



New South Wales

Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Health Care Complaints Act 1993* to facilitate investigations and prosecutions arising from the Walker Special Commission of Inquiry concerning Campbelltown and Camden Hospitals (*the Special Commission*).

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Health Care Complaints Act 1993* (*the Principal Act*) set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts proposed section 105 into the Principal Act, which gives effect to proposed Schedule 5 to the Principal Act.

Schedule 1 [2] inserts proposed Schedule 5 into the Principal Act, which contains the following provisions:

Clause 1 sets out definitions used in the proposed Schedule. In particular, it defines **HCCC** to mean the Health Care Complaints Commission constituted under the Principal Act. It also defines **the referred complaints** to mean the complaints and other matters relating to Campbelltown and Camden Hospitals specified in the commission establishing the Special Commission of Inquiry issued by the Governor on 11 December 2003.

Clause 2 provides that the HCCC is required to conduct investigations recommended by the Special Commission in relation to health practitioners. If a recommendation for such an investigation is made, the matter is taken to be a complaint made under the Principal Act and obligations required to be complied with before an investigation is instituted are dispensed with.

Clause 3 provides that the HCCC is, if the Special Commission so recommends, required to refer a specified matter in relation to a health practitioner to a registration authority for assessment by a professional or impairment assessment body. If a recommendation for such a referral is made, obligations required to be complied with before a matter is so referred are dispensed with.

Clause 4 authorises the Special Commission to provide the HCCC, a health registration authority or a professional or impairment assessment body with documents or other information obtained by the Special Commission in the course of its inquiries.

Clause 5 provides that the HCCC, any registration authority, any professional or impairment assessment body or any disciplinary body may take into account any matter contained in a report of the Special Commission (or other information used by the Special Commission) in any investigation or other action taken in respect of a health practitioner under the Principal Act or a health registration Act.

Clause 6 protects investigations and disciplinary and other action arising from the recommendations of the Special Commission from certain legal challenges.

Clause 7 provides that anything done by the HCCC, before the commencement of the proposed Schedule, with respect to the investigation of a matter in anticipation of a recommendation of the Special Commission is taken to have been done after that commencement if the recommendation is contained in a report of the Special Commission. The clause also ensures that the HCCC can continue to deal with matters that the Special Commission considers, but for which it does not make recommendations for further action.



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New South Wales

Health Care Complaints Amendment (Special Commission of Inquiry) Bill 2004

No. , 2004

A Bill for

An Act to amend the *Health Care Complaints Act 1993* to facilitate investigations and prosecutions arising from the Special Commission of Inquiry concerning Campbelltown and Camden Hospitals.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Health Care Complaints Amendment (Special Commission of Inquiry) Act 2004*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Health Care Complaints Act 1993 No 105

The *Health Care Complaints Act 1993* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 105

Insert after section 104:

105 Special provisions relating to Walker Special Commission of Inquiry

Schedule 5 has effect.

[2] Schedule 5

Insert at the end of the Act:

Schedule 5 Special provisions relating to Walker Special Commission of Inquiry

(Section 105)

1 Definitions

In this Schedule:

disciplinary body means a person or body (including a professional standards committee) established under a health registration Act that has the power to discipline a health practitioner or to suspend or cancel (by whatever means) the registration of a health practitioner.

HCCC means the Health Care Complaints Commission constituted under this Act.

impairment assessment body means a person or body established under a health registration Act to assess whether a health practitioner is suffering from any impairment and to make recommendations accordingly (such as an Impaired Registrants Panel under the *Medical Practice Act 1992*).

professional assessment body means a person or body established under a health registration Act to assess and report on the professional performance of a health practitioner (such as a Performance Review Panel under the *Medical Practice Act 1992*).

the referred complaints means the complaints and other matters relating to Campbelltown and Camden Hospitals specified in the commission establishing the Special Commission issued on 11 December 2003, as altered or varied by the Governor from time to time.

the Special Commission means the Special Commission of Inquiry established under the *Special Commissions of Inquiry Act 1983* for the purposes of inquiring into and reporting to the Governor on the referred complaints, and includes the Commissioner of the Special Commission.

2 Provisions applicable to recommendations for investigation by HCCC

- (1) This clause applies in respect of a recommendation in a report of the Special Commission that a specified matter in relation to a health practitioner be investigated by the HCCC.
- (2) The HCCC is required to investigate any such matter, without delay, in accordance with this Act and the relevant health registration Act.
- (3) If a recommendation for such an investigation is made:
 - (a) the matter is taken to be a complaint duly made under this Act, and cannot be withdrawn, and
 - (b) the requirements made by this Act or the relevant health registration Act before a complaint is investigated are taken to have been duly complied with, including that:
 - (i) the complaint be verified by statutory declaration, and
 - (ii) the appropriate registration authority has been notified of the complaint, and
 - (iii) the appropriate registration authority has been consulted by the HCCC about whether the complaint should be investigated, and
 - (iv) the HCCC has assessed the complaint for the purposes of determining whether the complaint should be investigated, and
 - (c) the HCCC is required to give the health practitioner such notice of the matter as the HCCC is required under this Act to give a person against whom a complaint is made, and

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| (d) | the complainant for the purposes of this Act is taken to be the Director-General of the Department of Health or the person identified in the recommendation as the complainant. | 1
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| 3 | Provisions applicable to recommendations for referral by HCCC for professional or other assessment | 5
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| (1) | This clause applies in respect of a recommendation in a report of the Special Commission that a specified matter in relation to a health practitioner be referred by the HCCC under section 26 of this Act to a registration authority for assessment by an impairment assessment body or a professional assessment body. | 7
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| (2) | The HCCC is required to refer any such matter, without delay, under section 26 of this Act. | 13
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| (3) | If a recommendation for such a referral is made, the requirements made by this Act or the relevant health registration Act before the matter is referred for assessment by an impairment assessment body or a professional assessment body are taken to have been duly complied with. | 15
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| 4 | Provision of documents and other information to relevant agencies by Special Commission | 20
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| (1) | In this clause:

<i>relevant agency</i> means the HCCC, a registration authority, an impairment assessment body or a professional assessment body. | 22
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| (2) | The Special Commission is authorised to provide a relevant agency with documents or other information obtained by it in the course of its inquiries (but only if the Special Commission is satisfied that it is reasonably necessary to do so to assist the relevant agency to exercise the functions of the relevant agency). | 26
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| (3) | Information may be provided under this clause despite any Act or law. | 32
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5 Consideration of report of, and documents or other information used by, Special Commission

Any matter contained in a report of the Special Commission and any documents or other information taken into account by the Special Commission in making its report:

- (a) may be taken into account by the HCCC in any investigation or other action taken by the HCCC in respect of a health practitioner under this Act or the relevant health registration Act, and
- (b) may be taken into account by any registration authority in any investigation or other action taken by the registration authority in respect of a health practitioner under the relevant health registration Act, and
- (c) may be taken into account by any impairment assessment body or professional assessment body in any assessment of a health practitioner under the relevant health registration Act, and
- (d) may be taken into account by a disciplinary body in any proceedings against a health practitioner under the relevant health registration Act.

6 Protection of certain actions relating to Special Commission from challenge

- (1) For the purposes of this clause, a *protected action* is any action of the HCCC, a disciplinary body, a registration authority, an impairment assessment body or a professional assessment body under this Act or a health registration Act in relation to a health practitioner, being:
 - (a) any investigation or other action that is recommended in a report of the Special Commission, or
 - (b) any prosecution or other action that is taken following the carrying out of any such recommended investigation or other action.
- (2) A protected action may not be:
 - (a) challenged, reviewed, quashed or called into question before any court of law, administrative review body or disciplinary body in any proceedings, or

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- (b) restrained, removed or otherwise affected by any proceedings,
because of the exercise by a designated person of any function with respect to a matter to which that protected action relates.
- (3) Subclause (2) applies whether or not the proceedings relate to any question involving compliance or non-compliance, by a designated person, with the provisions of this Act or a health registration Act or the rules of natural justice (procedural fairness).
- (4) This clause does not affect the generality of section 36 of the *Special Commissions of Inquiry Act 1983*.
- (5) In this clause:
designated person means:
(a) the Special Commission (including the Commissioner of the Special Commission), or
(b) the HCCC (including the Commissioner of the HCCC), or
(c) a registration authority, an impairment assessment body or a professional assessment body (or a member of any such body), or
(d) a complainant, or
(e) any person assisting or otherwise associated with any of them.
exercise of functions includes the purported exercise of functions and the non-exercise or improper exercise of functions.
proceedings includes:
(a) proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, and
(b) without limiting paragraph (a), proceedings for a stay of disciplinary or other proceedings, and
(c) without limiting paragraph (a), proceedings in the exercise of the inherent jurisdiction of the Supreme Court or the jurisdiction conferred by section 23 of the *Supreme Court Act 1970*,
but does not include criminal proceedings.
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7 Action by HCCC in anticipation of recommendation of Special Commission etc

- (1) Anything done by the HCCC, before the commencement of this Schedule, with respect to the investigation of a matter in anticipation of a recommendation of the Special Commission is taken, for the purposes of this Schedule, to have been done after that commencement if the recommendation is contained in a report of the Special Commission.
- (2) The HCCC is not precluded from continuing to investigate or take other action with respect to a matter that the Special Commission has considered but in respect of which it has not recommended any further investigation or other action.

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