

FIRST PRINT

## HEALTH CARE COMPLAINTS BILL 1992

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- to facilitate the maintenance of standards of health services in New South Wales
- to promote the rights of clients in the New South Wales health system by providing clear and easily accessible mechanisms for the resolution of complaints
- to facilitate the dissemination of information about clients' rights throughout the health system
- to provide an independent mechanism for assessing whether the prosecution of disciplinary action should be taken against health practitioners who are registered under health registration Acts.

The Bill establishes the Health Care Complaints Commission, the primary function of which is to receive and deal with complaints, and the Health Conciliation Registry, which is to administer the conciliation of complaints referred to it by the Commission.

The Commission will replace the Complaints Unit which was established within the Department of Health in January 1984.

References in the Bill to monetary penalties are expressed in penalty units. Under section 56 of the Interpretation Act 1987, one penalty unit is currently equivalent to \$100.

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#### PART 1—PRELIMINARY

Clause 1 specifies 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 states the objects of the proposed Act.

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Clause 4 defines various expressions used in the proposed Act, including "client", "health practitioner", "health registration Act", "health service", "health service provider" and "registration authority".

Clause 5 provides that the proposed Act is to bind the Crown.

Clause 6 provides that the various notes and charts included in the proposed Act do not form part of it but are merely explanatory notes provided to assist understanding.

### **PART 2—HEALTH CARE COMPLAINTS COMMISSION**

Clause 7 constitutes the Health Care Complaints Commission as a body corporate and provides that it is to be a statutory body representing the Crown.

Clause 8 provides that the Commission is to consist of a single Commissioner appointed by the Governor. By an amendment made to the Public Sector Management Act 1988 by Schedule 2 to the proposed Act, the position of Commissioner is made a senior executive position under the Public Sector Management Act 1988.

Clause 9 sets out the functions of the Commission. Those functions fall within 3 main areas. The Commission:

- is to be the recipient, processor and monitor of complaints concerning the clinical management and care of individual clients by health service providers
- may make reports to appropriate persons on action to be taken to deal with a complaint which is found to be justified in whole or part
- may provide information concerning complaints and complaints procedures.

Clause 10 provides that, generally, the Commissioner is to be subject to the control and direction of the Minister.

Clause 11 provides for the Commission to have 2 divisions, the complaints and preliminary inquiry division and the investigation and prosecution division.

Clause 12 enables the staff of the Commission to be employed under Part 2 of the Public Sector Management Act 1988. The clause also enables the Commission to make arrangements for the use of the staff and facilities of a public authority.

Clause 13 provides that the financial year of the Commission is to be the year commencing 1 July.

Clause 14 enables the Commission to delegate its functions to any officer of the Commission.

### **PART 3—HEALTH CONCILIATION REGISTRY AND CONCILIATORS**

Clause 15 establishes the Health Conciliation Registry. The Registry is to consist of a Registrar and such other persons as may be employed under the Health Administration Act 1982 to exercise the Registry's functions.

Clause 16 specifies the functions of the Registry.

Clause 17 authorises the Minister to appoint conciliators on a full-time or part-time basis for the purposes of the proposed Act.

Clause 18 specifies the functions of conciliators.

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### **PART 4—COMPLAINTS**

#### **Division 1—Complaints made under this Act**

Clause 19 provides that a complaint may be made under the proposed Act against a health service provider concerning:

- the professional conduct of a health practitioner
- a health service which affects the clinical management or care of an individual client.

Clause 20 enables a complaint to be made by a client, the parent or guardian of a client, a client's representative, a health service provider who has a sufficient interest in the complaint, the Director-General of the Department of Health or the Minister.

Clause 21 provides that a complaint is made by lodging it, in writing, with the Commission.

Divisions 1, 2 and 3 of Part 4 each address to some extent the relationship between the Commission and various health registration authorities (the Chiropractors and Osteopaths Registration Board, the Dental Technicians Registration Board, the Dental Board, the Medical Board of New South Wales, the Nurses Registration Board, the Optical Dispensers Licensing Board, the Board of Optometrical Registration, the Pharmacy Board of New South Wales, the Physiotherapists Registration Board, the Podiatrists Registration Board and the Psychologists Registration Board) in respect of complaints made to them. (The constituting Act for each registration authority is amended in Schedule 2 to the proposed Act to require the authority to notify the Commission of complaints made to it.)

In the case of a complaint made under the proposed Act to the Commission, clause 22 requires the Commission to notify a registration authority of the complaint if it is made against or directly involves a health practitioner who is or has been registered by the registration authority. The Commission and the registration authority are to consult to see if they can reach agreement as to the action to be taken concerning the complaint.

#### **Division 2—Complaints made under other Acts**

Clause 23 provides that if a complaint is made to a registration authority rather than to the Commission, the registration authority and the Commission are to consult to see if they can reach agreement as to the action to be taken concerning the complaint.

#### **Division 3—The outcomes of consultation between the Commission and registration authorities**

Clause 24 provides that, following consultation, the complaint may be referred to the Commission by the registration authority for investigation or the Commission may itself decide to investigate the complaint.

Clause 25 imposes similar requirements for the conciliation of complaints that are not referred for investigation.

Clause 26 prevents a registration authority from taking any action concerning a complaint while it is subject to investigation or conciliation by the Commission.

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Clause 27 provides that a complaint that comes to the Commission via a registration authority is to be dealt with in the same way as a complaint made directly under the proposed Act to the Commission.

Clause 28 requires the Commission to notify the registration authority of the outcome of its dealing with the complaint.

#### **Division 4—Notification and withdrawal of complaints**

Clause 29 requires the Commission to give notice of a complaint made to it to the person against whom the complaint is made, the person's employer (if relevant) and the appropriate registration authority. The notice does not have to be given, however, if to do so would, or would be likely to, prejudice the investigation of the complaint, place the health or safety of a client at risk or place the complainant at risk of intimidation or harassment.

Clause 30 requires the Commission to give notice of a complaint made to it against a health service provider (other than a health practitioner) to the Director-General.

Clause 31 enables a complainant to withdraw a complaint at any time. The Commission may nevertheless pursue the matter if it believes that the complaint:

- raises a significant issue of public safety or public interest
- raises a significant question as to the appropriate care or treatment of a client by a health service provider
- appears to provide grounds for disciplinary action against a health practitioner.

#### **Division 5—The preliminary inquiry stage**

Clause 32 requires all complaints to be referred to the complaints and preliminary inquiry division of the Commission unless they have come via a registration authority or unless they are matters which have arisen under Part 5 of the proposed Act and are to be investigated in accordance with that Part.

Clause 33 specifies the purpose of assessment of a complaint within the complaints and preliminary inquiry division of the Commission. The purpose is to decide whether the complaint should be conciliated, investigated, referred to the Director-General or referred to another body for investigation or whether the Commission should decline to entertain the complaint.

Clause 34 enables the Commission to require the complainant to provide further particulars of the complaint within a specified time.

Clause 35 requires the Commission to carry out its assessment of a complaint within 60 days.

Clause 36 requires the Commission, generally, to refer a complaint to the Director-General if the complaint involves a breach of an Act the enforcement of which falls within the primary responsibility of the Director-General. The Acts concerned are the Area Health Services Act 1986, the Health Administration Act 1982, the Mental Health Act 1990, the Nursing Homes Act 1988, the Poisons Act 1966, the Private Hospitals and Day Procedure Centres Act 1988, the Public Health Act 1991, the Public

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Hospitals Act 1929 and the Therapeutic Goods and Cosmetics Act 1972. The Director-General is required to notify the Commission of the outcome of the Director-General's dealing with the complaint.

Clause 37 enables the Commission to refer a complaint, or part of a complaint, to another person or body for investigation.

Clause 38 sets out the circumstances in which the Commission may decline to entertain a complaint, or part of a complaint.

Clause 39 sets out the circumstances in which the Commission may refer a complaint to the Health Conciliation Registry for conciliation. Such a reference may be made if the complainant has acted reasonably to resolve the complaint, the parties to the complaint consent to conciliation and the Commission has consulted any appropriate registration authority.

Clause 40 sets out the circumstances in which the Commission may refer a complaint to its investigation and prosecution division for investigation. Such a reference may be made if the complaint:

- raises a significant issue of public safety or public interest
- raises a significant question as to the appropriate care or treatment of a client by a health service provider
- appears to provide grounds for disciplinary action against a health practitioner.

Before the reference is made, the Commission must consult any appropriate registration authority and the complainant must verify the complaint by statutory declaration.

Clause 41 prevents the Commission from referring a complaint for conciliation if the parties to the complaint have reached agreement, but such an agreement does not prevent the Commission from referring the complaint for investigation.

Clause 42 requires the Commission to give notice to the parties to a complaint of any action taken or decision made by it under Division 5 concerning the complaint. That notice does not have to be given, however, if to do so would prejudice the investigation of the complaint, place the health or safety of a client at risk or place the complainant at risk of intimidation or harassment.

#### **Division 6—Conciliation of complaints**

Clause 43 requires the Registrar of the Health Conciliation Registry to appoint a conciliator to conciliate a complaint referred to the Registry by the Commission. The Registrar may appoint 2 conciliators to conciliate the complaint if the Registrar thinks it is desirable to do so.

Clause 44 requires the Registrar to make arrangements for a conciliation and to notify the parties to the complaint of those arrangements within 14 days after the reference of the complaint.

Clause 45 provides that participation in conciliation is to be voluntary.

Clause 46 sets out the role of a conciliator. The conciliator is to assist the parties (if possible) to settle the complaint by agreement.

Clause 47 excludes legal representation at a conciliation but allows a party, at the discretion of the Registrar, to be accompanied by an agent.

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Clause 48 is intended to preserve the confidentiality of the conciliation process. It prevents evidence given in the conciliation process from being admissible in legal proceedings. It also makes it an offence for a conciliator, except in a report relating to the conciliation which is required by the proposed Act, to disclose information obtained in the conciliation process.

Clause 49 provides that the conciliation process is concluded if either party terminates the conciliation process or if the parties reach agreement concerning the complaint. The conciliator also has power to terminate the conciliation process if of the opinion that it is unlikely the parties will reach agreement or a significant issue of public safety or public interest has been raised.

Clause 50 provides for the preparation and distribution of a report at the conclusion of the conciliation process. A report may contain a recommendation that the Commission investigate the complaint.

Clause 51 requires a conciliator to furnish information to the Registrar, separately from the report under clause 50, that will enable the Registrar to report to registration authorities under clause 52.

Clause 52 requires the Registrar to furnish a six-monthly report to each registration authority which summarises complaints conciliated during that period with respect to persons regulated by the authority. The purpose of the report is to assist in the development of professional and educational standards. The report must not identify any party to a complaint.

Clause 53 enables the Commission to investigate a conciliated complaint if a conciliator so recommends or if new material becomes available that raises a matter that justifies investigation.

Clause 54 prevents the Health Conciliation Registry from dealing with complaints other than those referred to it by the Commission.

Clause 55 exonerates the Registrar, a member of staff of the Health Conciliation Registry and a conciliator from the crime of concealing information of a serious offence if the information was obtained in the exercise of their functions under the proposed Act.

#### **Division 7—Investigation of complaints**

Clause 56 specifies the purpose of investigation of a complaint within the investigation and prosecution division of the Commission. The purpose is to obtain information concerning the matter complained of and to determine what action should be taken on the complaint.

Clause 57 enables the Commission to obtain independent expert advice concerning a complaint. The adviser's report may be used in disciplinary proceedings under a health registration Act but is not admissible as evidence in any legal proceedings and the adviser cannot be compelled to give evidence in relation to the report. By an amendment made to the Defamation Act 1974 in Schedule 2 to the proposed Act, there is to be a defence of absolute privilege for the publication of such a report.

Clause 58 enables the Commission to authorise a member of its staff to exercise powers of entry, search and seizure for the purpose of investigating a complaint.

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Clause 59 prevents an authorised person from entering premises except with the consent of the owner or occupier of the premises or under the authority of a search warrant.

Clause 60 sets out the powers of entry, search and seizure of an authorised person.

Clause 61 enables an authorised person to apply for a search warrant and specifies the circumstances in which a warrant may be issued. Before an application for a warrant may be made, the authorised person or the Commission is required to notify the President or Chairperson of any appropriate registration authority of the application.

Clause 62 makes it an offence to obstruct an authorised person.

Clause 63 makes it an offence to impersonate an authorised person.

Clause 64 makes it an offence to improperly disclose information obtained as a consequence of the exercise of the entry, search and seizure powers.

Clause 65 requires the Commission to notify the appropriate registration authority (if any) of the findings of an investigation.

Clause 66 provides that, after the investigation of a complaint, the Commission may:

- dismiss the complaint
- terminate the matter by sending a letter of explanation or clarification
- comment on the complaint
- recommend a change in clinical practice
- refer the complaint to an appropriate person with a recommendation as to disciplinary action
- intervene in disciplinary proceedings before bodies established under health registration Acts
- prosecute a complaint as if it were the complainant.

The appropriate person for disciplinary action will ordinarily be the appropriate registration authority but, because a health practitioner concerned may not be registered, the Commission may also make recommendations to other persons or bodies.

Clause 67 requires the Commission to inform a person who may be subject to disciplinary action or adverse comment as the result of an investigation of the grounds for the action or comment. Such a person is to be given 14 days within which to make submissions to the Commission before the action is taken or the comment is made. However, the Commission is not required to inform a health practitioner of its proposed action if it relates to the sufficiency of the physical or mental capacity of the health practitioner to practise as a health practitioner.

Clause 68 requires the Commission to consult with an appropriate registration authority before recommending to the authority that it take specified disciplinary action. The clause also enables the Commission to consult with other persons or bodies to whom similar recommendations may be made.

Clause 69 requires the Commission to notify the parties to the complaint of the Commission's decision following its investigation.

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### **Division 8—Reports**

Clause 70 requires the Commission to prepare and distribute to specified persons a report concerning a complaint which the Commission has found to be justified.

Clause 71 enables the Commission to follow up on action taken to implement its report. The Commission may, after consulting the Director-General, report inadequate or untimely action to the Minister.

Clause 72 gives the Commission a discretion to forward a copy of its report to the parties to the complaint and, if there is no appropriate registration authority, any appropriate professional association.

### **PART 5—OTHER INVESTIGATIONS BY THE COMMISSION**

Clause 73 enables the Commission, with the approval of the Minister or the Director-General, to investigate matters concerning health services and health care facilities.

Clause 74 provides that a matter investigated under the proposed Part should generally be referred to the investigation and prosecution division of the Commission as if it were a complaint made by the Minister or the Director-General.

Clause 75 applies the provisions of Divisions 7 and 8 of Part 4 (concerning expert assistance and powers of entry, search and seizure) to the investigation of a matter under the proposed Part.

### **PART 6—MISCELLANEOUS**

Clause 76 provides that the proposed Act is to prevail over a health registration Act to the extent of any inconsistency.

Clause 77 requires the Director-General and the Commission to consult with each other if either requests it.

Clause 78 sets out the requirements for the Commission's annual report.

Clause 79 grants an exemption from liability to various persons who act in good faith for the purpose of carrying the provisions of the proposed Act into effect.

Clause 80 enables the Commission, the Health Conciliation Registry, the Registrar and a conciliator to continue to exercise their functions concerning a matter despite the commencement of legal proceedings relating to the matter.

Clause 81 makes it an offence for a person to threaten or intimidate another person into not proceeding with a complaint or not assisting the Commission in its dealings with a complaint.

Clause 82 makes it an offence for a person to furnish information to the Commission which the person knows is false or misleading in a material particular.

Clause 83 provides for proceedings for offences against the proposed Act or the regulations to be dealt with summarily before a Local Court.

Clause 84 enables the Governor-in-Council to make regulations for the purposes of the proposed Act.



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Clause 85 provides for the amendment of the Acts specified in Schedule 2.

Clause 86 gives effect to Schedule 3 which contains savings and transitional provisions consequent on the enactment of the proposed Act.

Clause 87 requires the Minister to carry out a review of the proposed Act after 5 years.

### SCHEDULE 1—PROVISIONS CONCERNING CONCILIATORS

Schedule 1 contains provisions relating to the term of office of conciliators, their remuneration, the circumstances in which the office of a conciliator becomes vacant and the application of certain Acts (including the Public Sector Management Act 1988) to conciliators.

### SCHEDULE 2—AMENDMENT OF ACTS

Schedule 2 contains amendments to the following Acts:

- Chiropractors and Osteopaths Act 1991
- Defamation Act 1974
- Dental Technicians Registration Act 1975
- Dentists Act 1989
- Health Administration Act 1982
- Nurses Act 1991
- Ombudsman Act 1974
- Optical Dispensers Act 1963
- Optometrists Act 1930
- Pharmacy Act 1964
- Physiotherapists Registration Act 1945
- Podiatrists Act 1989
- Psychologists Act 1989
- Public Sector Management Act 1988
- Search Warrants Act 1985
- Statutory and Other Offices Remuneration Act 1975

A summary of the amendments is as follows:

#### **Complaints under the Chiropractors and Osteopaths Act 1991 and the Nurses Act 1991**

Both these Acts contain detailed procedures (based on those originally enacted in the Medical Practitioners Act 1938) concerning the making and resolution of complaints.

Those Acts are amended so as to co-ordinate the complaints procedures under those Acts and the proposed Act.

If a complaint is made either to the Commission or to the appropriate registration authority (the Chiropractors and Osteopaths Registration Board or the Nurses Registration Board) about a person registered under one of those Acts, the

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Commission and the registration authority must consult in order to decide how the complaint is to be handled. The Commission must investigate the complaint if either it or the registration authority determines that the complaint should be investigated.

After the investigation of a complaint, the Commission and the appropriate registration authority must again consult if any disciplinary action is proposed in order to decide the form that action should take. The complaint must be referred to the appropriate disciplinary tribunal (the Chiropractors and Osteopaths Tribunal or the Nurses Tribunal) if either the Commission or the registration authority decides that the complaint should be so referred.

The Acts are also amended to remove the existing role of the Director-General.

### **Handling of complaints under other health registration Acts**

The health registration Acts with less detailed procedures concerning the making and resolution of complaints are amended to require each registration authority to notify the Commission of any complaint made to the registration authority. Under Divisions 2 and 3 of Part 4 of the proposed Act, arrangements may be made for the Commission to investigate the complaint. If the Commission investigates the complaint, its investigation may take the place of any investigation that might otherwise be carried out by the registration authority.

### **Applications for search warrants under the Chiropractors and Osteopaths Act 1991**

Before an application can be made for a search warrant to investigate a matter arising under the Chiropractors and Osteopaths Act 1991, the applicant for the warrant or the Director-General will be required to notify the President of the Chiropractors and Osteopaths Registration Board of the application.

### **Defence of absolute privilege under the Defamation Act 1974 for the publication of certain reports under the proposed Act**

The Defamation Act 1974 is to be amended to provide a defence of absolute privilege for the publication of:

- the report of an expert witness obtained by the Commission in the investigation of a complaint
- the report of the Commission following the investigation of a complaint which the Commission finds to be justified in whole or part.

### **Exclusion of Ombudsman Act 1974 from conciliation of complaints**

The Ombudsman Act 1974 is amended to prevent the Ombudsman from investigating the conduct of a conciliator in relation to the conciliation of a complaint under the proposed Act.

### **Office of Commissioner of the Commission**

The Public Sector Management Act 1988 is amended to constitute the office of Commissioner as a senior executive position for the purposes of that Act.

### **Search warrants**

A consequential amendment is made to the Search Warrants Act 1985 in relation to the power conferred by clause 61 of the proposed Act to obtain a search warrant for the purpose of investigating a complaint.

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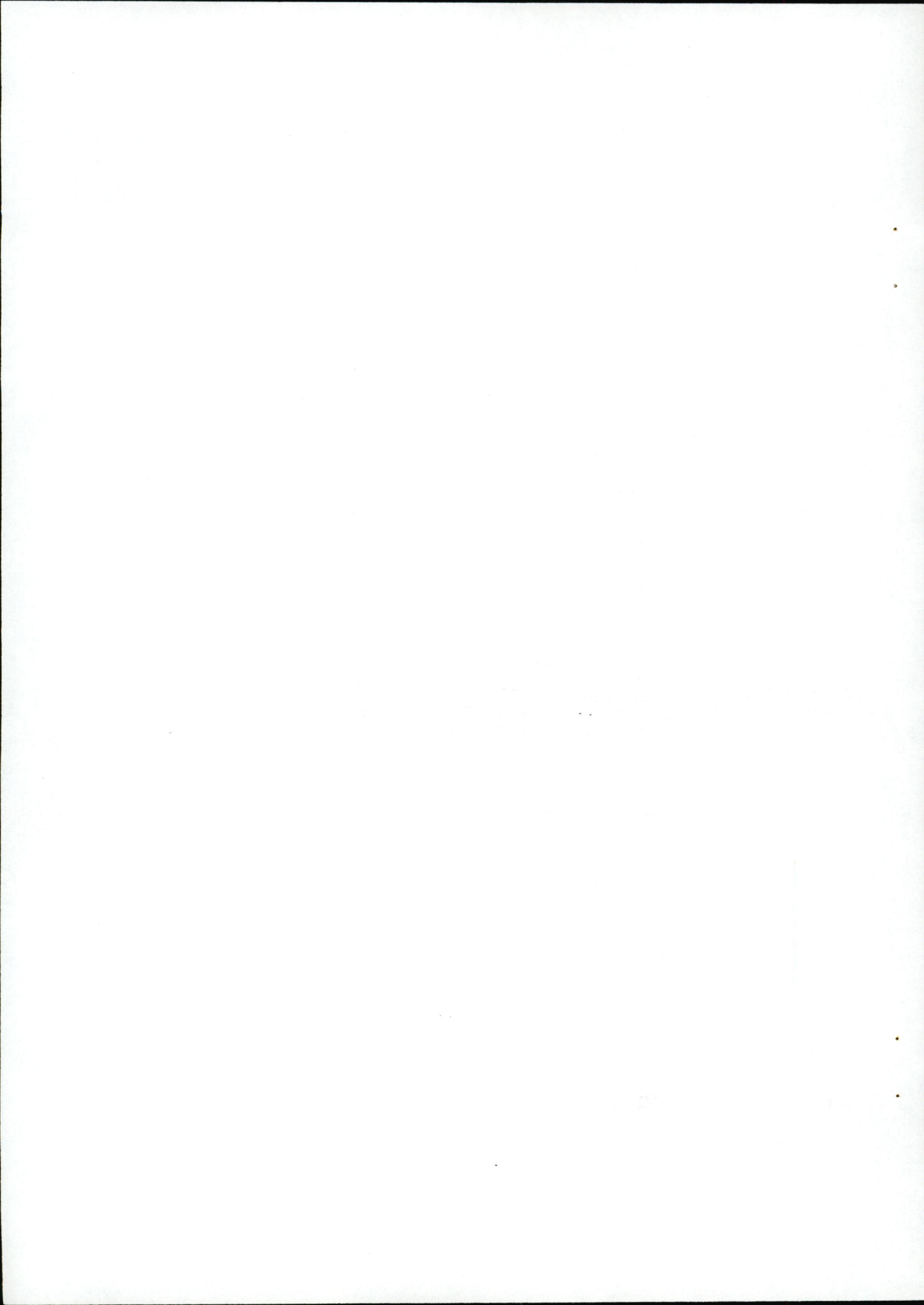
**Remuneration of full-time conciliators**

The Statutory and Other Offices Remuneration Act 1975 is amended so that the remuneration of full-time conciliators may be determined in accordance with that Act.

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

Schedule 3 enables the regulations under the proposed Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act. It also provides that:

- complaints made before the commencement of the proposed Act may continue to be dealt with as if the proposed Act had not been enacted, but that the Director of the Complaints Unit of the Department of Health is to have the same powers to decline to entertain complaints as are conferred on the Commission under the proposed Act
  - complaints may be made under the proposed Act about circumstances that occurred before the commencement of the provisions of the proposed Act that enable the making of complaints
  - if the proposed Medical Practice Act 1992 has not commenced when a provision of the proposed Act which contains a reference to the proposed Medical Practice Act 1992 commences, the reference is taken to be a reference to the Medical Practitioners Act 1938.
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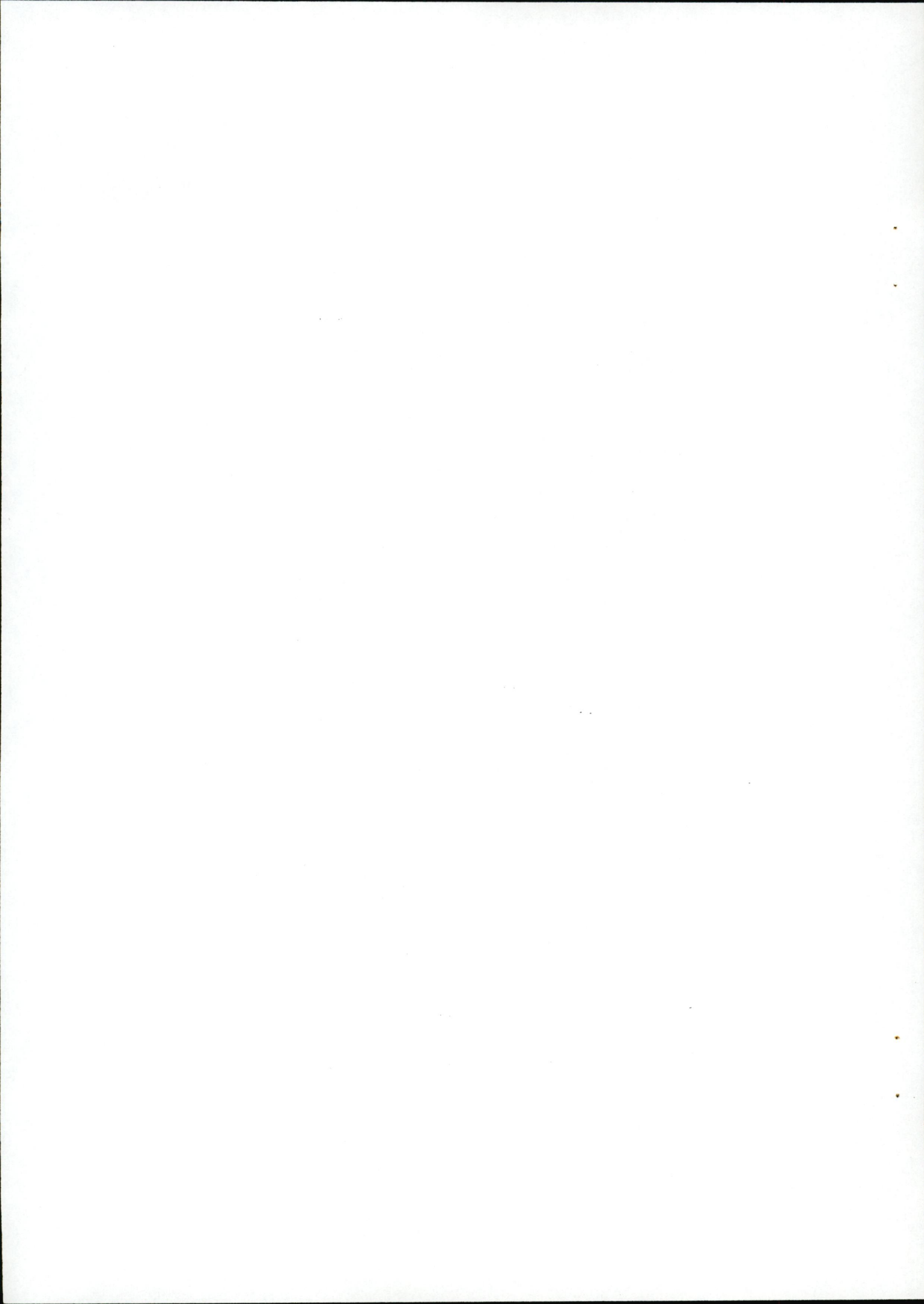
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SCHEDULE 1—PROVISIONS CONCERNING CONCILIATORS

SCHEDULE 2—AMENDMENT OF ACTS

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

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# HEALTH CARE COMPLAINTS BILL 1992

NEW SOUTH WALES



No. , 1992

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## A BILL FOR

An Act to provide for the making, conciliation, investigation and prosecution of health care complaints; to constitute the Health Care Complaints Commission and the Health Conciliation Registry and to specify their functions; to amend certain Acts; and for other purposes.

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Health Care Complaints Act 1992.

**5 Commencement**

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

**Objects of this Act**

3. The objects of this Act are:

- 10     • to facilitate the maintenance of standards of health services in New South Wales
- to promote the rights of clients in the New South Wales health system by providing clear and easily accessible mechanisms for the resolution of complaints
- 15     • to facilitate the dissemination of information about clients' rights throughout the health system
- to provide an independent mechanism for assessing whether the prosecution of disciplinary action should be taken against health practitioners who are registered under health registration Acts.

**20 Definitions**

4. In this Act:

“**authorised person**” means an officer of the Commission who is authorised as referred to in section 58 and includes the Commissioner;

- 25 “**client**” means a person who uses or receives a health service, and includes a patient;

“**Commission**” means the Health Care Complaints Commission constituted by section 7;

“**complainant**” means:

- 30     (a) the person making the complaint, except as provided by paragraph (b); or
- (b) the client on whose behalf the complaint is made if the complaint is made by a person chosen by the client as his or her representative for the purpose of making the complaint;

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- “**conciliator**” means a person appointed to be a conciliator under section 17;
- “**Director-General**” means the Director-General of the Department of Health;
- “**exercise**” of a function includes, where the function is a duty, the performance of the duty; 5
- “**function**” includes a power, authority and duty;
- “**Health Conciliation Registry**” means the Health Conciliation Registry established by section 15;
- “**health facility**” means a person (other than a natural person) who provides a health service; 10
- “**health practitioner**” means a natural person who provides a health service (whether or not the person is registered under a health registration Act);
- “**health registration Act**” means any of the following Acts: 15
- Chiropractors and Osteopaths Act 1991
  - Dental Technicians Registration Act 1975
  - Dentists Act 1989
  - Medical Practice Act 1992
  - Nurses Act 1991 20
  - Optical Dispensers Act 1963
  - Optometrists Act 1930
  - Pharmacy Act 1964
  - Physiotherapists Registration Act 1945
  - Podiatrists Act 1989 25
  - Psychologists Act 1989;
- “**health service**” includes the following services, whether provided as public or private services:
- (a) medical, hospital and nursing services;
  - (b) dental services; 30
  - (c) psychiatric services;
  - (d) pharmaceutical services;
  - (e) ambulance services;
  - (f) community health services;
  - (g) health education services; 35

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- (h) welfare services necessary to implement any services referred to in paragraphs (a)–(g);
- 5 (i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, psychologists and optical dispensers;
- (j) services provided by dietitians, masseurs, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers;
- 10 (k) services provided in other alternative health care fields;
- (l) a service prescribed by the regulations as a health service for the purposes of this Act;
- “health service provider”** means a person who provides a health service (being a health practitioner or a health facility);
- 15 **“officer of the Commission”** means a person who is employed under section 12 (1) or whose services are made use of under section 12 (2);
- “parties to a complaint”** means the complainant and the person against whom the complaint is made;
- “registered”** includes enrolled;
- 20 **“registration authority”** means the person who has the function, under a health registration Act, of determining an application for **registration under the Act.**

**Act binds the Crown**

5. This Act binds the Crown.

25 **Notes in the text**

6. Notes and charts appearing in this Act are explanatory notes and do not form part of this Act. They are provided to assist understanding.

**PART 2—HEALTH CARE COMPLAINTS COMMISSION****Constitution of the Commission**

7. (1) There is constituted by this section a body corporate with the corporate name of the Health Care Complaints Commission.

(2) The Commission is a statutory body representing the Crown. 5

**Membership of the Commission**

8. (1) The Commission consists of a Commissioner appointed by the Governor.

(2) The employment of the Commissioner is subject to Part 2A of the Public Sector Management Act 1988, but is not subject to Part 2 of that Act. 10

(3) The Minister may, from time to time, appoint a person to act in the office of the Commissioner during the illness or absence of the Commissioner (or during a vacancy in the office of Commissioner) and the person, while so acting, has all the functions of the Commissioner and is taken to be the Commissioner. 15

(4) The Minister may, at any time, remove a person from office as acting Commissioner.

(5) An acting Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine. 20

**Functions of the Commission**

9. (1) The Commission has the following functions:

(a) to receive and deal with complaints under this Act:

- relating to the professional conduct of health practitioners; and 25
- concerning the clinical management and care of individual clients by health service providers; and
- referred to it by a registration authority under a health registration Act; 30

(b) to assess those complaints and to refer them for conciliation or investigation in appropriate cases;

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- (c) to make complaints concerning the professional conduct of health practitioners and to prosecute those complaints before the appropriate bodies, including registration authorities, professional standards committees and tribunals;
- 5 (d) to report to appropriate persons on any action the Commission considers ought to be taken following the investigation of a complaint if the complaint is found to be justified in whole or part;
- (e) to monitor, identify and advise the Minister on trends in complaints;
- 10 (f) to publish and distribute information concerning the means available for the making of complaints and the way in which complaints may be made and dealt with;
- (g) to provide information to health service providers and professional and educational bodies concerning complaints, including trends in complaints.
- 15

(2) The Commission also has such other functions as are conferred or imposed on it by or under this or any other Act.

**Ministerial control**

10. The Commission is subject to the control and direction of the  
20 Minister, except in respect of the following:
- the investigation of a complaint
  - the assessment of the prosecution of disciplinary action against a person
  - the terms of any recommendation of the Commission
  - 25 • the contents of a report of the Commission, including the annual report.

**Divisions of the Commission**

11. The Commission is to have 2 divisions: the complaints and preliminary inquiry division and the investigation and prosecution  
30 division.

**Staff of the Commission**

12. (1) Such staff as may be necessary to enable the Commission to exercise its functions may be employed under Part 2 of the Public Sector Management Act 1988.
- 35 (2) The Commission may arrange for the use of the services of any staff or facilities of a public authority.

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(3) In this section:

“public authority” means any of the following:

- a Government department or administrative office
- a statutory body representing the Crown
- an area health service constituted under the Area Health Services Act 1986 5
- a hospital, institution or organisation mentioned in the Second, Third, Fourth or Fifth Schedule to the Public Hospitals Act 1929
- any other public or local authority (including any State owned corporation) constituted by or under an Act. 10

**Financial year**

13. The financial year of the Commission is the year commencing on 1 July.

**Delegation of functions** 15

14. The Commission may delegate its functions, other than its power of delegation, to any officer of the Commission.

**PART 3—HEALTH CONCILIATION REGISTRY AND  
CONCILIATORS****Health Conciliation Registry**

5 15. (1) The Health Conciliation Registry is established by this section.

(2) The Health Conciliation Registry consists of a Registrar and other staff employed by the Health Administration Corporation under section 14 of the Health Administration Act 1982 in connection with the exercise of the functions of the Health Conciliation Registry under this Act.

**10 Functions of the Health Conciliation Registry**

16. The Health Conciliation Registry has the functions conferred or imposed on it by or under this or any other Act.

**Conciliators**

15 17. (1) The Minister may appoint one or more persons to be conciliators for the purposes of this Act.

(2) A conciliator may be appointed on a full-time or part-time basis.

(3) Schedule 1 has effect with respect to the conciliators.

**Functions of conciliators**

20 18. A conciliator has the functions conferred or imposed on a conciliator by or under this or any other Act.



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**PART 4—COMPLAINTS**

**Division 1—Complaints made under this Act**

**What can a complaint be made about?**

19. (1) A complaint may be made under this Act concerning:
- (a) the professional conduct of a health practitioner; or 5
  - (b) a health service which affects the clinical management or care of an individual client.
- (2) A complaint may be made against a health service provider.
- (3) A complaint may be made against a health service provider even though, at the time the complaint is made, the health service provider is not qualified or entitled to provide the health service concerned. 10

**Who may make a complaint?**

20. A complaint may be made by any of the following:
- the client concerned
  - a parent or guardian of the client concerned 15
  - a person chosen by the client concerned as his or her representative (including a solicitor) for the purpose of making the complaint
  - a health service provider who has a sufficient interest in the matter the subject of the complaint
  - the Director-General or a delegate 20
  - the Minister or a delegate.

**NOTE**

Various functions are conferred or imposed by this Act on the Director-General and the Minister. Under section 21 of the Health Administration Act 1982, the Director-General and the Minister may delegate the functions which are conferred or imposed on them by or under that Act "or any other Act" to any person specified in the instrument of delegation. Accordingly, section 21 of that Act, for example, enables the Director-General to delegate to, say, an area health service, the power to make a complaint. 25  
30

**How is a complaint made?**

21. (1) A complaint is made by lodging the complaint in writing with the Commission.

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(2) The complaint is to include particulars of the allegations on which it is founded.

**Notification of and consultation with registration authorities**

22. (1) If a complaint made under this Act to the Commission is made against or directly involves a health practitioner who is or has been registered under a health registration Act, the Commission must notify the appropriate registration authority of the complaint. The complaint is to be notified as soon as practicable after the complaint is made.

(2) The Commission and the appropriate registration authority must consult in order to see if agreement can be reached between them as to the course of action to be taken concerning the complaint.

**Division 2—Complaints made under other Acts**

**Reference of complaints by registration authorities**

23. When, in accordance with a health registration Act, a registration authority notifies the Commission of a complaint made under the health registration Act, the registration authority and the Commission must consult in order to see if agreement can be reached between them as to the course of action to be taken concerning the complaint.

**Division 3—The outcomes of consultation between the Commission and registration authorities**

**Investigation of complaints**

24. (1) After consultation under section 22 or 23 between a registration authority and the Commission, the Commission may investigate the complaint.

(2) The Commission must investigate the complaint if the registration authority directs it to do so.

(3) A complaint to be investigated in accordance with this section must be referred to the investigation and prosecution division of the Commission for investigation and must not be referred for conciliation.

**Conciliation of complaints**

25. The Commission, in the case of a complaint which is not investigated in accordance with section 24, may refer the complaint to the Health Conciliation Registry for conciliation in accordance with Division 6. The Commission must so refer the complaint if the registration authority directs it to do so.

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**Suspension of action by registration authority**

26. A registration authority must not take any action concerning a complaint while it is subject to investigation or conciliation by the Commission.

**Complaints taken to be made under this Act**

5

27. A complaint which is investigated or referred for conciliation in accordance with this Division is taken to be a complaint made under this Act to the Commission by a client.

**Registration authority to be notified of outcome**

28. (1) The Commission is required to notify the registration authority of the outcome of its dealing with a complaint to which this Division applies.

10

(2) The requirement made by this section does not affect any other requirement of any person to report to the registration authority under this Part.

15

**NOTE**

It is intended that the health professional registration boards and the Commission will operate in collaboration with each other. Divisions 1, 2 and 3 will allow complete information sharing between the two arms in the disciplinary system, with a decision to investigate a complaint being made only after there has been consultation between the Commission and the registration authority. Where a disagreement occurs as to the appropriate action, both bodies will retain the ability to refer the matter for investigation, thus creating an internal checking method for all decisions which may result in disciplinary action. This two-pronged system will also apply to decisions to refer complaints for conciliation.

20

25

**Division 4—Notification and withdrawal of complaints**

**Persons to be notified of complaint**

30

29. (1) On receiving a complaint made under this Act or another Act, the Commission must give written notice of the making of the complaint, the nature of the complaint and the identity of the complainant to the person against whom the complaint is made.

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(2) This section does not require the Commission to give notice if 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
- 5 (c) place the complainant at risk of intimidation or harassment.

**Director-General to be notified of complaint made against a health facility**

30. On receiving a complaint against a health facility, the Commission must give written notice of the making of the complaint, the nature of the complaint and the identity of the complainant to the Director-General.

**Can a complaint be withdrawn?**

31. (1) A complainant may withdraw the complaint at any time by notice in writing to the Commission.

15 (2) On the withdrawal of a complaint, the Commission may cease to deal with it or may continue to deal with the matter the subject of the complaint if it appears to the Commission that:

- (a) the matter raises a significant issue of public safety or public interest; or
- 20 (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 appears to provide grounds for disciplinary action against a health practitioner.

**Division 5—The preliminary inquiry stage**

25 **Reference to the complaints and preliminary inquiry division**

32. (1) On its receipt, a complaint is to be referred to the complaints and preliminary inquiry division of the Commission for assessment.

(2) This section does not apply to a complaint which is to be investigated in accordance with section 24 or a matter which is to be investigated in accordance with section 73.

**The purpose of assessment**

33. The assessment of a complaint within the complaints and preliminary inquiry division of the Commission is for the purpose of deciding whether:

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- the complaint should be conciliated
- the complaint should be investigated
- the complaint should be referred to the Director-General to be dealt with in accordance with section 36
- the complaint should be referred to another person or body for investigation in accordance with section 37 5
- the Commission should decline to entertain the complaint.

**Commission may require further information**

34. For the purposes of the assessment, the Commission may require the complainant to provide further particulars of the complaint within the time specified by the Commission. 10

**Time for completion of assessment**

35. The Commission is required to carry out its assessment of a complaint:

- (a) within 60 days after receiving the complaint; or 15
- (b) if, under section 34, the Commission has required the complainant to provide further particulars of the complaint, within 60 days after the date on which the Commission required those particulars to be provided.

**Reference of certain complaints to the Director-General 20**

36. (1) Following the assessment, the Commission must refer the complaint to the Director-General if it appears to the Commission that the complaint involves a possible breach of any of the following Acts:

- the Area Health Services Act 1986
- the Health Administration Act 1982 25
- the Mental Health Act 1990
- the Nursing Homes Act 1988
- the Poisons Act 1966
- the Private Hospitals and Day Procedure Centres Act 1988
- the Public Health Act 1991 30
- the Public Hospitals Act 1929
- the Therapeutic Goods and Cosmetics Act 1972.

(2) The Commission is not required to refer the complaint to the Director-General if the complaint was made by the Director-General.

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(3) The Director-General is required to notify the Commission of the outcome of the Director-General's dealing with the complaint, including any action taken as a result of the complaint.

5 (4) This section does not prevent the Commission from dealing with a complaint (or any part of a complaint) in so far as it concerns:

- (a) a health service which affects the clinical management or care of an individual client; or
- (b) the professional conduct of a health practitioner.

**NOTE**

10 The Director-General, under the Minister, is primarily responsible for the enforcement of the Acts listed in section 36. Accordingly, complaints arising under those Acts are to be referred to the Department of Health for action. Accountability will be maintained through obligations imposed on the Director-General to notify the Commission of the outcome.

15 However, section 36 (4) ensures that the Commission may continue to pursue questions concerning the clinical management or care of individual clients and the professional conduct of health practitioners.

**20 Reference of complaint to another body for investigation**

37. (1) Following the assessment, the Commission may refer a complaint (or any part of a complaint) to another person or body if, during the assessment, it appears that the complaint raises issues which require investigation by the other person or body.

25 (2) Despite the referral of a complaint (or part), the Commission may continue to deal with the complaint.

**In what circumstances can the Commission decline to entertain a complaint?**

30 38. (1) Following the assessment, the Commission may decline to entertain a complaint (or any part of a complaint) for any one or more of the following reasons:

- (a) the complaint (or part) is frivolous, vexatious or not made in good faith;
- 35 (b) the subject-matter of the complaint (or part) is trivial or does not warrant conciliation or investigation;

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- (c) in the opinion of the Commission, the subject-matter of the complaint is appropriate for conciliation and the complainant unreasonably declines to enter into conciliation;
  - (d) the subject-matter of the complaint (or part) has been or is under investigation by some other competent person or body or has been or is the subject of legal proceedings; 5
  - (e) the complaint (or part) raises issues which require investigation by another person or body;
  - (f) there is or was, in relation to the matter complained of, a satisfactory alternative means of dealing with the matter by the complainant; 10
  - (g) the complaint (or part) relates to a matter which occurred more than 2 years before the complaint was made and the complainant does not have a sufficient reason for having delayed the making of the complaint; 15
  - (h) the complainant has failed to provide further particulars of the complaint (or part) within the time specified by the Commission;
  - (i) the complaint (or part) concerns a matter that falls within the responsibility of the Commonwealth.
- (2) This section does not exhaust the circumstances in which the Commission may decline to entertain a complaint (or part). 20

**Reference of complaint for conciliation**

39. (1) Following the assessment:

- (a) if it appears to the Commission that the complainant has taken all reasonable steps to resolve the matter the subject of the complaint with the person against whom the complaint is made; and 25
- (b) the parties to the complaint consent to the complaint being referred for conciliation; and
- (c) in the case of a complaint made against a health practitioner who is registered under a health registration Act, the Commission has consulted the appropriate registration authority, 30

the Commission may refer the complaint to the Health Conciliation Registry for conciliation in accordance with Division 6.

(2) This section has effect subject to sections 40 and 41.

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**Reference of complaint for investigation**

40. (1) Following the assessment, if it appears to the Commission that:

- 5 (a) the complaint raises a significant issue of public safety or public interest; or
- (b) the complaint raises a significant question as to the appropriate care or treatment of a client by a health service provider; or
- (c) the complaint appears to provide grounds for disciplinary action against a health practitioner,
- 10 the Commission may refer the complaint to the investigation and prosecution division of the Commission for investigation in accordance with Division 7.

(2) The Commission must not, in the case of a complaint made against a health practitioner who is registered under a health registration Act, refer the complaint for investigation until it has consulted the appropriate registration authority.

15

(3) Before the Commission refers a complaint for investigation, the complainant must verify the complaint by statutory declaration.

**Effect of agreement between parties to complaint**

- 20 41. The Commission must not refer a complaint for conciliation if the parties to the complaint have reached agreement concerning the matter the subject of the complaint but may, despite any such agreement (whenever made), refer the complaint for investigation.

**Notice of action taken or decision made following assessment**

25 42. (1) The Commission must give the parties to the complaint notice in writing of the action taken or decision made under this Division by the Commission concerning the complaint.

(2) If the Commission decides to refer a complaint against a health practitioner to the investigation and prosecution division of the Commission, the Commission must give notice in writing of the decision:

30

- (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
- 35 (b) if the health practitioner has provided the health service in the capacity of an employee, to the health practitioner's employer.



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(3) This section does not require the Commission to give notice of action taken or a decision made to refer a complaint to the investigation and prosecution division of the Commission if the giving of the notice will:

- (a) prejudice the investigation of the complaint; or 5
- (b) place the health or safety of a client at risk; or
- (c) place the complainant at risk of intimidation or harassment.

(4) If the Commission declines to entertain the complaint (or part of the complaint) the Commission must include in the notice to the complainant the reasons for its decision. 10

(5) The Commission may notify a complainant whose complaint is one that can properly be made under this Act that, if the complaint is not resolved to the complainant's satisfaction, the complainant may ask the Commission to further consider the complaint. The Commission may further consider the complaint accordingly. 15

### **Division 6—Conciliation of complaints**

#### **Appointment of conciliators**

43. (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. 20

(2) The Registrar may appoint 2 conciliators to conciliate the complaint if the Registrar thinks it is desirable to do so.

#### **Notification of arrangements for conciliation**

44. 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: 25

- (a) the referral of the complaint for conciliation; and
- (b) the details of the arrangements made concerning the conciliation process.

#### **Conciliation to be voluntary** 30

45. Participation in the conciliation process by the parties to a complaint is voluntary.

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**What is the role of a conciliator?**

46. The function of a conciliator is to conciliate the complaint:

- 5 (a) by bringing the parties to the complaint together for the purpose of promoting the discussion, negotiation and settlement of the complaint; and
- (b) by undertaking any activity for the purpose of promoting that discussion, negotiation and settlement; and
- (c) if possible, by assisting the parties to the complaint to reach agreement.

10

**NOTE**

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

**Are the parties entitled to be represented?**

15 47. (1) At the conciliation of a complaint, a party to the complaint is not entitled to be legally represented.

(2) At the conciliation of a complaint, a party to the complaint is not entitled to be represented by an agent, except as provided by this section.

(3) The Registrar may permit a party to a complaint to be represented by an agent if it appears to the Registrar that:

- 20 (a) an agent should be permitted to facilitate conciliation; and
- (b) the agent proposed has sufficient knowledge of the matter the subject of the complaint to enable the agent to represent the party effectively.

25 (4) The Registrar's permission may be given subject to conditions. The entitlement of an agent to represent a party is subject to compliance by the agent with any such conditions.

(5) This section does not prevent an officer of a corporation which is a party to a complaint from representing the corporation.

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(6) Contravention of this section does not invalidate the conciliation of a complaint.

**NOTE**

Section 47 creates a presumption that a conciliation will proceed with only the parties to the complaint and the conciliator present, without legal or other advisers. 5

Section 47 (3) however creates an exception, and provides the Registrar with a discretion to admit an adviser to the conciliation process. This is designed to ensure that parties who may otherwise be disadvantaged are catered for. For example, persons of non-English speaking backgrounds may require the assistance of an interpreter, or frail or disabled individuals may benefit from the assistance of a carer or guardian. 10

**Confidentiality of the conciliation process**

48. (1) Evidence of anything said or admitted during the conciliation process and a document prepared for the purposes of the conciliation process: 15

- (a) are not admissible and cannot be used in a proceeding in a court or before a person or body (other than a court) authorised by law, or by consent of parties, to hear and receive evidence; and 20
- (b) cannot be used by the Commission as a ground for exercising a power of investigation.

(2) A conciliator or a party to a complaint must not disclose information obtained during the conciliation process, except for the purposes of sections 50 and 51. 25

Maximum penalty: 10 penalty units.

**NOTE**

This section will ensure that any information created specifically for the purpose of the conciliation process will be privileged, and will be unable to be used for any purpose other than the conciliation. Source documents, however, and documents which have not been created for the purposes of conciliation will not be subject to this limitation and may continue to be used in any legal proceedings. 30

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**Conclusion of the conciliation process**

49. (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.
- 5
- (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 conciliation process after having formed the view:
- (a) that it is unlikely that the parties will reach agreement; or
  - (b) that a significant issue of public safety or public interest has been raised.
- 10

**Preparation and distribution of report on conclusion of the conciliation process**

- 15 50. (1) On the conclusion of the conciliation process, the conciliator (or conciliators) must prepare a report to the Registrar concerning the conciliation.
- (2) The report must state whether the conciliation process was terminated after reaching agreement or without reaching agreement.
- 20 (3) The report may contain a recommendation that the Commission investigate the complaint.
- (4) As soon as practicable after receipt of the report, the Registrar must give a copy of the report to the parties to the complaint, the Commission and the appropriate registration authority (if any).

**25 Furnishing of other information to the Registrar concerning conciliation**

51. A conciliator must furnish information to the Registrar, otherwise than in a report under section 50, sufficient to enable the Registrar to comply with section 52.

**30 Six-monthly reports to registration authorities**

- 35 52. (1) As soon as practicable after 1 April and 1 September 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 conciliated during the previous 6 months concerning health practitioners who are or have been registered by the registration authority:

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- the number of complaints conciliated
  - the background of each complainant
  - the nature of the issues conciliated
  - any issues of a general nature arising out of each complaint relevant to the professional or educational standards of the profession concerned. 5
- (2) A report must not contain any information which identifies or is capable of identifying 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. 10
- Can a conciliated complaint be referred for investigation?**
53. (1) The Commission may decide to investigate a complaint that has been subject to conciliation. 15
- (2) A complaint that has been subject to conciliation may only be investigated:
- (a) if the conciliator's report contains a recommendation that the Commission investigate the complaint; or
  - (b) if new material concerning the matter the subject of the complaint becomes available and that material raises a matter which would cause the Commission to refer the complaint for investigation in accordance with section 40. 20
- (3) Before investigating the complaint, the Commission must consult with the appropriate registration authority (if any). Section 24 applies to the investigation of a complaint under this section. 25
- Health Conciliation Registry to deal only with complaints referred by the Commission**
54. The Health Conciliation Registry has no power to receive or conciliate complaints which may come to it otherwise than on the referral of the Commission. Accordingly, the Registrar must refer any such complaints to the Commission. 30
- Offence of concealing a serious offence**
55. Section 316 of the Crimes Act 1900 does not apply to a person who obtains information concerning a serious offence referred to in that section while acting in the capacity of Registrar, a member of staff of the Health Conciliation Registry or a conciliator. 35

**Division 7—Investigation of complaints****NOTE**

5 The bulk of Commission investigations under this Division will  
deal with matters arising under health registration Acts relating to  
health practitioners. The Commission will investigate with a view  
to moving to prosecution of the complaint before the appropriate  
professional board, committee or tribunal. The Commission will  
10 also use its powers under this Division for other matters referred  
to it, such as a matter which is referred for investigation under  
section 73, or where the Commission is operating in conjunction  
with the Department of Health under general health legislation.

**The purpose of investigation**

56. (1) The investigation of a complaint within the investigation and  
prosecution division of the Commission is for the purpose of obtaining  
15 information concerning the matter complained of and to determine what  
action should be taken in respect of the complaint.

(2) The investigation of a complaint is to be conducted as expeditiously  
as the proper investigation of the complaint permits.

**Expert assistance**

20 57. (1) In investigating a complaint, the Commission may obtain a  
report from a person (including a person registered under a health  
registration Act) who, in the opinion of the Commission, is sufficiently  
qualified or experienced to give expert advice on the matter the subject of  
the complaint.

25 (2) Such a report may be used in disciplinary proceedings under a  
health registration Act but may not be admitted or used in any other  
proceedings in a court or before a person or body (other than a court)  
authorised by law, or by consent of parties, to hear and receive evidence.

30 (3) A person from whom such a report is obtained may not be  
compelled to produce the report or to give evidence in relation to the  
report or its contents in any such other proceedings.

(4) In this section, “report” includes a copy, reproduction and  
duplicate of the report or any part of the report, copy or duplicate.

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**Authorisation of persons to carry out investigations**

58. (1) The Commission may authorise an officer of the Commission, in writing, to exercise the functions under section 60.

(2) The Commission must provide an authorised person with a certificate of authorisation in a form approved by the Commission. 5

(3) An authorised person in exercising in any place a function conferred on the authorised person under section 60 must, if so requested by a person apparently in charge of the place, produce the certificate to the person.

**Functions to be exercised only with consent or under search warrant** 10

59. An authorised person may not enter any premises and exercise a function under section 60 except with the consent of the owner or occupier of the premises or under the authority of a search warrant.

**Powers of entry, search and seizure**

60. An authorised person may, for the purpose of investigating a complaint, do any one or more of the following: 15

- (a) at any reasonable time, enter and inspect any premises which the authorised person reasonably believes are used by the person against whom the complaint is made in connection with the matter with which the complaint is concerned; 20
- (b) examine, seize, retain or remove any equipment that the authorised person reasonably believes is, has been or may be used in connection with that matter;
- (c) require the production of and inspect any stocks of any substance or drugs in or about those premises; 25
- (d) require any person within those premises to produce any records in the possession or under the control of that person relating to that matter;
- (e) take copies of, or extracts or notes from, any such records;
- (f) remove any such records, with the consent of the owner of the records, for a maximum period of 24 hours for the purpose of taking copies of, or notes from, those records; 30
- (g) require any person at those premises to answer questions or otherwise furnish information in relation to that matter;
- (h) require the owner or occupier of those premises to provide the authorised person with such assistance and facilities as is or are reasonably necessary to enable the authorised person to exercise the functions of an authorised person under this section. 35

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**Search warrant**

5 **61. (1)** An authorised person may apply to an authorised justice for a search warrant if the person has reasonable grounds for believing that entry to premises is necessary for the purpose of investigating a complaint that, if substantiated, may provide grounds for:

- (a) the suspension or disqualification (by deregistration or cancellation of enrolment) of the person against whom the complaint is made; or
- (b) the criminal prosecution of that person; or
- 10 (c) the taking of other significant disciplinary action against that person.

15 **(2)** An authorised person may not apply for a search warrant to search premises for the purpose of investigating a complaint against a health practitioner who is or was, at the relevant time, registered under a health registration Act (or whose registration is or was suspended) unless the authorised person or the Commission has caused the President or Chairperson of the appropriate registration authority to be notified of the application.

20 **(3)** An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a warrant authorising an authorised person named in the warrant to enter the premises and to exercise there the functions of an authorised person under section 60.

25 **(4)** Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

**(5)** In this section, “authorised justice” has the same meaning as in the Search Warrants Act 1985.

**Offence: obstructing an authorised person**

**62.** A person who:

- 30 (a) prevents an authorised person from exercising a function under section 60; or
- (b) hinders or obstructs an authorised person in the exercise of such a function; or
- 35 (c) without reasonable excuse, refuses or fails to comply with a requirement made or to answer a question of an authorised person asked in accordance with section 60; or



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(d) furnishes an authorised person with information knowing that it is false or misleading in a material particular,  
is guilty of an offence.

Maximum penalty: 20 penalty units.

**Offence: impersonating an authorised person** 5

63. A person who impersonates or falsely represents that the person is an authorised person is guilty of an offence.

Maximum penalty: 10 penalty units.

**Offence: improper disclosure of information**

64. If a person discloses information obtained in exercising a function under this Division and the disclosure is not made: 10

- (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 15
- (d) with other lawful excuse,

the person is guilty of an offence.

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

**Notification of findings of investigation to appropriate registration authority** 20

65. (1) The Commission must notify the appropriate registration authority (if any) of the findings of an investigation.

(2) If the Commission is required to consult with the registration authority under section 68, the notification may be given at the time of consultation. 25

**Action that may be taken after an investigation**

66. (1) After the investigation of a complaint, the Commission may:

- (a) dismiss the complaint if the complaint is found to be one that the Commission could have declined to entertain under section 38; or
- (b) terminate the matter by sending a letter of explanation or clarification to the complainant; or 30
- (c) if the complaint was made against a health practitioner, comment to the health practitioner on the matter the subject of the complaint; or

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- (d) if the complaint was made against a health facility, recommend a change in clinical practice to the health facility; or
- (e) refer the complaint to:
- 5 (i) the appropriate registration authority (if any); or
- (ii) if there is no appropriate registration authority, some other appropriate person or body,
- with a recommendation as to any disciplinary action the Commission believes should be taken with respect to the complaint; or
- 10 (f) if the complaint was made against a health practitioner, intervene in any proceedings that may be taken before a professional standards committee established under the appropriate health registration Act; or
- (g) if the complaint was made against a health practitioner:
- 15 (i) intervene in any proceedings that may be taken before a person or body established under a health registration Act that has the power to cancel (by whatever means) the registration of the health practitioner: or
- 20 (ii) prosecute the complaint as a complainant before the person or body.

(2) Disciplinary action that may be recommended under subsection (1) (e) includes, but is not limited to, the prosecution of a complaint in accordance with a health registration Act, the dismissal of a person and the institution of criminal proceedings.

**25 Persons investigated to be given opportunity to be heard in certain circumstances**

**67. (1)** If, following the investigation of a complaint against a health service provider:

- 30 (a) the Commission proposes to do any of the things referred to in section 66 (1) (e), (f) or (g); or
- (b) the Commission considers there are grounds for adverse comment in respect of the health service provider,

35 the Commission must, before doing the thing proposed or making the adverse comment, inform the health service provider of the substance of the grounds for its proposed action and give the health service provider an opportunity to make submissions.

(2) Any such submission must be made in writing within 14 days after the health service provider is so informed.

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(3) The Commission is not required by this section to inform a health practitioner of the substance of the grounds for its proposed action if those grounds relate to the sufficiency of the physical or mental capacity of the health practitioner to practise as a health practitioner.

**Consultation with appropriate registration authorities or other persons or bodies** 5

68. Before deciding on the terms of any recommendation under section 66 (1) (e), the Commission must consult with the appropriate registration authority (if any) and may consult with any other appropriate person or body referred to in section 66 (1) (e) (ii). 10

**Notification of Commission's decision to parties to complaint**

69. The Commission must notify the parties to the complaint of the decision made by the Commission following the investigation of the complaint.

**Division 8—Reports** 15

**Report following investigation of complaint**

70. (1) The Commission must prepare a report concerning a complaint in respect of which (or part of which) the Commission acts as referred to in section 66 (1) (c) or (d).

(2) The Commission's report must include both the reasons for its conclusions and any action taken or recommended to be taken. 20

(3) The Commission is to forward a copy of its report to:

- (a) the Director-General; and
- (b) if the person against whom the complaint is made is or was registered under a health registration Act—the appropriate registration authority; and 25
- (c) the Minister.

**NOTE**

If a report relates specifically to an area health service or a public hospital, the Director-General would generally be expected to forward it on to that body to provide an opportunity for comment. Similarly, in respect of reports that impact on professional and institutional associations, the Commission will be able to exercise its discretion under section 72 to ensure all relevant parties obtain copies of the report. 30  
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**Implementation of report**

71. (1) The Commission may request the Director-General to notify it of any action taken or proposed as a consequence of its report under section 70.

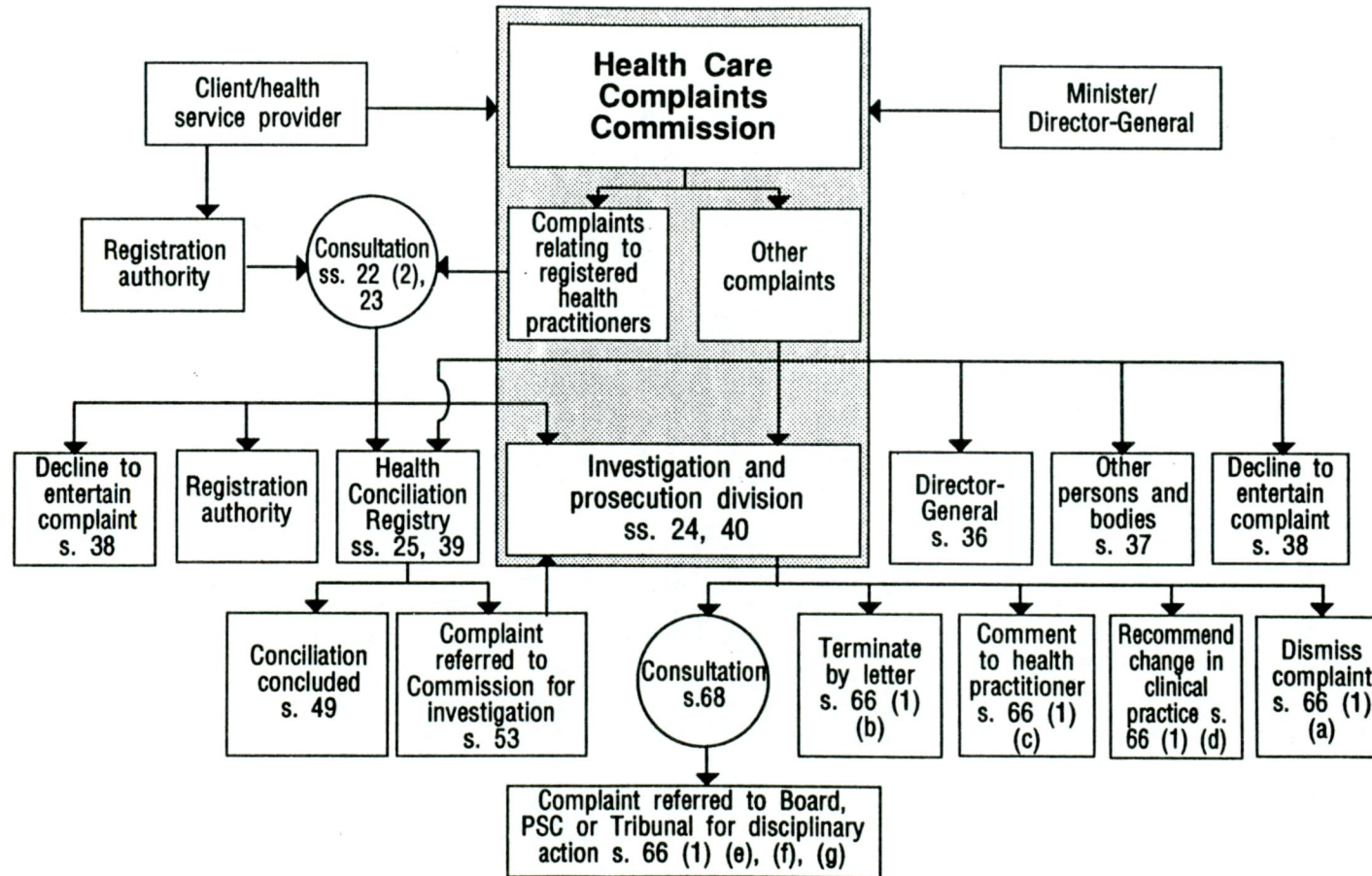
- 5 (2) If the Commission is not satisfied that sufficient steps have been taken within a reasonable time in consequence of its report, it may, after consulting the Director-General, make a report to the Minister.

**Copies of report may be given to parties to complaint and others**

10 72. The Commission has a discretion to forward a copy of a report under this Division to any one or more of the following:

- the complainant
  - the person against whom the complaint was made
  - if there is no appropriate registration authority, a professional or similar association of which the person against whom the complaint
- 15 was made is, or is qualified to be, a member.

**SOURCE AND FLOW OF COMPLAINTS RECEIVED BY THE HEALTH CARE COMPLAINTS COMMISSION**



*Health Care Complaints 1992***PART 5—OTHER INVESTIGATIONS BY THE COMMISSION****Investigation of health services**

73. (1) The Commission may, with the approval of the Minister or the Director-General, investigate any matter concerning a health service affecting the clinical management or care of clients.

(2) The Commission may investigate a matter concerning a health service affecting the clinical management or care of clients which is the subject of a report or comment in a print or electronic medium only with the approval of the Minister.

**NOTE**

For the purposes of this section, an approval may be given on the initiative of the Minister or the Director-General or following a request made by the Commission.

The matter in respect of which the approval is given need not relate to an individual client and need not have arisen because of the making of a complaint.

While the Director-General may choose to refer a general matter to the Commission under this Part, nothing prevents a delegation of the Director-General's functions under existing health legislation. For example, the Director-General's functions under section 44 of the Nursing Homes Act 1988, section 11 of the Public Hospitals Act 1929 or section 47 of the Private Hospitals and Day Procedure Centres Act 1988 could be delegated to the Commission, if it were considered more suitable for action to be pursued under that legislation.

**Application of complaints process to matters investigated as referred to in this Part**

74. (1) A matter which is investigated by the Commission as referred to in this Part is taken to be a complaint made to the Commission by the Minister or the Director-General, as the case requires.

(2) Such a matter is to be referred to the investigation and prosecution division of the Commission unless the Commission is of the opinion that it should be referred to the complaints and preliminary inquiry division.

**Application of investigative powers for the purposes of this Part**

75. Divisions 7 and 8 of Part 4 apply to an investigation under this Part in the same way as they apply to the investigation of a complaint under Division 7 of Part 4.

*Health Care Complaints 1992***PART 6—MISCELLANEOUS****Inconsistency between this Act and health registration Acts**

76. This Act prevails over a health registration Act to the extent of any inconsistency between them.

**Consultation between Commission and Director-General**

5

77. (1) The Director-General must, if requested to do so by the Commission, consult with the Commission with respect to matters arising under the administration of this Act.

(2) The Commission must, if requested to do so by the Director-General, consult with the Director-General with respect to matters arising under the administration of this Act.

10

**Annual report**

78. (1) The Commission must include in its annual report for a year:

(a) in relation to complaints generally:

- the number and type of complaints made to it during the year 15

- the sources of those complaints

- the number and type of complaints referred to the complaints and preliminary inquiry division of the Commission during the year

- the number and type of complaints referred for conciliation during the year 20

- the results of conciliations

- the number and type of complaints referred to the investigation and prosecution division of the Commission during the year 25

- the results of investigations

- a summary of the results of prosecutions completed during the year arising from complaints

- the number and details of complaints not finally dealt with at the end of the year 30

- time intervals involved in the complaints process; and

(b) the number and type of complaints referred to the Director-General during the year and the outcomes of those complaints, as far as they are known.

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- (2) The Commission may include in its annual report for a year:
- (a) any report made to the Minister under section 71; and
  - (b) any request made to the Minister or the Director-General for approval to investigate under section 73.
- 5 (3) Matters included in the annual report:
- (a) are to be reported, as far as practicable, according to professional groupings; and
  - (b) must not identify individual clients or health service providers, unless their names have already lawfully been made public.
- 10 (4) Matters which are required by an Act to be included in the Commission's annual report may be included in the annual report of the Department of Health.

**Exoneration from liability**

- 15 79. No matter or thing done or omitted by a person, being the Commissioner, an officer of the Commission, a conciliator or a person employed in the Health Conciliation Registry, if done or omitted in good faith for the purpose of executing this Act, subjects the person personally to any action, liability, claim or demand.

20 **Pending legal proceedings do not prevent exercise of certain functions**

80. The Commission, the Health Conciliation Registry, the Registrar and a conciliator are not prevented from exercising any function concerning a matter merely because legal proceedings relating to the matter have been commenced.

25 **Offence: intimidation or bribery of complainants**

81. (1) A person who, by threat, intimidation or inducement, persuades or attempts to persuade another person:
- (a) not to make a complaint to the Commission or a registration authority or not to continue with a complaint made to the Commission or a registration authority; or
  - (b) not to have discussions with, or take part in proceedings before, the Commission or a registration authority concerning a complaint or a matter that could become the subject of a complaint,
- is guilty of an offence.
- 35 (2) A person who refuses to employ or dismisses another person or subjects another person to any detriment because the other person:



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- (a) intends to make a complaint, or has made a complaint, to the Commission or a registration authority; or
- (b) intends to take part, is taking part, or has taken part in any discussions with, or proceedings before, the Commission or a registration authority concerning a complaint or a matter which could become the subject of a complaint, 5
- is guilty of an offence.
- Maximum penalty: 50 penalty units or imprisonment for 12 months.
- Offence: furnishing false or misleading information to the Commission** 10
- 82.** A person who furnishes the Commission with information for the purposes of this Act knowing that it is false or misleading in a material particular is guilty of an offence.
- Maximum penalty: 20 penalty units.
- Proceedings for offences** 15
- 83.** Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- Regulations**
- 84.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 20
- (2) A regulation may create an offence punishable by a penalty not exceeding 20 penalty units. 25
- Amendment of other Acts**
- 85.** Each Act specified in Schedule 2 is amended in the manner set out in that Schedule.
- Savings, transitional and other provisions**
- 86.** Schedule 3 has effect. 30

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**Review of Act**

87. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

5 (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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**SCHEDULE 1—PROVISIONS CONCERNING CONCILIATORS**

(Sec. 17 (3))

**Term of office**

1. Subject to this Schedule, a conciliator holds office for such period (not exceeding 5 years) as is specified in the conciliator's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Remuneration**

2. (1) A full-time conciliator is entitled to be paid:

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the conciliator.

(2) A part-time conciliator is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the conciliator.

**Vacancy in office**

3. (1) The office of a conciliator becomes vacant if the conciliator:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) in the case of a full-time conciliator—is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (g) becomes a mentally incapacitated person; or

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SCHEDULE 1—PROVISIONS CONCERNING CONCILIATORS—  
*continued*

- 5 (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a conciliator from office for misbehaviour, incompetence or incapacity.

10 **Effect of certain other Acts**

4. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a conciliator.

(2) If by or under any Act provision is made:

- 15 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or  
(b) prohibiting the person from engaging in employment outside the duties of that office,

20 the provision does not operate to disqualify the person from holding that office and also the office of a part-time conciliator or from accepting and retaining any remuneration payable to the person under this Act as a part-time conciliator.

SCHEDULE 2—AMENDMENT OF ACTS

(Sec. 85)

**Chiropractors and Osteopaths Act 1991 No. 7**

- 25 (1) Section 3 (**Definitions**):

Insert in section 3 (1), in alphabetical order:

“**Commission**” means the Health Care Complaints Commission constituted under the Health Care Complaints Act 1992;

- 30 (2) Section 28 (**Complaints**):

Omit section 28 (2)–(5), insert instead:

(2) Any person (including the Board) may make a complaint to the Board.

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SCHEDULE 2—AMENDMENT OF ACTS—*continued*

- (3) A complaint must:
- (a) be in writing; and
  - (b) contain particulars of the allegations on which it is founded; and 5
  - (c) be verified by statutory declaration; and
  - (d) be lodged with the Registrar.
- (4) The Board must notify the Commission of a complaint as soon as practicable after the complaint is made.
- (5) The Board may require the complainant to provide further particulars of the complaint. 10
- (3) Section 29 (**Referral or dismissal of complaints by the Board**):
- (a) Before section 29 (1), insert:
    - (1A) This section is subject to section 30.
  - (b) From section 29 (1) (a), omit “Director-General”, insert instead “Commission”. 15
- (4) Section 30:
- Omit the section, insert instead:
- Role of the Health Care Complaints Commission**
30. (1) Before the Board takes any action under section 29, the Board and the Commission must consult in order to see if agreement can be reached between them as to the course of action to be taken concerning a complaint. 20
- (2) The Board also has power under the Health Care Complaints Act 1992 to direct the Commission to investigate a complaint or to refer a complaint for conciliation under that Act. 25
- (3) The Board must not take action on a complaint while it is subject to investigation or conciliation under the Health Care Complaints Act 1992. 30
- (4) A complaint must not be referred to the Tribunal or a Committee until the complaint has been investigated by the Commission under the Health Care Complaints Act 1992.
- (5) If the Commission recommends to the Board in accordance with the Health Care Complaints Act 1992 that a complaint (whether made under that Act or this Act) be referred to the Tribunal, the Board must comply with that 35

*Health Care Complaints 1992*SCHEDULE 2—AMENDMENT OF ACTS—*continued*

- 5 recommendation. This applies only to a complaint of a kind that could be made under this Act. A recommendation by the Commission for referral to the Tribunal is to be complied with even if the complaint has already been referred to a Committee.
- (5) Section 31 (**Investigation of complaints**):  
Omit the section.
- 10 (6) Section 32 (**Suspension etc. by the Board**):  
From section 32 (5), omit "Director-General", insert instead "Commission".
- (7) Section 34 (**Professional Standards Committees**):  
From section 34 (3), omit "or is informed by the Director-General of his or her decision to refer a complaint".
- 15 (8) Section 36 (**Proceedings before a Committee**):  
From section 36 (2) (c), omit "Director-General", insert instead "Commission".
- (9) Section 38 (**Referral of certain matters to the Tribunal**):  
From section 38 (1) (b), omit "or the Director-General".
- 20 (10) Section 44 (**The Chiropractors and Osteopaths Tribunal**):  
Omit section 44 (3) (a) and (b), insert instead:  
(a) a complaint or other matter is referred to the Tribunal;  
or  
25 (b) the Commission decides, in accordance with the Health Care Complaints Act 1992, to prosecute a complaint before the Tribunal; or
- (11) Section 46 (**Proceedings before the Tribunal**):  
From section 46 (2) (c), omit "Director-General", insert instead "Commission".
- 30 (12) Section 63 (**Search warrants**):  
After section 63 (1), insert:  
(1A) A person appointed under section 62 as an inspector must not apply for a search warrant unless the person has caused the President to be notified of the application.

*Health Care Complaints 1992*SCHEDULE 2—AMENDMENT OF ACTS—*continued*

- (13) Schedule 3 (**Proceedings before a Committee and the Tribunal**):
- (a) Clause 8 (**Nominal complainant**): 5  
 Omit “the Director-General or an officer of the Department of Health appointed by the Director-General”, insert instead “a person appointed by the Commission”.
- (b) Clause 9: 10  
 Omit the clause, insert instead:  
**Intervention by Commission**  
 9. (1) Without limiting the operation of clause 8, a person appointed by the Commission may intervene, and has a right to be heard, in any proceedings before a Committee or the Tribunal.  
 (2) In the case of proceedings before the Tribunal, the person so appointed may be a barrister or solicitor. 15
- Defamation Act 1974 No. 18**
- Section 17O:
- After section 17N, insert:  
**Matters arising under the Health Care Complaints Act 1992** 20
- 17O. (1) There is a defence of absolute privilege:
- (a) for a publication to or by a conciliator for the purpose of the conciliation of a complaint under the Health Care Complaints Act 1992; and 25
- (b) for the publication by any such conciliator of a report or information under section 50 or 51 of the Health Care Complaints Act 1992.
- (2) There is a defence of absolute privilege:
- (a) for a publication of a report under section 57 of the Health Care Complaints Act 1992 (or that section as applied by section 75 of that Act); and 30
- (b) for the publication of a report made under section 70 of the Health Care Complaints Act 1992 by the Health Care Complaints Commission constituted under that Act. 35

*Health Care Complaints 1992*SCHEDULE 2—AMENDMENT OF ACTS—*continued***Dental Technicians Registration Act 1975 No. 40**

- (1) Section 19 (**Proceedings before board against dental technician**):

5           In section 19 (1), after “section 20”, insert “, or after the investigation by the Health Care Complaints Commission under the Health Care Complaints Act 1992 of a complaint of which the Commission is notified under section 20A,”.

- (2) Section 19A (**Proceedings before board against dental prosthetist**):

10           In section 19A (1), after “section 20”, insert “, or after the investigation by the Health Care Complaints Commission under the Health Care Complaints Act 1992 of a complaint of which the Commission is notified under section 20A,”.

- 15           (3) Section 20A:

After section 20, insert:

**Health Care Complaints Commission to be notified of complaints**

20           20A. The board must notify the Health Care Complaints Commission of any complaint made to it concerning the carrying out of technical work or work forming part of the practice of dental prosthetics. The complaint is to be notified as soon as practicable after the complaint is made.

**Dentists Act 1989 No. 139**

- 25           (1) Section 31A:

After section 31, insert:

**Health Care Complaints Commission to be notified of complaints**

30           31A. The Board must notify the Health Care Complaints Commission of any complaint made to it. The complaint is to be notified as soon as practicable after the complaint is made.



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SCHEDULE 2—AMENDMENT OF ACTS—*continued*

- (2) Section 34 (**Determination by Board as to the manner in which a complaint is to be dealt with**):

After section 34 (b), insert:

- (b1) that it will cause the complaint to be investigated by the Health Care Complaints Commission under the Health Care Complaints Act 1992; or
- 5

**Health Administration Act 1982 No. 135**

- Section 14 (**Employees of Corporation**):

After section 14 (1) (b), insert:

- (b1) to enable the Health Conciliation Registry to exercise its functions under the Health Care Complaints Act 1992; and
- 10

**Nurses Act 1991 No. 9**

- (1) Section 3 (**Definitions**):

- (a) Insert in section 3 (1), in alphabetical order:

**“Commission”** means the Health Care Complaints Commission constituted under the Health Care Complaints Act 1992;

- (b) From section 3 (1), omit the definition of **“Director-General”**.
- 15  
20

- (2) Section 44 (**Complaints**):

Omit section 44 (2)–(5), insert instead:

(2) Any person (including the Board) may make a complaint to the Board.

25

(3) A complaint must:

- (a) be in writing; and
- (b) contain particulars of the allegations on which it is founded; and
- (c) be verified by statutory declaration; and
- (d) be lodged with the Registrar.
- 30

(4) The Board must notify the Commission of a complaint as soon as practicable after the complaint is made.

*Health Care Complaints 1992*SCHEDULE 2—AMENDMENT OF ACTS—*continued*

(5) The Board may require the complainant to provide further particulars of the complaint.

(3) Section 45 (**Referral or dismissal of complaints by the Board**):

5 (a) Before section 45 (1), insert:

(1A) This section is subject to section 46.

(b) From section 45 (1) (a), omit "Director-General", insert instead "Commission".

(4) Section 46:

10 Omit the section, insert instead:

**Role of the Health Care Complaints Commission**

15 46. (1) Before the Board takes any action under section 45, the Board and the Commission must consult in order to see if agreement can be reached between them as to the course of action to be taken concerning a complaint.

(2) The Board also has power under the Health Care Complaints Act 1992 to direct the Commission to investigate a complaint or to refer a complaint for conciliation under that Act.

20 (3) The Board must not take action on a complaint while it is subject to investigation or conciliation under the Health Care Complaints Act 1992.

25 (4) A complaint must not be referred to the Tribunal or a Committee until the complaint has been investigated by the Commission under the Health Care Complaints Act 1992.

30 (5) If the Commission recommends to the Board in accordance with the Health Care Complaints Act 1992 that a complaint (whether made under that Act or this Act) be referred to the Tribunal, the Board must comply with that recommendation. This applies only to a complaint of a kind that could be made under this Act. A recommendation by the Commission for referral to the Tribunal is to be complied with even if the complaint has already been referred to a Committee.

35 (5) Section 47 (**Investigation of complaints**):

Omit the section.

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SCHEDULE 2—AMENDMENT OF ACTS—*continued*

- (6) Section 48 (**Suspension etc. by the Board**):  
 From section 48 (5), omit “Director-General”, insert instead “Commission”.
- (7) Section 50 (**Professional Standards Committees**): 5  
 From section 50 (3), omit “or is informed by the Director-General of his or her decision to refer a complaint”.
- (8) Section 52 (**Proceedings before a Committee**):  
 From section 52 (2) (c), omit “Director-General”, insert instead “Commission”. 10
- (9) Section 54 (**Referral of certain matters to the Tribunal**):  
 (a) From section 54 (1) (b), omit “or the Director-General”.  
 (b) From section 54 (4), omit “Director-General”, insert instead “Commission”.
- (10) Section 59 (**The Nurses Tribunal**): 15  
 Omit section 59 (3) (a) and (b), insert instead:  
 (a) a complaint or other matter is referred to the Tribunal;  
 or  
 (b) the Commission decides, in accordance with the Health Care Complaints Act 1992, to prosecute a complaint before the Tribunal; or 20
- (11) Section 61 (**Proceedings before the Tribunal**):  
 From section 61 (2) (c), omit “Director-General”, insert instead “Commission”.
- (12) Schedule 2 (**Proceedings before a Committee and the Tribunal**): 25  
 (a) Clause 8 (**Nominal complainant**):  
 Omit “the Director-General or an officer of the Department of Health appointed by the Director-General”, insert instead “a person appointed by the Commission”. 30

*Health Care Complaints 1992*SCHEDULE 2—AMENDMENT OF ACTS—*continued*

(b) Clause 9:

Omit the clause, insert instead:

**Intervention by Commission**

5           9. (1) Without limiting the operation of clause 8, a person appointed by the Commission may intervene, and has a right to be heard, in any proceedings before a Committee or the Tribunal.

10           (2) In the case of proceedings before the Tribunal, the person so appointed may be a barrister or solicitor.

**Ombudsman Act 1974 No. 68**Schedule 1 (**Excluded conduct of public authorities**):

At the end of Schedule 1, insert:

15           25. Conduct of a conciliator in relation to the conciliation of a complaint under the Health Care Complaints Act 1992.

**Optical Dispensers Act 1963 No. 35**

Section 25A:

After section 25, insert:

20           **Notification of complaints to, and their investigation by, the Health Care Complaints Commission**

25           25A. (1) The board must notify the Health Care Complaints Commission of any complaint made to it concerning the carrying out of optical dispensing by an optical dispenser. The complaint is to be notified as soon as practicable after the complaint is made.

30           (2) The board may, instead of making inquiry under section 25, refer the matter that would otherwise be the subject of inquiry for investigation by the Health Care Complaints Commission under the Health Care Complaints Act 1992.

(3) Such an investigation by the Health Care Complaints Commission is taken, for the purposes of this Act, to be an inquiry made by the board but does not prevent the board from making any further or additional inquiry.

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SCHEDULE 2—AMENDMENT OF ACTS—*continued*

**Optometrists Act 1930 No. 20**

Section 15B:

After section 15A, insert:

**Notification of complaints to, and their investigation by,  
the Health Care Complaints Commission** 5

15B. (1) The board must notify the Health Care Complaints Commission of any complaint made to it concerning the practice of optometry by a registered optometrist. The complaint is to be notified as soon as practicable after the complaint is made. 10

(2) The board may, instead of making inquiry under section 15, refer the matter that would otherwise be the subject of inquiry for investigation by the Health Care Complaints Commission under the Health Care Complaints Act 1992. 15

(3) Such an investigation by the Health Care Complaints Commission is taken, for the purposes of this Act, to be an inquiry made by the board but does not prevent the board from making any further additional inquiry. 20

**Pharmacy Act 1964 No. 48**

(1) Section 19B (**Complaints about former pharmacists**):

From section 19B (1), omit "Director-General of the Department of Health", insert instead "Health Care Complaints Commission". 25

(2) Section 19D (**Making of complaints about pharmacists**):

From section 19D (2), omit "Director-General of the Department of Health", insert instead "Health Care Complaints Commission".

(3) Section 19E (**Procedure on receipt of complaint by the registrar**): 30

Omit section 19E (1), insert instead:

(1) On receipt of a complaint by the registrar, the registrar is required to refer the complaint to the Board and to notify the Health Care Complaints Commission of the receipt and nature of the complaint. 35

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SCHEDULE 2—AMENDMENT OF ACTS—*continued*

(4) Section 19F (**Determination of how complaint to be dealt with**):

After section 19F (b), insert:

- 5           (b1) that it will cause the complaint to be investigated by the Health Care Complaints Commission under the Health Care Complaints Act 1992; or

**Physiotherapists Registration Act 1945 No. 9**

Section 24AA:

10           After section 24, insert:

**Notification of complaints to, and their investigation by, the Health Care Complaints Commission**

15           24AA. (1) The Board must notify the Health Care Complaints Commission of any complaint made to it concerning the practice of physiotherapy by a physiotherapist. The complaint is to be notified as soon as practicable after the complaint is made.

20           (2) The Board may, instead of making inquiry under section 24, refer the matter that would otherwise be subject of inquiry for investigation by the Health Care Complaints Commission under the Health Care Complaints Act 1992.

25           (3) Such an investigation by the Health Care Complaints Commission is taken, for the purposes of this Act, to be an inquiry made by the Board but does not prevent the Board from making any further or additional inquiry.

**Podiatrists Act 1989 No. 23**

(1) Section 14 (**Complaints**):

(a) After section 14 (2), insert:

30           (2A) The Board must notify the Health Care Complaints Commission of any complaint made to it. The complaint is to be notified as soon as practicable after the complaint is made.

(b) After section 14 (5), insert:

35           (6) The Board may, in accordance with Division 3 of Part 4 of the Health Care Complaints Act 1992, refer a complaint to the Health Care Complaints Commission.

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SCHEDULE 2—AMENDMENT OF ACTS—*continued*

- (2) Section 16 (**Consequences of misconduct etc.**):  
 After “after” in section 16 (1), insert “an investigation conducted by the Health Care Complaints Commission or”.
- Psychologists Act 1989 No. 51** 5
- (1) Section 14 (**Complaints**):
- (a) After section 14 (2), insert:  
 (2A) The Board must notify the Health Care Complaints Commission of any complaint made to it. The complaint is to be notified as soon as practicable after the complaint is made. 10
- (b) After section 14 (5), insert:  
 (6) The Board may, in accordance with Division 3 of Part 4 of the Health Care Complaints Act 1992, refer a complaint to the Health Care Complaints Commission for investigation.
- (2) Section 16 (**Consequences of misconduct etc.**): 15  
 After “after” in section 16 (1), insert “an investigation conducted by the Health Care Complaints Commission or”.
- Public Sector Management Act 1988 No. 33**
- (1) Schedule 3B (**Senior Executive Positions**): 20  
**Insert** at the end of Part 2:  
 Commissioner of the Health Care Complaints Commission
- (2) Schedule 3B (**Senior Executive Positions**):  
**From** the matter relating to the Department of Health in Part 1, omit “Director, Complaints Unit”.
- Search Warrants Act 1985 No. 37** 25
- Section 10 (**Definitions**):  
 Insert in the definition of “search warrant” in section 10, in alphabetical order of Acts:  
 section 61 of the Health Care Complaints Act 1992;

*Health Care Complaints 1992*SCHEDULE 2—AMENDMENT OF ACTS—*continued***Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)**

At the end of Part 1 of Schedule 2, insert:

5 Full-time conciliator (under the Health Care Complaints Act 1992).

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS**

(Sec. 86)

**Regulations**

- 10 1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Schedule or from a later date.
- 15 (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before
- 20 the date of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of publication.

**Complaints made before the commencement of this Act**

- 25 2. A complaint made to the Complaints Unit of the Department of Health or a registration authority before the commencement of Part 4 may continue to be dealt with and disposed of as if this Act had not been enacted, except as provided by clause 3.

**Power to decline to entertain complaints**

- 30 3. The Director of the Complaints Unit of the Department of Health has the same functions in relation to a complaint (or any part of a complaint) as the Commission has under section 38.



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**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS—*continued*****Complaints concerning past conduct**

4. A complaint may be made under and subject to this Act in respect of an act or omission that occurred before the commencement of Part 4 but only if the complaint could have been made lawfully before that commencement. 5

**Construction of references to the Medical Practice Act 1992**

5. If, on the commencement of this Schedule, the Medical Practice Act 1992 has not commenced, a reference in this Act to the Medical Practice Act 1992 is to be read as a reference to the Medical Practitioners Act 1938. 10

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