 35 Offence: obstructing an authorised person, Commission etc		19
	Omit section 35 (d). Insert instead:		20
	(d)	furnishes information that is false or misleading in a material particular to an authorised person, the Commissioner or a member of staff of the Commission in connection with the exercise of their functions under this Act with respect to a complaint,	21 22 23 24 25
[31]	Section 37 Offence: improper disclosure of information		26
	Omit the section.		27
[32]	Section 37A		28
	Insert before section 38:		29
37A	Protection from incrimination		30
	(1) Self-incrimination not an excuse		31
		A person is not excused from a requirement under section 34A to give information, to answer a question or to produce a document on the ground that the information, answer or document might incriminate the person or make the person liable to a penalty.	32 33 34 35

(2)	Information or answer not admissible if objection made	1
	However, any information or answer given by a natural person in compliance with a requirement under section 34A is not admissible in evidence against the person in any civil or criminal proceedings (except disciplinary proceedings or proceedings for an offence under this Part) if:	2 3 4 5 6
	(a) the person objected at the time to doing so on the ground that it might incriminate the person, or	7 8
	(b) the person was not warned on that occasion that the person may object to giving the information or answer on the ground that it might incriminate the person.	9 10 11
(3)	Documents admissible	12
	Any document produced by a person in compliance with a requirement under section 34A is not inadmissible in evidence against the person in any proceedings on the ground that the document might incriminate the person.	13 14 15 16
(4)	Further information	17
	Further information obtained as a result of a document produced or information or answer given in compliance with a requirement under section 34A is not inadmissible in any proceedings on the ground:	18 19 20 21
	(a) that the document, information or answer had to be produced or given, or	22 23
	(b) that the document, information or answer might incriminate the person.	24 25
(5)	The Commission, the Commissioner or a member of staff of the Commission cannot be required (whether by subpoena or any other procedure) to produce, in connection with any proceedings, a document that contains any information or answer that has been obtained as a result of a requirement under section 34A if the information or answer is not admissible in evidence in those proceedings because of this section.	26 27 28 29 30 31 32
[33]	Section 39 What action is taken after an investigation?	33
	Omit section 39 (1) (c). Insert instead:	34
	(c) refer the complaint to the appropriate registration authority (if any) for consideration of the taking of action under the relevant health registration Act, such as the referral of the health practitioner for performance assessment or impairment assessment,	35 36 37 38 39

[34] Section 39 (1A)	1
Insert after section 39 (1):	2
(1A) The Commission is not required to take action under this section if it reviews its assessment of the complaint and takes action under section 20A.	3 4 5
[35] Section 59	6
Omit the section. Insert instead:	7
59 Investigation of health services	8
The Commission may, in accordance with this Part, investigate the delivery of health services by a health service provider directly affecting the clinical management or care of clients which may not be the particular object of a complaint but which arises out of a complaint or out of more than one complaint, if it appears to the Commission that:	9 10 11 12 13 14
(a) the matter raises a significant issue of public health or safety, or	15 16
(b) the matter raises a significant question as to the appropriate care or treatment of clients, or	17 18
(c) the matter, if substantiated, would provide grounds for disciplinary action against a health practitioner.	19 20
[36] Section 80 Functions of Commission	21
Omit section 80 (1) (j).	22
[37] Section 96 Exoneration from liability	23
Insert at the end of the section:	24
(2) The making of a complaint, or the reporting of any matter or thing that could give rise to a complaint, to the Commission or a registration authority by any person does not, if it was done in good faith, subject the person personally to any action, liability, claim or demand.	25 26 27 28 29

[38] Section 99A

Insert after section 99:

99A Offence: improper disclosure of information

If a person discloses information obtained in exercising a function under this Act and the disclosure is not made:

- (a) with the consent of the person to whom the information relates, or
 - (b) in connection with the execution and administration of this Act, or
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
 - (d) with other lawful excuse,
- the person is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

[39] Section 103A

Insert after section 103:

103A Application of Ombudsman Act 1974

- (1) The *Ombudsman Act 1974* makes provision in respect of the investigation of the conduct of certain public authorities including the Commission.
- (2) The Commission is not precluded by anything in this Act or by any other Act or law from providing information to the Ombudsman in connection with a preliminary inquiry under section 13AA of the *Ombudsman Act 1974* or an investigation under that Act.

Note. Section 12 of the *Ombudsman Act 1974* enables a person to make a complaint about a wide range of conduct of a public authority relating to administrative action or inaction by the public authority. Section 13AA of that Act enables the Ombudsman to conduct preliminary inquiries into such a complaint and section 13 of that Act enables the Ombudsman to investigate such conduct whether or not a complaint has been made if it appears to the Ombudsman that the conduct may be, for example, contrary to law.

[40] Schedule 4 Savings, transitional and other provisions	1
Omit clause 1. Insert instead:	2
 Part 1 Preliminary	 3
1 Regulations	4
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	5
this Act	6
<i>Health Legislation Amendment (Complaints) Act 2004</i>	7
<i>Health Registration Legislation Amendment Act 2004</i>	8
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	9
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	10
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	11
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	12
(4) The provisions of this Schedule are subject to any regulations made under this clause.	13
 Part 2 Provisions consequent on the enactment of this Act	 14
	15

[41] Schedule 4, Parts 3 and 4	1
Insert at the end of the Schedule:	2
Part 3 Provisions consequent on enactment of Health Legislation Amendment (Complaints) Act 2004	3
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5 Definition	6
In this Part:	7
<i>amending Act</i> means the <i>Health Legislation Amendment (Complaints) Act 2004</i> .	8
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6 Commission and Commissioner	10
The person holding the office of Commissioner, or acting in that office, immediately before the substitution of section 76 by the amending Act is taken to have been appointed to hold or act in that office under section 76 as so substituted on the same terms and conditions as applied to that person's appointment before that substitution.	11
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7 Health Conciliation Registry	17
(1) The Health Conciliation Registry established under Part 6 (as in force immediately before its substitution by the amending Act) is abolished.	18
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(2) A person who was a member of staff of the Health Conciliation Registry immediately before its abolition is transferred to the staff of the Commission.	21
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(3) Any such transfer is taken to have been done under section 87 of the <i>Public Sector Employment and Management Act 2002</i> .	24
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8 Conciliators and conciliation	26
(1) A person appointed as a conciliator under section 89 before its substitution by the amending Act and whose appointment is in force immediately before that substitution is taken to have been appointed as a conciliator under section 89 (as inserted by the amending Act).	27
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(2) Any complaint that was referred to the Health Conciliation Registry before the substitution of Division 8 of Part 2 by the amending Act, and the conciliation of which under that Division was not finalised before the substitution:	32
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| <p>(a) is taken to have been referred to the Health Conciliation Registry in accordance with that Division as substituted, and</p> <p>(b) is to continue to be dealt with in accordance with that Division as substituted.</p> <p>9 Application of amendments</p> <p>(1) An amendment made by Schedule 1 [7] or [24] to the amending Act applies only to complaints made on or after the commencement of the amendment.</p> <p>(2) Despite subclause (1), an amendment made by Schedule 1 [7] or [24] to the amending Act applies to a complaint made before the commencement of the amendment to the extent (if any) that section 20A (3) applies to the complaint.</p> <p>(3) An amendment made by Schedule 1 [6], [10]–[14], [17]–[23], [27], [29], [32], [37] or Schedule 3 to the amending Act applies to a complaint whether made before, on or after the commencement of the amendment.</p> <p>(4) Despite subclause (3):</p> <p style="padding-left: 20px;">(a) an amendment made by Schedule 1 [6] or [12] to the amending Act does not apply to a complaint that was assessed by the Commission under section 13 before the commencement of the amendment, and</p> <p style="padding-left: 20px;">(b) the amendment made by Schedule 1 [22] to the amending Act does not apply to a referral of a complaint under section 26 that took place before the commencement of the amendment, and</p> <p style="padding-left: 20px;">(c) the amendment made by Schedule 1 [37] to the amending Act does not affect any proceedings commenced before the commencement of the amendment, and</p> <p style="padding-left: 20px;">(d) an amendment made by Schedule 3 [2] or [5] to the amending Act does not apply to a complaint in respect of which the Commission has made a determination under section 39 before the commencement of the amendment.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> |
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**Part 4 Provisions consequent on enactment of
Health Registration Legislation
Amendment Act 2004**

10 Definition

In this Part:

amending Act means the *Health Registration Legislation
Amendment Act 2004*.

11 Pending proceedings

- (1) An amendment made to a health registration Act by the amending Act does not apply to a complaint that was referred to a Committee or Tribunal under the health registration Act before the commencement of the amendment.
- (2) An amendment made to a health registration Act by the amending Act does not apply to a complaint if an inquiry into the complaint under the health registration Act had commenced before the commencement of the amendment.

12 Amendments relating to constitution of Tribunal and committees

- (1) The amendment made to section 147 of the *Medical Practice Act 1992* by the amending Act does not affect the Tribunal as constituted before the commencement of the amendment to deal with a complaint if the Tribunal is still dealing with that complaint at that commencement. Accordingly, the Tribunal as so constituted may continue to deal with the complaint as if the amendment had not been made.
- (2) The amendment made to section 169 of the *Medical Practice Act 1992* by the amending Act does not affect any Committee that was constituted before the commencement of the amendment to deal with a complaint and is still dealing with the complaint at that commencement. Accordingly, any such Committee may continue to deal with the complaint as if the amendment had not been made.
- (3) The amendment made to section 51 of the *Nurses and Midwives Act 1991* by the amending Act does not affect any Committee that was constituted before the commencement of the amendment to deal with a complaint and is still dealing with the complaint at that commencement. Accordingly, any such Committee may continue to deal with the complaint as if the amendment had not been made.

Health Legislation Amendment (Complaints) Bill 2004

Schedule 1 Amendments to Health Care Complaints Act 1993 relating to complaints

13 Statutory declarations

Any amendment made to a health registration Act by the
amending Act to remove a requirement that a statutory
declaration be given in relation to a complaint applies to a
complaint whether made before, on or after the commencement
of the amendment.

**[42] Schedule 5 Special provisions relating to Walker Special Commission of
Inquiry**

Omit “because of the exercise by a designated person of any function with
respect to a matter to which that protected action relates” from clause 6 (2).

Insert instead “because a designated person exercises a function in the
circumstances or manner authorised by this Schedule or because of any act or
omission of the Special Commission”.

Schedule 2	Amendments to Health Care Complaints Act 1993 relating to complaints resolution	1
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	(Section 3)	4
[1] Long title		5
	Omit “conciliation”. Insert instead “resolution”.	6
[2] Section 4 Definitions		7
	Omit “constituted” from the definition of <i>Health Conciliation Registry</i> .	8
	Insert instead “established”.	9
[3] Section 4		10
	Insert in alphabetical order:	11
	<i>Registrar</i> means the Registrar of the Health Conciliation Registry.	12
		13
[4] Section 12 Consultation between the Commission, a registration authority and the Registrar		14
	Omit section 12 (1). Insert instead:	15
		16
	(1) Before determining, as a result of the assessment of a complaint, whether to investigate a complaint, to refer the complaint for conciliation, to deal with the complaint under Division 9 or to discontinue dealing with the complaint, the Commission must consult with the appropriate registration authority, subject to this section.	17
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	(1A) If it is proposed, as a result of the assessment of a complaint, to refer the complaint for conciliation, the Commission must also consult with the Registrar.	23
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		25
[5] Section 14 Suspension of action by registration authority		26
	Omit “conciliation by the Health Conciliation Registry” from section 14 (1).	27
	Insert instead “is being dealt with under Division 8 or 9”.	28
[6] Section 15 Provision of information to registration authorities		29
	Insert “and will involve the Registrar in the consultation process” after “conciliation” in the note to the section.	30
		31
[7] Section 20 The purpose of assessment		32
	Insert “or dealt with under Division 9” after “conciliated”.	33

[8] Section 27 Circumstances in which Commission may discontinue dealing with complaint	1 2
Omit section 27 (1) (b). Insert instead:	3
(b) the subject-matter of the complaint (or part) is trivial or does not warrant investigation or conciliation or the Commission dealing with it under Division 9,	4 5 6
[9] Part 2, Divisions 8 and 9	7
Omit Division 8 and the note to the Part. Insert instead:	8
Division 8 Conciliation	9
46 Appointment of conciliators	10
(1) On the referral of a complaint by the Commission to the Health Conciliation Registry, the Registrar must appoint a conciliator to conciliate the complaint.	11 12 13
(2) The Registrar may appoint more than one conciliator to conciliate the complaint if the Registrar thinks it is desirable to do so.	14 15
47 Notification of arrangements for conciliation	16
Within 14 days after the referral of a complaint by the Commission to the Health Conciliation Registry, the Registrar must give written notice to the parties to the complaint of the following:	17 18 19 20
(a) that the complaint has been referred for conciliation,	21
(b) that the conciliation process is voluntary and that the consent of the parties is required,	22 23
(c) the objects of the conciliation process,	24
(d) confidentiality provisions concerning conciliation,	25
(e) the effect of any agreements arising out of conciliation,	26
(f) the reasons why conciliation is considered to be appropriate.	27 28
48 Conciliation to be voluntary	29
Participation in the conciliation process by the parties to a complaint is voluntary.	30 31

49 Role of conciliator

The function of a conciliator is:

- (a) to bring the parties to the complaint together for the purpose of promoting the discussion, negotiation and settlement of the complaint, and
- (b) to undertake any activity for the purpose of promoting that discussion, negotiation and settlement, and
- (c) if possible, to assist the parties to the complaint to reach agreement.

Note. A conciliator has no power to impose a decision on the parties, to make a determination or to award compensation.

50 Assistance to parties at conciliation

- (1) At the conciliation of a complaint, a party to the complaint is not entitled to be legally represented.
- (2) A party to a complaint may be assisted by another person (not being a legal practitioner) if the assistance is provided:
 - (a) to the complainant, or
 - (b) to another party to the complaint and the Registrar or conciliator gives permission because the party would be disadvantaged without the assistance.
- (3) This section does not prevent an officer of a corporation that is a party to a complaint from representing the corporation.
- (4) Contravention of this section does not invalidate the conciliation of a complaint.

51 Confidentiality of the conciliation process

- (1) Evidence of anything said or of any admission made during the conciliation process is not admissible in any proceedings before a court, tribunal or body.
- (2) A document prepared for the purposes of, or in the course of, the conciliation process (or a copy of such a document) is not admissible in any proceedings before a court, tribunal or body.
- (3) This section does not apply to evidence or a document if the persons who attended, or were named during, the conciliation process and, in the case of a document, all persons named in the document, consent to admission of the evidence or document.

- (4) A person cannot be required (whether by subpoena or any other procedure) to produce evidence or a document that is inadmissible in evidence in proceedings before a court, tribunal or body because of this section.

52 Conclusion of the conciliation process

- (1) The conciliation process is concluded:
- (a) if either party terminates the conciliation process at any time, or
 - (b) if the parties to the complaint reach agreement concerning the matter the subject of the complaint.
- (2) The complainant must notify the Registrar without delay if the parties reach agreement otherwise than during the conciliation process.
- (3) The conciliation process is terminated if the conciliator terminates the process after having formed the view:
- (a) that it is unlikely that the parties will reach agreement, or
 - (b) a significant issue of public health or safety has been raised.

53 Preparation and distribution of report on conclusion of conciliation process

- (1) On the conclusion of the conciliation process, the conciliator who was involved in the process must prepare a report to the Registrar concerning the conciliation.
- (2) The report may state only:
- (a) the outcome of the conciliation process, and
 - (b) whether or not a recommendation is made that the Commission investigate the complaint.
- (3) As soon as practicable after receipt of the report, the Registrar must give a copy of the report to the Commission, the parties to the complaint and the appropriate registration authority (if any).

54 Furnishing of other information to Registrar concerning conciliation process

A conciliator who was involved in a conciliation process must furnish information to the Registrar (otherwise than in a report under section 53) sufficient to enable the Registrar to comply with section 55.

55 Six-monthly reports to registration authorities

- (1) As soon as practicable after 1 April and 1 October in each year, the Registrar must furnish a report to each registration authority setting out the following information in relation to the complaints which have been dealt with under this Division during the previous 6 months:
- (a) the number of complaints dealt with,
 - (b) the background of each complaint,
 - (c) the nature of the issues the subject of the conciliation process,
 - (d) any issues of a general nature arising out of each complaint relevant to the professional or educational standards of the profession concerned.
- (2) A report must not contain any information which identifies a party to a complaint.
- (3) A registration authority must not use a report furnished to it under this section except for the purpose of providing general information to health practitioners who are registered by it concerning the professional or educational standards of their profession.

56 Complaint may be referred for investigation

- (1) Despite section 20A, the Commission may investigate a complaint that has been dealt with under this Division but only if:
- (a) the report under section 53 contains a recommendation that the Commission investigate the complaint, or
 - (b) new material concerning the matter the subject of the complaint becomes available and that material raises a matter that would cause the Commission to refer the complaint for investigation in accordance with section 23.
- (2) Before investigating the complaint, the Commission must consult with the appropriate registration authority (if any). If either the Commission or the appropriate registration authority (or both) is (or are) of the opinion that a complaint should be investigated, it must be investigated.

57 Health Conciliation Registry and conciliators to be independent in dealing with complaints

A member of staff of the Commission employed in the Health Conciliation Registry or a conciliator is not subject to the direction and control of the Commissioner in relation to dealing with any particular complaint that has been referred to the Health Conciliation Registry for conciliation.

58 Offence for conciliator or staff of Health Conciliation Registry to disclose information obtained in conciliation

A conciliator or a member of staff of the Commission employed in the Health Conciliation Registry must not disclose information obtained during the conciliation of a complaint (including to a member of staff of the Commission that is not employed in the Registry) except in any one or more of the following circumstances:

- (a) with the consent of the parties to the complaint concerned,
- (b) in connection with the administration or execution of this Division,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

58A Offence of concealing a serious offence

A conciliator is not liable to be proceeded against under section 316 of the *Crimes Act 1900* in respect of any information obtained in connection with the conciliation process.

Division 9 Complaints resolution

58B Objects of Commission under this Division

The objects of the Commission under this Division are as follows:

- (a) to provide an alternate and neutral means of resolving complaints that is independent of the investigative processes of the Commission,

	(b) to facilitate the resolution of complaints, including determining the most appropriate means of resolution having regard to the nature of the complaint and the expectations of the parties to the complaint,	1 2 3 4
	(c) to provide information to health service providers and members of the public on the complaints resolution functions of the Commission under this Part.	5 6 7
58C	Function of Commission under this Division	8
	The Commission, when dealing with a complaint under this Division, is to take appropriate measures to assist in the resolution of the complaint, including (but not limited to) any of the following measures:	9 10 11 12
	(a) providing information to the parties to the complaint,	13
	(b) undertaking discussions concerning the complaint with the parties to the complaint,	14 15
	(c) facilitating the direct resolution of the complaint between the parties to the complaint.	16 17
58D	Participation in complaints resolution process to be voluntary	18
	Participation in the complaints resolution process under this Division by the parties to a complaint is voluntary.	19 20
[10]	Section 65 Functions	21
	Insert after section 65 (1) (a):	22
	(a1) without limiting paragraph (a), to monitor and review the exercise of functions by the Health Conciliation Registry,	23 24
[11]	Section 80 Functions of Commission	25
	Omit section 80 (1) (b). Insert instead:	26
	(b) to assess those complaints and, in appropriate cases, to investigate them, refer them for conciliation or deal with them under Division 9 of Part 2,	27 28 29

[12] Part 6	1
Omit the Part. Insert instead:	2
Part 6 Health Conciliation Registry	3
85 Health Conciliation Registry	4
There is established a Health Conciliation Registry within the Commission.	5 6
86 Functions of Health Conciliation Registry	7
(1) The Health Conciliation Registry has the functions conferred or imposed on it by or under this or any other Act.	8 9
(2) In particular, the Health Conciliation Registry has the following functions:	10 11
(a) to arrange for the conciliation of complaints referred to the Registry by the Commission,	12 13
(b) to liaise with the parties to a conciliation, including conducting pre-conciliation conferences, where appropriate,	14 15 16
(c) to appoint a conciliator or conciliators to conduct the conciliation of a complaint referred to the Registry by the Commission,	17 18 19
(d) to facilitate the conciliation of complaints,	20
(e) to provide information about the conciliation process to the public and to health professionals.	21 22
87 Registrar of Health Conciliation Registry	23
The Commission is to appoint a member of its staff as Registrar of the Health Conciliation Registry to manage the Registry.	24 25
88 Staff of Health Conciliation Registry	26
The Commission is to designate as staff of the Health Conciliation Registry such of its staff as may be necessary to enable the Registry to carry out its functions.	27 28 29
89 Conciliators	30
(1) The Minister may appoint one or more suitably qualified persons to be conciliators for the purposes of this Act.	31 32
(2) A conciliator may be appointed on a full-time or part-time basis.	33
(3) Schedule 2 has effect with respect to the conciliators.	34

90	Functions of conciliators	1
	A conciliator has the functions conferred or imposed on a	2
	conciliator by or under this or any other Act.	3
[13]	Section 96 Exoneration from liability	4
	Omit “the Registrar, a conciliator or a person employed in the Registry”.	5
	Insert instead “the Registrar or a conciliator”.	6
[14]	Section 97 Pending legal proceedings do not prevent exercise of certain functions	7
	Omit “the Health Conciliation Registry,”.	8
		9

Schedule 3 Amendments to Health Care Complaints Act 1993 relating to Director of Proceedings

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

Director of Proceedings means the Director of Proceedings appointed under Part 6A.

[2] Section 39 What action is taken after an investigation?

Omit section 39 (1) (a) and (b). Insert instead:

(a) refer the complaint to the Director of Proceedings,

[3] Section 75 The Commission

Insert after section 75 (2):

(3) Subject to section 90B, the functions of the Commission are exercisable by the Commissioner. Any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, is taken to have been done by the Commission.

(4) A reference in this Act to anything done or omitted by, to or in relation to the Commission includes a reference to a thing done or omitted by, to or in relation to the Commissioner or another officer of the Commission having authority in the circumstances.

[4] Section 76

Omit the section. Insert instead:

76 Appointment of Commissioner

(1) The Governor may appoint a Commissioner.

(2) The Commissioner has and may exercise the functions conferred or imposed on the Commissioner by or under this or any other Act.

[5] Part 6A	1
Insert after Part 6:	2
 Part 6A Director of Proceedings	 3
90A Director of Proceedings	4
(1) The Commission is to appoint a member of its staff to be Director of Proceedings.	5 6
(2) The Commission may, from time to time, appoint a person to act in the office of the Director of Proceedings during the illness or absence of the Director, and the person, while so acting, has and may exercise all the functions of the Director and is taken to be the Director.	7 8 9 10 11
 90B Functions of Director of Proceedings	 12
(1) The following functions of the Commission are to be exercised only by the Director of Proceedings in relation to any complaint referred to the Director by the Commission:	13 14 15
(a) to determine whether the complaint should be prosecuted before a disciplinary body and, if so, whether it should be prosecuted by the Commission or referred to another person or body for prosecution,	16 17 18 19
(b) to intervene in any proceedings that may be taken before a disciplinary body in relation to the complaint.	20 21
(2) In addition, the Director of Proceedings has any other functions conferred or imposed on the Director by or under this or any other Act.	22 23 24
(3) The Director of Proceedings:	25
(a) may at any time consult with a registration authority in relation to the exercise of any of the Director's functions, and	26 27 28
(b) must consult with the appropriate registration authority (if any) before determining whether or not a complaint should be prosecuted before a disciplinary body.	29 30 31
(4) The exercise by the Director of Proceedings of any function referred to in subsection (1) is taken to be the exercise of that function by the Commission.	32 33 34
(5) While holding the office of Director of Proceedings, a person is not to exercise any function of the Commission other than a function referred to in subsection (1).	35 36 37

90C Criteria relevant to determinations of Director of Proceedings

- (1) The Director of Proceedings is to take into account the following matters when making a determination as to whether or not a complaint should be prosecuted before a disciplinary body:
 - (a) the protection of the health and safety of the public,
 - (b) the seriousness of the alleged conduct the subject of the complaint,
 - (c) the likelihood of proving the alleged conduct,
 - (d) any submissions made under section 40 by the health practitioner concerned.
- (2) For the purpose of enabling the Director of Proceedings to fulfil the Director's functions under this section in relation to a complaint referred to the Director, the Commission is to provide the Director with any submissions received under section 40 in relation to the complaint.

90D Independence of Director of Proceedings

The Director of Proceedings is not subject to the direction and control of the Commissioner in relation to dealing with any particular complaint that has been referred by the Commission to the Director for consideration.

Schedule 4	Amendment of other Acts	1
	(Section 4)	2
4.1	Freedom of Information Act 1989 No 5	3
[1]	Schedule 1 Exempt documents	4
	Insert after clause 25:	5
	26 Documents relating to complaints under health legislation	6
	A document provided by the Health Care Complaints Commission to a registration authority (within the meaning of the <i>Health Care Complaints Act 1993</i>) relating to a particular complaint is an exempt document.	7 8 9 10
[2]	Schedule 2 Exempt bodies and offices	11
	Omit the matter relating to the Health Care Complaints Commission.	12
	Insert instead:	13
	The Health Care Complaints Commission—complaint handling, investigative, complaints resolution and reporting functions (including any functions exercised by the Health Conciliation Registry).	14 15 16 17
[3]	Schedule 2	18
	Omit “The Health Conciliation Registry—conciliation functions.”.	19
4.2	Health Administration Act 1982 No 135	20
[1]	Section 14 Employees of Corporation	21
	Omit section 14 (1) (b1).	22
[2]	Part 2, Division 6C	23
	Insert after Division 6B:	24
	Division 6C Root cause analysis teams	25
20L	Definitions	26
	In this Division:	27
	RCA team means a root cause analysis team appointed under section 20M.	28 29

	<i>relevant health services organisation</i> means any area health service, a statutory health corporation prescribed by the regulations or an affiliated health organisation prescribed by the regulations.	1 2 3 4
	<i>reportable incident</i> means an incident relating to the provision of health services by a relevant health services organisation, being an incident of a type prescribed by the regulations or set out in a document adopted by the regulations.	5 6 7 8
	<i>service</i> means a health service, and includes any administrative or other service related to a health service.	9 10
20M	Appointment of RCA teams to deal with reportable incidents	11
(1)	When a reportable incident involving a relevant health services organisation is reported to the chief executive officer of the organisation, the organisation is to appoint a root cause analysis team in relation to the reportable incident.	12 13 14 15
(2)	The relevant health services organisation is, subject to the regulations, to appoint such members of the RCA team as the organisation considers appropriate to undertake the functions of the RCA team in relation to the reportable incident.	16 17 18 19
(3)	The relevant health services organisation is to cause a written record to be kept of the persons appointed under this section as members of the RCA team in relation to a particular reportable incident.	20 21 22 23
20N	Restrictions on RCA teams	24
(1)	A RCA team does not have authority to conduct an investigation relating to the competence of an individual in providing services.	25 26
(2)	A report furnished or information made available by a RCA team must not disclose:	27 28
(a)	the name or address of an individual who is a provider or recipient of services unless the individual has consented in writing to that disclosure, or	29 30 31
(b)	as far as is practicable, any other material that identifies, or may lead to the identification of, such an individual.	32 33
(3)	A RCA team is to have regard to the rules of natural justice in so far as they are relevant to the functions of a RCA team.	34 35

20O	Responsibilities of RCA team in relation to reportable incident	1
(1)	A RCA team is to notify in writing the relevant health services organisation by which it was appointed if the RCA team is of the opinion that the reportable incident that it is considering raises matters that may involve professional misconduct or unsatisfactory professional conduct by a person who is a visiting practitioner or employee of the organisation or may indicate that such a person is suffering from an impairment.	2 3 4 5 6 7 8
(2)	A RCA team may notify in writing the relevant health services organisation by which it was appointed if the RCA team is of the opinion that the reportable incident that it is considering raises matters that may involve unsatisfactory professional performance by a person who is a visiting practitioner or employee of the organisation, but not to the extent that would constitute professional misconduct or unsatisfactory professional conduct.	9 10 11 12 13 14 15 16
(3)	On completion of its consideration of a reportable incident, a RCA team must prepare a report in writing that contains the following:	17 18 19
	(a) a description of the reportable incident,	20
	(b) a causation statement, being a statement that indicates the reasons why the RCA team considers the reportable incident concerned occurred,	21 22 23
	(c) any recommendations by the RCA team as to the need for changes or improvements in relation to a procedure or practice arising out of the incident.	24 25 26
20P	Disclosure etc of information	27
	A person who is or was a member of a RCA team must not make a record of, or divulge or communicate to any person, any information acquired by the person as such a member, except:	28 29 30
	(a) for the purpose of exercising the functions of a member, or	31
	(b) for the purposes of any recommendation of a RCA team, or	32
	(c) for the purposes of any report prepared by a RCA team under section 20O (3), or	33 34
	(d) in accordance with the regulations.	35
	Maximum penalty: 50 penalty units.	36

20Q	Information not to be given in evidence	1
(1)	A person who is or was a member of a RCA team and the relevant health services organisation for which the RCA team was appointed are neither competent nor compellable:	2
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		4
	(a) to produce before any court, tribunal, board or person any document in his, her or its possession or under his, her or its control that was created by, at the request of or solely for the purpose of the RCA team, or	5
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	(b) to divulge or communicate to any court, tribunal, board or person any matter or thing that came to the notice of a member of the RCA team as such a member.	9
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(2)	Subsection (1) does not apply to a requirement made in proceedings in respect of any act or omission by a RCA team or by a member of a RCA team as a member.	12
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20R	Findings of RCA team not evidence of certain matters	15
	A notification or report of a RCA team under section 200 is not admissible as evidence in any proceedings that a procedure or practice is or was careless or inadequate.	16
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20S	Personal liability of members etc	19
(1)	Anything done by a RCA team, a member of a RCA team or any person acting under the direction of a RCA team, in good faith for the purposes of the exercise of the RCA team's functions, does not subject such a member or person personally to any action, liability, claim or demand.	20
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(2)	Without limiting subsection (1), a member of a RCA team has qualified privilege in proceedings for defamation in respect of:	25
		26
	(a) any statement made orally or in writing in the exercise of the functions of a member, or	27
		28
	(b) the contents of any report or other information published by the RCA team.	29
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(3)	The members of a RCA team are, and are entitled to be, indemnified by the relevant health services organisation for which the RCA team is appointed in respect of any costs incurred in defending proceedings in respect of a liability against which they are protected by this section.	31
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20T	Regulations relating to RCA teams	1
	The regulations may make provision for or with respect to the following:	2
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	(a) the constitution and membership of RCA teams,	4
	(b) the functions of RCA teams,	5
	(c) the procedure of RCA teams and the manner in which they are to exercise their functions,	6
		7
	(d) permitting or requiring RCA teams to make specified information available to the public,	8
		9
	(e) permitting or requiring RCA teams to furnish reports concerning their activities to the Minister and to relevant health services organisations,	10
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		12
	(f) enabling a RCA team to be appointed by a relevant health services organisation in respect of a reportable incident at another relevant health services organisation.	13
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20U	Review of Division	16
	(1) The Minister is to review this Division to determine whether the policy objectives of the Division remain valid and whether the terms of the Division remain appropriate for securing those objectives.	17
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	(2) The review is to be undertaken as soon as possible after the period of 3 years from the date of commencement of this Division.	21
		22
	(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.	23
		24
		25
4.3	Health Services Act 1997 No 154	26
[1]	Section 99A	27
	Insert after section 99:	28
99A	Duty of chief executive officer to report certain conduct of visiting practitioner	29
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	(1) The chief executive officer of a public health organisation is to report to a registration authority any conduct of a visiting practitioner that the chief executive officer suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the health registration Act by which the registration authority is constituted.	31
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Schedule 4 Amendment of other Acts

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- (2) In this section, *health registration Act* and *registration authority* have the same meanings as in the *Health Care Complaints Act 1993*.

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[2] Section 117A

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Insert after section 117:

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117A Duty of chief executive officer to report certain conduct of employee

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- (1) The chief executive officer of a public health organisation is to report to a registration authority any conduct of an employee of the organisation that the chief executive officer suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the health registration Act by which the registration authority is constituted.
- (2) In this section, *health registration Act* and *registration authority* have the same meanings as in the *Health Care Complaints Act 1993*.

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