

**Authorised Version No. 005**  
**Health Complaints Act 2016**

**No. 22 of 2016**

Authorised Version incorporating amendments as at  
1 July 2019

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**Authorised Version No. 005**  
**Health Complaints Act 2016**

**No. 22 of 2016**

Authorised Version incorporating amendments as at  
1 July 2019

**The Parliament of Victoria enacts:**

**Part 1—Preliminary**

**1 Purposes**

The main purposes of this Act are—

- (a) to provide for a complaints process and other processes about health service provision and related matters; and
- (b) to establish the office of Health Complaints Commissioner; and
- (c) to establish the Health Complaints Commissioner Advisory Council; and
- (d) to repeal the **Health Services (Conciliation and Review) Act 1987**; and
- (e) to make minor and consequential amendments to other Acts; and
- (f) to provide for related matters.

**2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 February 2017, it comes into operation on that day.

### 3 Definitions

(1) In this Act—

***approved practice protocol*** means a practice protocol approved by the Minister under section 125;

***Assistant Commissioner*** means a person employed as an Assistant Health Complaints Commissioner under section 121;

***Australian Health Practitioner Regulation Agency*** means the Australian Health Practitioner Regulation Agency established by section 23 of the National Law;

***authorised person*** means a person authorised by the Commissioner under section 62;

***carer*** has the same meaning as in the **Carers Recognition Act 2012**;

***code of conduct*** means—

- (a) the general code of conduct; and
- (b) any other code of conduct in respect of a general health service that is prescribed by the regulations;

***Commissioner*** means the Health Complaints Commissioner appointed under section 111;

***Commissioner initiated investigation*** means an investigation under section 47;

***complaint*** means a complaint made under section 5, 6 or 7;

***complaint data review*** means a review conducted under section 105;

***complaint data review report*** means a report prepared under section 107;

***complaint handling standards*** means—

- (a) standards made by the Governor in Council under section 133 or 136; or
- (b) the interim standards referred to in section 131(1), for the period during which the interim standards apply under section 131(2);

***complaint investigation*** means an investigation under section 45;

***complaint resolution process*** means a process by which the Commissioner may seek an agreed resolution of a complaint under section 32(1);

***complainant*** means a person who makes a complaint under section 5, 6 or 7;

***conciliation*** means a complaint resolution process referred to in section 32(1)(b);

***Council*** means the Health Complaints Commissioner Advisory Council established under section 140;

***Council President*** means the President of the Council appointed under section 141(3);

***follow up investigation*** means an investigation under section 53;

***follow up report*** means a report prepared under section 56;

***follow up statement*** means a statement published under section 82(1);

***general code of conduct*** means—

- (a) until a general code of conduct in respect of general health services is prescribed by the regulations, the

general code of conduct for general health services set out in Schedule 2; or

- (b) the general code of conduct in respect of general health services prescribed by the regulations;

***general health service*** means a health service that is not a health profession service;

***general health service provider*** means a person who provides a general health service;

***general health service warning statement*** means a statement published under section 87(1) or (2);

***health profession*** means a health profession within the meaning of the National Law;

***health profession service*** means the practice of a health profession;

***health service*** means the following services—

- (a) an activity performed in relation to a person that is intended or claimed (expressly or otherwise) by the person or the provider of the service—
- (i) to assess, predict, maintain or improve the person's physical, mental or psychological health or status; or
  - (ii) to diagnose the person's illness, injury or disability; or
  - (iii) to prevent or treat the person's illness, injury or disability or suspected illness, injury or disability;
- (b) a health related disability, palliative care or aged care service;

- (c) a surgical or related service;
- (d) the prescribing or dispensing of a drug or medicinal preparation;
- (e) the prescribing or dispensing of an aid or piece of equipment for therapeutic use;
- (f) health education services;
- (g) therapeutic counselling and psychotherapeutic services;
- (h) support services necessary to implement any services referred to in paragraphs (a) to (g);
- (i) services—
  - (i) that are ancillary to any other services to which this definition applies; and
  - (ii) that affect or may affect persons who are receiving other services to which this definition applies;
- (j) any other prescribed services;

**Example**

Examples of services to which paragraph (i) applies are laundry services, cleaning services and catering services.

***health service principles*** means the principles set out in section 4;

***health service provider*** means a person who provides a health service;

***identification***, in relation to an authorised person, means the document issued by the Commissioner under section 63(1) that identifies that person;

***inquiry*** means an inquiry conducted under section 103;

***interim prohibition order*** means an order made under section 90;

***investigation hearing*** means a hearing of the Commissioner conducted under section 59(3);

***investigation hearing notice*** means a notice served under section 61(1);

***investigation report*** means a report prepared under section 50;

***member of the staff of the Commissioner*** means—

- (a) an Assistant Commissioner; or
- (b) an employee referred to in section 121(1); or
- (c) a person with whom the Commissioner has entered into an agreement or arrangement under section 121(3);

***National Board*** has the same meaning as in the National Law;

***National Law*** means the Health Practitioner Regulation National Law;

***party***, in relation to a complaint, means—

- (a) the complainant; or
- (b) any health service provider about whom the complaint is made; or
- (c) the person who received or sought the health service, if that person—
  - (i) is not the complainant; and

- (ii) has not notified the Commissioner under section 22 that the person does not wish to be a party to the complaint;

*prohibition order* means an order made under section 95;

*public health warning statement* means a statement published under section 84(1);

*referral investigation* means an investigation under section 46;

*relevant law* means any of the following—

- (a) the **Disability Act 2006**;
- (b) the **Health Records Act 2001**;
- (c) the **Privacy and Data Protection Act 2014**;
- (d) the **Mental Health Act 2014**;
- (e) the National Disability Insurance Scheme Act 2013 of the Commonwealth;

S. 3(1) def. of  
*relevant law*  
amended by  
No. 19/2019  
s. 263.

*relevant notice or information* means all or any of the following—

- (a) a copy of a formal description of a complaint under section 17(1) or (2);
- (b) a notice or information under section 13(3), 19(3), 20(3), 21(2), 28(1)(a), (c) or (d) or (2), 49(1) or (3);

*Secretary* means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health and Human Services.

- (2) A reference in this Act to any process under this Act does not include proceedings for an offence against this Act.

#### **4 Health service principles**

For the purposes of this Act, the following principles are the health service principles—

- (a) that a health service is able to be accessed;
- (b) that a health service is safe and of high quality;
- (c) that a health service is provided with appropriate care and attention;
- (d) that a person seeking or being provided with a health service and the person's carer are treated with respect, dignity and consideration;
- (e) that adequate and clear information is provided about a health service in respect of the treatment, options and costs in a transparent manner;
- (f) that an inclusive approach is applied in the making of decisions about a health service;
- (g) that the privacy and confidentiality of health information and personal information is respected;
- (h) that a health service provider makes provision for the person seeking or being provided with a health service to make comments or complaints and that those comments or complaints are addressed.



## **Part 2—Complaints**

### **Division 1—Making a complaint**

#### **5 Complaint by person who received or sought a health service**

- (1) A person may make a complaint to a health service provider about—
  - (a) any unreasonable provision of a health service by the provider to the person; or
  - (b) any unreasonable failure by the provider to provide a health service to the person that the person has sought; or
  - (c) any unreasonable failure by the provider to act consistently with the health service principles in the provision of or a failure to provide a health service to the person; or
  - (d) the provision of a health service by the provider to the person in an unreasonable manner; or
  - (e) the manner in which a complaint by the person is dealt with by the health service provider, including whether the provider has not complied with or has acted inconsistently with any complaint handling standards.
- (2) A person may make a complaint to the Commissioner about—
  - (a) anything to which a paragraph of subsection (1) applies, without making a complaint to the health service provider, if it would be unreasonable or inappropriate to resolve the matter by making a complaint under subsection (1); or

- (b) any failure by a general health service provider in providing or failing to provide a general health service to the person—
  - (i) to comply or act consistently with a code of conduct applying to the general health service; or
  - (ii) to comply with an interim prohibition order; or
  - (iii) to comply with a prohibition order; or
- (c) a matter that was the subject of a complaint by the person to a health service provider under subsection (1), if that complaint is not resolved within 3 months of making the complaint; or
- (d) the manner in which a complaint by the person under subsection (1) is dealt with by the health service provider, including whether the provider has not complied with or has acted inconsistently with any complaint handling standards.

**6 Complaint about health service received or sought by another person**

- (1) A person may make a complaint to a health service provider about—
  - (a) any unreasonable provision of a health service by the provider to another person; or
  - (b) any unreasonable failure of the provider to provide a health service to another person that the other person has sought; or
  - (c) any unreasonable failure by the provider to act consistently with the health service principles in a provision of or a failure to provide a health service to another person; or

- (d) the provision of a health service by the provider to another person in an unreasonable manner; or
  - (e) the manner in which a complaint—
    - (i) by the person is dealt with by the health service provider, including whether the provider has not complied with or has acted inconsistently with any complaint handling standards; or
    - (ii) made by another person under section 5(1)(a), (b), (c) or (d) is dealt with by the health service provider, including whether the provider has not complied with or has acted inconsistently with any complaint handling standards.
- (2) A person may make a complaint to the Commissioner about—
- (a) anything to which a paragraph of subsection (1) applies, without making a complaint to the health service provider, if it would be unreasonable or inappropriate to resolve the matter by making a complaint under subsection (1); or
  - (b) any failure by a general health service provider in providing or failing to provide a general health service to another person—
    - (i) to comply or act consistently with a code of conduct applying to the general health service; or
    - (ii) to comply with an interim prohibition order; or
    - (iii) to comply with a prohibition order; or

- (c) a matter that was the subject of a complaint by the person to a health service provider under subsection (1), if that complaint is not resolved within 3 months of making the complaint; or
- (d) the manner in which a complaint by the person under subsection (1) is dealt with by the health service provider, including whether the provider has not complied with or has acted inconsistently with any complaint handling standards.

## **7 Complaint by carer**

- (1) A carer of a person may make a complaint to a health service provider about—
  - (a) any unreasonable treatment of the carer by the provider when providing or failing to provide a health service to the person cared for by the carer; or
  - (b) the manner in which a complaint by the carer is dealt with by the health service provider, including whether the provider has not complied with or has acted inconsistently with any complaint handling standards.
- (2) A carer of a person who has sought a health service from or has been provided with a health service by a health service provider may make a complaint to the Commissioner about—
  - (a) anything to which subsection (1) applies, without making a complaint to the health service provider, if it would be unreasonable or inappropriate to resolve the matter by making a complaint under subsection (1); or
  - (b) a matter that was the subject of a complaint by the carer to a health service provider under subsection (1), if that complaint is not

resolved within 3 months of making the complaint; or

- (c) the manner in which a complaint by the carer under subsection (1) is dealt with by the health service provider, including whether the provider has not complied with or has acted inconsistently with any complaint handling standards.

### **8 Time for making a complaint**

- (1) A person is not entitled to make a complaint to the Commissioner under section 5(2) or 6(2) and a carer is not entitled to make a complaint to the Commissioner under section 7(2)—
  - (a) more than 12 months after the provision of the health service was completed; or
  - (b) if the health service was not provided, more than 12 months after the health service was sought.
- (2) Despite subsection (1), the Commissioner may deal with a complaint lodged after the end of the 12 month period if the Commissioner is satisfied that the circumstances of the case so require.

### **9 Complaint may be either oral or in writing**

- (1) A complaint made to the Commissioner may be made either orally or in writing.

#### **Note**

A complaint may be made by an electronic communication within the meaning of section 3(1) of the **Electronic Transactions (Victoria) Act 2000**.

- (2) A person who makes an oral complaint must confirm the complaint as recorded in writing by the Commissioner under section 10 as soon as practicable.

- (3) The Commissioner may waive the requirement for a person to comply with subsection (2), if the Commissioner is satisfied that it is appropriate to do so in the circumstances.
- (4) The Commissioner must make a written record of any waiver given under subsection (3).

#### **10 Record of complaint**

- (1) If a complaint is made to the Commissioner, the Commissioner must make a written record on receiving the complaint.
- (2) A written record made under subsection (1) must include the date that the complaint was received by the Commissioner.

#### **11 Commissioner to assist persons to make complaints**

- (1) The Commissioner must give reasonable assistance to a person who is making a complaint to the Commissioner or confirming a complaint made to the Commissioner.
- (2) The Commissioner, in giving reasonable assistance to a person under this section, may assist the person to identify the parties to the complaint.

### **Division 2—Procedure when a complaint is made to the Commissioner**

#### **12 Preliminary complaint resolution**

- (1) This section applies on a complaint being—
  - (a) recorded by the Commissioner under section 10; and
  - (b) if required by section 9(2), confirmed by the complainant.

- (2) The Commissioner may seek further information about the complaint by—
  - (a) interviewing the complainant; or
  - (b) requiring the complainant to give the Commissioner more information.
- (3) The Commissioner may provide advice about the options available to resolve the complaint.
- (4) The Commissioner may attempt an early resolution of the complaint with all or any of the following persons—
  - (a) the complainant;
  - (b) any health service provider about whom the complaint is made;
  - (c) the person who received or sought the health service, if that person is not the complainant.
- (5) The Commissioner may deal with the resolution of a complaint under subsection (4) in any manner and using any means that the Commissioner considers appropriate.

### **13 Decision whether to deal with complaint**

- (1) The Commissioner must decide whether or not to deal with a complaint made to the Commissioner.
- (2) A decision must be made under subsection (1)—
  - (a) as soon as practicable after the complaint is made; or
  - (b) if the Commissioner has attempted an early resolution of the complaint under section 12 and the complaint is not resolved, as soon as practicable after the failure to resolve the complaint.

- (3) As soon as possible after making a decision under subsection (1), the Commissioner must give written notice of that decision to the complainant.

**Note**

Division 4 of Part 2 provides for the deferral of the giving of this notice in certain circumstances.

**14 Grounds for not dealing with complaints**

The Commissioner may refuse to deal, or cease to deal, with a complaint made to the Commissioner if—

- (a) the Commissioner is satisfied that the complaint is frivolous, vexatious, misconceived, lacking in substance or otherwise does not warrant action; or
- (b) the Commissioner is satisfied that the complaint is not made in good faith; or
- (c) the Commissioner is satisfied that the complaint is made for an improper purpose; or
- (d) the complainant does not comply with a request for more information under section 12(2) and the Commissioner believes that it is not in the public interest to deal with the complaint; or
- (e) the Commissioner is satisfied that there is no reasonable prospect of resolving the complaint by the conduct of a complaint resolution process and the Commissioner does not believe that the complaint should be investigated under Part 4; or
- (f) the subject matter of the complaint comes within the jurisdiction of a court, tribunal or other body; or



- (g) the subject matter of the complaint—
  - (i) is before a court, tribunal or other body;  
or
  - (ii) has been determined by a court, tribunal or other body and does not raise a new matter that, the Commissioner believes, ought to be dealt with by the Commissioner; or
- (h) the health service provider has taken action that the Commissioner is satisfied has resolved the complaint; or
- (i) the Commissioner is satisfied that—
  - (i) reasonable attempts have not been made to seek to resolve the complaint with the health service provider; and
  - (ii) it is reasonable and appropriate to seek to resolve the complaint with the health service provider; or
- (j) the complaint has been withdrawn under this Part.

### **15 Formal description of complaint**

- (1) As soon as possible after a decision is made under section 13 to deal with a complaint, the Commissioner must seek the agreement of the complainant to a description of the complaint.
- (2) The Commissioner may decide not to deal with a complaint if agreement about the description of the complaint is not reached within 10 business days after the Commissioner seeks the agreement, or any longer period determined by the Commissioner.
- (3) The Commissioner must give written notice of a decision under subsection (2) to the complainant as soon as possible after the decision is made.

**16 Alteration or variation of formal description of complaint**

The Commissioner, with the agreement of the complainant, may alter or vary the formal description of a complaint.

**17 Copy of formal description of complaint to be given to health service provider**

- (1) As soon as possible after the formal description of a complaint is agreed under section 15, the Commissioner must give a copy of the formal description of the complaint to the health service provider about whom the complaint is made.
- (2) If the formal description of the complaint is altered or varied under section 16, the Commissioner must give a copy of the formal description of the complaint as so altered or varied to the health service provider about whom the complaint is made.

**Note**

Division 4 of Part 2 provides for the deferral of the giving of a copy of a formal description of a complaint under this section in certain circumstances.

**18 Commissioner may request more information**

In order to determine how to deal with a complaint, the Commissioner may request more information from—

- (a) the complainant; or
- (b) the health service provider; or
- (c) any person who received or sought the health service (if applicable); or
- (d) any other person whom the Commissioner reasonably believes has relevant information.

**19 Commissioner may divide or concurrently deal with complaints**

- (1) The Commissioner may divide a complaint at any time—
  - (a) into 2 or more complaints if the Commissioner believes it is in the interests of the person who received or sought the health service; or
  - (b) into a part that may be dealt with under this Act and a part that is or may be the subject of a notification, complaint, investigation or inquiry under the National Law or a relevant law, for the purpose of referring that part of the complaint to the person or body responsible for dealing with the matter under that law.
- (2) The Commissioner may concurrently deal with 2 or more complaints, whether or not there is more than one complainant, if the Commissioner reasonably believes that—
  - (a) the complainant or complainants are not disadvantaged; and
  - (b) the health service provider's rights are not adversely affected; and
  - (c) the person who received or sought the health service is not disadvantaged.
- (3) If the Commissioner acts under this section the Commissioner must give written notice to any relevant complainant, health service provider and person who received or sought the health service of the action taken as soon as possible after taking it.

**Note**

Division 4 of Part 2 provides for the deferral of the giving of this notice in certain circumstances.

## **20 Commissioner decision as to how to deal with complaint**

- (1) The Commissioner must at the same time as, or as soon as possible after, giving a copy of the formal description of a complaint to a health service provider under section 17, make a decision under subsection (2) regarding how the complaint should be dealt with.
- (2) The Commissioner may decide—
  - (a) that the complaint is to be the subject of a complaint resolution process if the parties agree to participate in that process; or
  - (b) that the complaint is to be the subject of a complaint investigation.
- (3) The Commissioner must give written notice of any decision under this section to the parties, as soon as possible after making the decision.

### **Note**

Division 4 of Part 2 provides for the deferral of the giving of this notice in certain circumstances.

## **21 Decision to deal with a refused complaint**

- (1) The Commissioner may decide to deal with a complaint in respect of which the Commissioner made a decision under section 14 if—
  - (a) the Commissioner becomes aware of new information in respect of that complaint; or
  - (b) the Commissioner reasonably believes that further action should be taken in respect of that complaint.

- (2) If the Commissioner acts under this section the Commissioner must inform any relevant complainant, health service provider and person who received or sought the health service of the action taken as soon as possible after taking it.

**Note**

Division 4 of Part 2 provides for the deferral of the giving of this information in certain circumstances.

**22 Notification by person who does not wish to be a party**

- (1) A person may notify the Commissioner that the person does not wish to be a party to a complaint if that person is not the complainant.
- (2) On notice being given to the Commissioner under subsection (1), the person giving the notice is taken not to be a party to the complaint.

**23 Withdrawal of complaint**

A complainant may withdraw a complaint at any time after making it by written notice given to the Commissioner.

**24 Effect of withdrawal of complaint**

If a complaint has been withdrawn the Commissioner may proceed with the complaint under this Act if—

- (a) the Commissioner reasonably believes that it is in the public interest to do so; or
- (b) the Commissioner reasonably believes that the complaint involves—
- (i) a contravention of an interim prohibition order or a prohibition order by a general health service provider; or

- (ii) a contravention by a general health service provider of a code of conduct applying to the general health service; or
- (c) the Commissioner reasonably believes that the complaint may have been withdrawn because of victimisation, coercion, duress or intimidation.

### **Division 3—Referral of complaints**

#### **25 Referral of complaint if another Act applies**

- (1) This section applies if the subject matter of a complaint or a part of a complaint made to the Commissioner would also be a reason for making a complaint or conducting an investigation or inquiry under a relevant law.
- (2) As soon as practicable after the complaint is made, the Commissioner must refer the complaint or the part of the complaint to the person or body responsible for dealing with the matter under the relevant law.

#### **26 Complaint to which National Law may also apply**

- (1) To avoid doubt, the Commissioner is a health complaints entity within the meaning of the National Law.

**Note**

See Division 5 of Part 8 of the National Law, in particular section 150 of that Law, for the Commissioner's duties if a complaint is made that may be the subject of a notification under section 150(2) of that Law.

- (2) If it is agreed under section 150 of the National Law to deal with the complaint or a part of the complaint under that Law, the Commissioner must refer the complaint to the Australian Health Practitioner Regulation Agency or the relevant National Board.

**27 Commissioner may continue to exercise certain functions and powers despite referral**

Despite the referral of a complaint or a part of a complaint under section 25 or 26, the Commissioner may exercise any of the functions or powers of the Commissioner under the following provisions in relation to the complaint or the part of the complaint—

- (a) Parts 4, 7 and 8 to the extent that the referred complaint or part of the complaint relates to a contravention by a general health service provider of a code of conduct applying to the general health service;
- (b) Part 10.

**28 Commissioner to notify referral of complaint**

- (1) As soon as practicable after a referral is made under section 25, the Commissioner must notify the following persons or bodies of doing so—
  - (a) the complainant;
  - (b) the Australian Health Practitioner Regulation Agency and any relevant National Board, if the matter is relevant to the regulation of the National Law;
  - (c) the person who received or sought the health service, if the person is not the complainant and it is appropriate in the circumstances to do so;
  - (d) the relevant health service provider.
- (2) As soon as practicable after a referral is made under section 26, the Commissioner must notify the following persons or bodies of doing so—
  - (a) the complainant;

- (b) the person who received or sought the health service, if the person is not the complainant and it is appropriate in the circumstances to do so;
- (c) the relevant health service provider.

**Note**

Division 4 of Part 2 provides for the deferral of the giving of a notice under this section in certain circumstances.

**Division 4—Deferral of notifications**

**29 Deferral of notifications by Commissioner**

- (1) The Commissioner may give a relevant notice or information to a party to a complaint at the same time as taking a relevant action in relation to the complaint if the Commissioner reasonably believes that advising the party of the complaint before that time may—
  - (a) prejudice an investigation by the Commissioner; or
  - (b) place at serious risk—
    - (i) the life, health, safety or welfare of a person; or
    - (ii) the health, safety or welfare of the public.
- (2) This section applies despite any requirement to the contrary in any other section of this Act.
- (3) Despite subsection (1), the Commissioner must give the relevant notice or information to the relevant party without delay if the Commissioner ceases to hold the belief set out in subsection (1) before the time for taking a relevant action in relation to a complaint.



(4) In this section—

*relevant action* means—

- (a) the execution of a search warrant under Division 3 of Part 5; or
- (b) the publication of a general health service warning statement under section 87; or
- (c) the service of an interim prohibition order under section 90.

### **30 Deferral of notifications at request of National Board**

- (1) This section applies if a National Board requests the Commissioner not to give a relevant notice or information to a specified party or parties to a complaint under this Act.
- (2) A request must be made on the basis that the National Board has formed a reasonable belief that giving the relevant notice or information may—
  - (a) seriously prejudice an investigation by the National Board; or
  - (b) place at risk a person's health or safety; or
  - (c) place a person at risk of harassment or intimidation.
- (3) Despite anything to the contrary in this Act, the Commissioner may decide not to give the relevant notice or information to the specified party or parties for a specified period which must not exceed the relevant period.
- (4) If the Commissioner makes a decision under subsection (3), the requirement under this Act to give the relevant notice or information is suspended for the specified period.

(5) In this section—

*relevant period* means the period beginning when the decision is made under subsection (3) and ending when the Commissioner is advised by the National Board that it no longer holds the reasonable belief referred to in subsection (2).

### **31 Deferral of notifications at request of Disability Services Commissioner**

- (1) This section applies if the Disability Services Commissioner requests the Commissioner not to give a relevant notice or information to a specified party or parties to a complaint under this Act.
- (2) A request must be made on the basis that the Disability Services Commissioner considers that giving the relevant notice or information may—
  - (a) affect the health, safety or welfare of a person to whom the health service provider is providing services; or
  - (b) prejudice the proper investigation of the complaint under the **Disability Act 2006**.
- (3) Despite anything to the contrary in this Act, the Commissioner may decide not to provide the relevant notice or information to the specified party or parties for a specified period which must not exceed the relevant period.
- (4) If the Commissioner makes a decision under subsection (3), the requirement under this Act to give the relevant notice or information is suspended for the specified period.
- (5) In this section—

*Disability Services Commissioner* has the same meaning as in the **Disability Act 2006**;

*relevant period* means the period beginning when the decision is made under subsection (3) and ending at the first of the following occurring—

- (a) the Commissioner is advised by the Disability Services Commissioner that the Disability Services Commissioner no longer holds the view referred to in subsection (2); or
- (b) the end of the investigation of the complaint by the Disability Services Commissioner under the **Disability Act 2006**; or
- (c) the end of the period of 6 months following the receipt of the complaint by the Disability Services Commissioner.

## **Part 3—Complaint resolution process**

### **Division 1—Complaint resolution process**

#### **32 Complaint resolution process**

- (1) If the Commissioner makes a decision under section 20(2)(a), the Commissioner may seek an agreed resolution to the complaint by either or both of the following processes—
  - (a) by the parties identifying the issues in dispute and by the Commissioner promoting discussion or negotiation of the complaint between the parties; or
  - (b) a process of negotiation between the parties in which the Commissioner proposes options for resolution of issues and proposes terms for agreement (*conciliation*).
- (2) The Commissioner must decide the manner in which the complaint resolution process is to be conducted.
- (3) In deciding how to conduct the complaint resolution process, the Commissioner must prefer the least formal action that is appropriate in the circumstances of the complaint.

#### **33 Notice of complaint resolution process**

- (1) The Commissioner must give written notice of any decision under section 32 to the parties, as soon as possible after making the decision.
- (2) A notice of a decision under section 32 must set out—
  - (a) the complaint resolution process that the Commissioner has decided is to be applied in respect of the complaint; and
  - (b) the manner in which the complaint resolution process is to be conducted; and

- (c) if a conciliation is to be conducted—
  - (i) the date that the conciliation is proposed to commence; and
  - (ii) the whole or part of the complaint to be the subject of the conciliation; and
  - (iii) the Commissioner's powers in the conduct of a conciliation; and
  - (iv) the obligations of the parties to a conciliation under section 43; and
  - (v) the offences under sections 41(3) and 43.
- (3) A notice under subsection (2) must be given in a reasonable time before any time fixed by the notice for anything to be done, having regard to—
  - (a) the complexity of the complaint; and
  - (b) ensuring that appropriate time is given for preparation by the parties.

#### **34 Parties withdrawal of agreement to complaint resolution process**

If at any time during the conduct of a complaint resolution process a party to the complaint withdraws or no longer agrees to participate in the process the Commissioner may—

- (a) cease the complaint resolution process and, if the Commissioner believes it is necessary commence a complaint investigation; or
- (b) decide to take no further action in respect of the complaint.

#### **35 Health service provider may be required to respond**

- (1) In a complaint resolution process, the Commissioner, by written notice, may require the health service provider to give a written response to each issue raised in the complaint.

- (2) In a notice under subsection (1) the Commissioner must specify the time within which the response must be given, which must be no more than 20 business days after the notice is given.
- (3) A health service provider to whom a notice is given under this section must comply with the requirements of the notice.

Penalty: In the case of a natural person,  
20 penalty units;  
In the case of a body corporate,  
100 penalty units.

### **36 Commissioner's power to extend time limit**

In a complaint resolution process, the Commissioner may extend the time within which a person must comply with a written notice given by the Commissioner under section 35.

### **37 Conciliation of the whole or a part of a complaint**

- (1) If at any time during the conduct of a complaint resolution process (other than a conciliation) the Commissioner reasonably believes that the whole or a part of the complaint may be conciliated, the Commissioner may seek the agreement of the parties to participate in a conciliation.
- (2) The Commissioner must give written notice of a decision under subsection (1) to the parties as soon as possible after making the decision.
- (3) The notice must specify the matters set out in section 33(2)(c) in relation to the conciliation.

### **38 Outcome of complaint resolution process**

- (1) If agreement is reached in a complaint resolution process on the resolution of the complaint that is the subject of the process, the Commissioner must—

- (a) make a written record of the agreement; and
  - (b) give a copy of the written record to each party.
- (2) If a health service provider gives an undertaking to the Commissioner in the course of a complaint resolution process, the Commissioner must make a written record of the undertaking that is signed by the provider.
- (3) If agreement on the resolution of a complaint is not reached in a complaint resolution process, the Commissioner may—
- (a) decide to take no further action in respect of the complaint; or
  - (b) conduct an investigation under Part 4 into the complaint.
- (4) If the Commissioner makes a decision under subsection (3)(a), the Commissioner must give written notice of the reasons for that decision to the parties.

**Note**

Section 43 provides for the confidentiality of anything said or done in conciliation or in an agreement reached in conciliation outside the process except in relation to undertakings under this section.

**39 Reporting on undertakings to Commissioner**

- (1) If, in a complaint resolution process, as part of resolving the complaint, a health service provider gives an undertaking to the Commissioner, the Commissioner, in writing, may require the health service provider to report to the Commissioner on the implementation of the undertaking within the time fixed by the Commissioner.
- (2) The time fixed by the Commissioner under subsection (1) must not be more than 12 months after the undertaking is given to the Commissioner.

- (3) The health service provider to whom a requirement under subsection (1) has been given must not, without reasonable excuse, contravene the requirement.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

## **Division 2—Conciliation**

### **40 Conciliation**

The Commissioner must not commence a conciliation of a complaint unless—

- (a) the parties have agreed to participate in the conciliation; and
- (b) written notice of the conciliation was given to a party under section 33 or 37 before the party agreed to participate in the conciliation.

### **41 Health service provider may be required to produce documents in conciliation**

- (1) In a conciliation, the Commissioner, by written notice, may require the health service provider to produce to the Commissioner any document or other evidence specified in the notice that is held by the health service provider and—
- (a) that forms part of the health information about the person who received or sought the health service; or
  - (b) that is about policies or protocols of the health service provider that are relevant to the subject matter of the complaint; or
  - (c) that is about investigations into the subject matter of the complaint by the health service provider.



(2) In a notice under subsection (1) the Commissioner must specify the time within which the document or evidence must be produced to the Commissioner, which must be no more than 20 business days after the notice is given.

(3) A health service provider to whom a notice is given under this section must comply with the requirements of the notice.

Penalty: In the case of a natural person,  
20 penalty units;

In the case of a body corporate,  
100 penalty units.

#### **42 Extension of time to produce documents**

In a conciliation, the Commissioner may extend the time within which a person must comply with a written notice given by the Commissioner under section 41.

#### **43 Confidentiality of information given or agreement reached in conciliation process**

(1) Subject to subsection (2), a party must not disclose anything said or done in a conciliation or any agreement reached in a conciliation outside the process.

Penalty: In the case of a natural person,  
20 penalty units;

In the case of a body corporate,  
100 penalty units.

(2) A party may disclose anything said or done in a conciliation outside the process with the consent of the person to whom the information relates.

- (3) Evidence of anything said or done in a conciliation is not admissible in any hearing or proceeding in a court or a tribunal.

**Note**

See section 152 for the authorised disclosure of information gained in the course of a conciliation process.

- (4) This section does not apply to an undertaking given under section 38(2) in the course of a conciliation.

**44 Completion of conciliation**

On the completion of a conciliation the Commissioner must provide written notice to the parties that specifies—

- (a) the date the conciliation ceased; and
- (b) the outcome of the conciliation.

## **Part 4—Investigations by the Commissioner**

### **Division 1—Investigations**

#### **45 Investigation of complaints by Commissioner**

The Commissioner may conduct an investigation of a complaint made to the Commissioner, if the Commissioner reasonably believes that the complaint should be investigated and—

- (a) the complaint is not suitable for a complaint resolution process; or
- (b) a complaint resolution process dealing with the complaint has not been successful; or
- (c) a health service provider who is a party to a complaint, without reasonable excuse, fails to participate in a complaint resolution process; or
- (d) a health service provider who is a party to a complaint does not comply with—
  - (i) a request for more information under section 18; or
  - (ii) a notice requiring the health service provider to give a written response under section 35; or
  - (iii) a notice requiring the production of a document or other evidence under section 41; or
- (e) a general health service provider has contravened a code of conduct applying to the general health service.

**46 Investigation of matter referred by Minister**

- (1) The Minister may refer to the Commissioner for investigation any matter that a person would be able to make a complaint about under section 6.
- (2) The Commissioner may investigate a matter referred under subsection (1).

**47 Power of Commissioner to conduct a Commissioner initiated investigation**

The Commissioner, on the Commissioner's own initiative, may conduct an investigation in relation to any matter that a person would be able to make a complaint about under section 5, 6 or 7.

**48 Commencement of Commissioner initiated investigation**

The Commissioner must not commence a Commissioner initiated investigation unless the Commissioner has consulted the Council President in relation to the proposed investigation.

**49 Notice of investigation under this Division**

- (1) If the Commissioner has decided to conduct an investigation under section 45, the Commissioner must give written notice of that investigation to the parties as soon as possible.
- (2) A notice under subsection (1) must be accompanied by a copy of the formal description of the complaint.
- (3) If the Commissioner has decided to conduct a referral investigation or a Commissioner initiated investigation, the Commissioner must give as soon as possible to the relevant health service provider—
  - (a) written notice of the investigation; and

- (b) a description of the matter being investigated.

**Note**

Division 4 of Part 2 provides for the deferral of the giving of notice under this section in certain circumstances.

**50 Commissioner's report on an investigation under this Division**

- (1) On completing an investigation under this Division the Commissioner must prepare a written report of the investigation.
- (2) In the report the Commissioner must set out—
  - (a) for a complaint investigation, a description of the complaint and any resolution of the complaint; and
  - (b) for a referral investigation, a description of the matter referred by the Minister; and
  - (c) for a Commissioner initiated investigation, a description of the matter investigated; and
  - (d) any findings in relation to the investigation under this Division, including, for an investigation of the provision of a general health service, whether or not there has been a contravention of a code of conduct applying to the general health service; and
  - (e) any recommendation of action that the health service provider should take to address the findings, and the time within which the action should be taken; and
  - (f) the time within which the health service provider must give a written response to the report to the Commissioner; and

- (g) if so requested by a person who made submissions in the investigation under this Division and against whom the Commissioner has made an adverse decision, a summary of the submissions made in relation to that decision.

**51 Persons to whom report on an investigation under this Division to be given**

- (1) The Commissioner must—
  - (a) give the investigation report to the health service provider; or
  - (b) if there is more than one health service provider, give that part of the report that relates to a health service provider to that health service provider.
- (2) The Commissioner may—
  - (a) give all or part of the investigation report to the Australian Health Practitioner Regulation Agency and any relevant National Board, if the investigation report is relevant to the administration of the National Law; and
  - (b) give all or part of the investigation report to an employer of the health service provider, if the investigation report is relevant to the health service provider's employment by that employer; and
  - (c) give all or part of the investigation report to a person who engages the health service provider, if the investigation report is relevant to the health service provider's engagement by that person; and
  - (d) give all or part of the investigation report to the Secretary.

- (3) For a complaint investigation, the Commissioner may—
- (a) give all or part of the investigation report to the complainant; and
  - (b) if the person who received or sought the health service is not the complainant, give all or part of the investigation report to that person if that person has agreed to be notified about the outcome of the complaint.
- (4) For a referral investigation, the Commissioner must give the investigation report to the Minister.

## **52 Response by health service provider**

A health service provider who received an investigation report under section 51 setting out recommendations that apply to the health service provider must not, without reasonable excuse, fail to give a written response to that investigation report to the Commissioner, within the time set out in the investigation report by the Commissioner, which—

- (a) states the action that has been taken to implement the recommendations; and
- (b) if a recommendation has not been implemented, gives a reason why the recommendation has not been implemented and sets out a plan—
  - (i) to implement the recommendation; or
  - (ii) to address the issue dealt with in the recommendation.

**Penalty:** In the case of a natural person,  
60 penalty units;  
In the case of a body corporate,  
300 penalty units.

## **Division 2—Follow up investigation**

### **53 Power of Commissioner to conduct a follow up investigation**

The Commissioner may conduct an investigation as to whether there has been any failure by a health service provider—

- (a) to take any action in respect of which the health service provider gave an undertaking referred to in section 38(2); or
- (b) to take any of the actions recommended in the report given to the health service provider that is—
  - (i) an investigation report; or
  - (ii) a follow up report.

### **54 Notice of follow up investigation**

If the Commissioner has decided to conduct a follow up investigation, the Commissioner must give as soon as possible to the relevant health service provider—

- (a) written notice of the investigation; and
- (b) a description of the matter being investigated.

### **55 Commencement of follow up investigation**

- (1) The Commissioner must not commence a follow up investigation under section 53(a) unless the health service provider—
  - (a) has not given the report on the undertaking under section 39 to the Commissioner within the time fixed by the Commissioner under that section; or
  - (b) has not, in the report given to the Commissioner under section 39, substantively addressed the implementation



of the undertaking given by the provider to the Commissioner.

- (2) The Commissioner must not commence a follow up investigation under section 53(b) unless the health service provider—
  - (a) has not given the response to the Commissioner within the time set out in—
    - (i) the investigation report; or
    - (ii) the follow up report; or
  - (b) has not, in the response required to be given to the Commissioner under section 52 or 58, substantively addressed the implementation of the recommendations made to the provider by the Commissioner.

#### **56 Commissioner's report on follow up investigation**

- (1) On completing a follow up investigation the Commissioner must prepare a written report of the investigation.
- (2) In the report the Commissioner must set out—
  - (a) whether the Commissioner has found that the health service provider has failed to take the actions—
    - (i) that the health service provider undertook to take; or
    - (ii) that were recommended; and
  - (b) any recommendation of action that the health service provider should take and the time within which to carry out the recommendation; and

- (c) the time within which the health service provider must provide a written response to the report to the Commissioner; and
- (d) if so requested by a person who made submissions in the investigation and against whom the Commissioner has made an adverse decision, a summary of the submissions made in relation to that decision.

**57 Persons to whom report on follow up investigation to be given**

- (1) The Commissioner—
  - (a) must—
    - (i) give the follow up report to the health service provider; or
    - (ii) if there is more than one health service provider, give that part of the follow up report that relates to a health service provider to that health service provider; and
  - (b) if the follow up report relates to a referral investigation, must give the report to the Minister.
- (2) The Commissioner may—
  - (a) for a follow up report that relates to a complaint investigation—
    - (i) give all or a part of the follow up report to the complainant; and
    - (ii) if the person who received or sought the health service is not the complainant, give all or a part of the follow up report to that person if the person has agreed to be notified about the outcome of the complaint; and

- (b) give all or part of the follow up report to the Australian Health Practitioner Regulation Agency and any relevant National Board, if the follow up report is relevant to the administration of the National Law; and
- (c) give all or part of the follow up report to an employer of the health service provider, if the follow up report is relevant to the health service provider's employment by that employer; and
- (d) give all or part of the follow up report to a person who engages the health service provider, if the follow up report is relevant to the health service provider's engagement by that person; and
- (e) give all or part of the follow up report to the Secretary.

### **58 Response by health service provider**

A health service provider who has received a follow up report under section 57 setting out recommendations that apply to the health service provider must not, without reasonable excuse, fail to give a written response to that report to the Commissioner, within the time set out in the follow up report by the Commissioner, which—

- (a) states the action that has been taken to implement the recommendations; and
- (b) if a recommendation has not been implemented, gives a reason why the recommendation has not been implemented and sets out a plan—
  - (i) to implement the recommendation; or

(ii) to address the issue dealt with in the recommendation.

**Penalty:** In the case of a natural person,  
60 penalty units;  
In the case of a body corporate,  
300 penalty units.

## **Part 5—Conduct of investigations, investigatory powers and related matters**

### **Division 1—Conduct of investigations**

#### **59 Principles applying to all investigations**

- (1) In an investigation under Part 4, the Commissioner may carry out any inquiries into the subject matter of the investigation that the Commissioner believes are necessary.
- (2) In an investigation under Part 4 the Commissioner—
  - (a) must act as expeditiously and with as little formality as is reasonably possible; and
  - (b) is bound by the rules of natural justice; and
  - (c) is not bound by the rules of evidence; and
  - (d) before making a decision affecting a person, must give the person an opportunity to make submissions to the Commissioner about the decision.
- (3) In an investigation under Part 4, the Commissioner may conduct a hearing.

#### **60 Requirements if there is no hearing**

If the Commissioner decides not to conduct a hearing in an investigation under Part 4, for the purpose of section 59(2)(d) the Commissioner—

- (a) may take oral or written submissions; and
- (b) may send for persons, documents or other things; and

- (c) must keep a record of all submissions and evidence given before the Commissioner and decisions made by the Commissioner.

**Note**

Parts 6 and 13 set out other provisions about the process for investigations under Part 4.

**61 Requirements if there is a hearing**

- (1) If the Commissioner decides to conduct a hearing in an investigation under Part 4, the Commissioner must at least 10 business days before the date on which the hearing is to commence give written notice of the hearing—
  - (a) for a complaint investigation, to the parties to the complaint; or
  - (b) for any other investigation under Part 4, to the health service provider being investigated.
- (2) A notice under subsection (1) must—
  - (a) specify the date on which the hearing is to commence; and
  - (b) specify the place at which the hearing is to be held.

**Note**

Parts 6 and 13 set out other provisions about the process for investigations under Part 4.

**Division 2—Authorised persons**

**62 Authorised persons**

The Commissioner may authorise persons to exercise powers under this Act.

### **63 Authorised persons' identification**

- (1) The Commissioner must issue a document to an authorised person that identifies that person.
- (2) A document of identification of an authorised person must contain a photograph of the person.

### **64 Production of identification**

An authorised person must produce their identification for inspection—

- (a) before exercising a power under Division 3; and
- (b) at any time during the exercise of a power under Division 3, if asked to do so.

## **Division 3—Entry and search under warrant**

### **65 Search warrants**

- (1) The Commissioner may apply to a magistrate for the issue of a search warrant for particular premises, if the Commissioner believes on reasonable grounds that there is on the premises evidence that is relevant to an investigation under Part 4.
- (2) If the magistrate is satisfied by evidence on oath or affirmation or by affidavit, that there are reasonable grounds to believe that there is evidence relevant to the investigation under Part 4 on the premises, the magistrate may issue a search warrant in accordance with the **Magistrates' Court Act 1989** authorising the Commissioner or an authorised person to search for the evidence named or described in the warrant.
- (3) In addition to anything the person executing the warrant may do under section 78 of the **Magistrates' Court Act 1989**, under the warrant the magistrate may authorise the person to do any of the following—

- (a) require a document named or described in the warrant to be produced for inspection;
  - (b) examine, make copies of or take extracts from a document named or described in the warrant;
  - (c) remove a document named or described in the warrant for so long as is necessary to make copies of or take extracts from the document.
- (4) A warrant issued under this section must state—
- (a) the purpose for which the search is required and the nature of the investigation under Part 4; and
  - (b) any conditions to which the warrant is subject; and
  - (c) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (d) a day, not later than 20 business days after the issue of the warrant, on which the warrant ceases to have effect.
- (5) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** apply to warrants issued under this section.
- (6) Despite subsection (3) and section 78(1)(b)(iii) of the **Magistrates' Court Act 1989**, a warrant issued under this section must not authorise the person executing the warrant to arrest a person.

## **66 Announcement before entry**

A person who executes a warrant issued under section 65—

- (a) must announce that the person is authorised by the warrant to enter the premises; and



- (b) if the person has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.

#### **67 Details of warrant to be given to occupier**

- (1) If the occupier is present at the premises where a warrant issued under section 65 is being executed, the person executing the warrant must—
  - (a) identify himself or herself to the occupier; and
  - (b) give the occupier a copy of the warrant.
- (2) If the occupier is not present at the premises where a warrant issued under section 65 is being executed, the person executing the warrant must—
  - (a) identify himself or herself to a person at the premises; and
  - (b) give the person a copy of the warrant.

#### **68 Offence to hinder or obstruct person executing warrant**

A person must not, without reasonable excuse, hinder or obstruct a person who is executing a warrant issued under section 65.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

**Division 4—Powers as to production of documents and things, attendance of witnesses and obtaining evidence**

**69 Power to compel production of documents and things or attendance of witnesses**

- (1) For the purpose of an investigation hearing, the Commissioner may serve written notice on a person requiring the person—
  - (a) to produce a specified document or thing to the Commissioner before a specified time and in a specified manner; or
  - (b) to attend the investigation hearing at a specified time and place to produce any specified document or thing; or
  - (c) to attend the investigation hearing at a specified time and place, and from then on from day to day until excused, to give evidence; or
  - (d) to attend the investigation hearing at a specified time and place, and from then on from day to day until excused, to give evidence and to produce any specified document or thing.
- (2) An investigation hearing notice—
  - (a) must be in the prescribed form (if any); and
  - (b) must contain the following information—
    - (i) a statement that failure to comply with the notice without reasonable excuse is an offence, and stating the maximum penalty for that offence;

(ii) examples of what may constitute a reasonable excuse for failing to comply with the notice;

(iii) any other prescribed information.

#### **70 Offence to fail to comply with investigation hearing notice**

A person who is served with an investigation hearing notice must not, without reasonable excuse, refuse or fail to comply with the notice.

**Penalty:** In the case of a natural person,  
120 penalty units or 12 months imprisonment or both;

In the case of a body corporate,  
600 penalty units.

#### **71 Variation of investigation hearing notice**

(1) A person on whom an investigation hearing notice is served may make a claim at the investigation hearing—

(a) that the person has or will have a reasonable excuse for failing to comply with the notice;  
or

(b) that a document or thing specified in the notice is not relevant to the subject matter of the investigation hearing.

(2) If the Commissioner is satisfied that the person's claim is made out, the Commissioner, by further written notice served on the person, may vary or revoke the investigation hearing notice.

(3) The Commissioner, by further written notice served on a person, may, at any time on the Commissioner's own initiative, vary or revoke an investigation hearing notice served on the person.

**72 Power to take evidence on oath or affirmation**

- (1) In an investigation hearing the Commissioner may require a person attending the hearing, whether under an investigation hearing notice or otherwise, to give evidence or answer questions on oath or affirmation.
- (2) The Commissioner, or a member of the staff of the Commissioner who is authorised to do so, may administer an oath or affirmation to a person for the purpose of subsection (1).

**73 Powers in relation to documents and things**

- (1) The Commissioner may—
  - (a) inspect any document or thing produced at the investigation hearing; and
  - (b) retain the document or thing for so long as is reasonably necessary for the purposes of the investigation hearing to which the document or thing is relevant; and
  - (c) copy any document or thing produced to the investigation hearing that is relevant to the subject matter of the hearing.
- (2) If the retention of a document or thing under subsection (1) ceases to be reasonably necessary for the purposes of the investigation hearing, the Commissioner, at the request of any person who appears to be entitled to the document or thing, must cause the document or thing to be delivered to the person.

## **Part 6—Protections and representations for persons acting under this Act**

### **74 Compellability of Commissioner or member of staff**

A person who is or was the Commissioner or a member of the staff of the Commissioner is not compellable to give evidence in a court in relation to an investigation under Part 4 unless the court gives leave.

### **75 Protection of participants**

A person who gives information or evidence, or produces a document or thing, to an investigation under Part 4 has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

### **76 Protection for people making a complaint**

- (1) A person who makes a complaint is not personally liable for any loss, damage or injury suffered by another person merely because of the making of the complaint.
- (2) A person who produces a document or gives any information or evidence to the Commissioner in making a complaint is not personally liable for any loss, damage or injury suffered by another person merely because of the production of the document or the giving of the information or evidence.
- (3) Nothing in this section derogates from the protection of a person under section 75.

### **77 Protection against self incrimination**

It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under Part 2, 3, 4 or 5 or section 129, or by or under a search warrant or investigation hearing notice issued under Division 3 or 4 of Part 5 if the giving of the information or the doing of that other thing would tend to incriminate the person.

### **78 Legal professional privilege and client legal privilege**

It is a reasonable excuse for a person to refuse or fail to give information or do any other thing that the person is required to do by or under Part 2, 3, 4 or 5 or section 129, or by or under a search warrant or investigation hearing notice issued under Division 3 or 4 of Part 5 if the giving of the information or the doing of that other thing would be a breach of legal professional privilege or client legal privilege.

### **79 Representation**

- (1) A person may be accompanied or represented by another person in relation to any process under this Act.
- (2) If the Commissioner so authorises, a person may be represented by an Australian legal practitioner in relation to any process under this Act.
- (3) A person may be represented by an Australian legal practitioner when the person is—
  - (a) giving evidence to the Commissioner or an Assistant Commissioner; or
  - (b) producing documents to the Commissioner or an Assistant Commissioner under an investigation hearing notice.

### **80 Offence to threaten etc. complainant**

- (1) A person must not, by threat or intimidation, persuade or attempt to persuade another person not to make a complaint under this Act or not to continue with any process under this Act.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

- (2) A person must not refuse to employ, or dismiss another person, or subject another person to any detriment because the other person—

(a) intends to make, makes or has made a complaint under this Act; or

(b) intends to take part in, or takes part in, or has taken part in any process under this Act.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

### **81 Offence to make false statements**

A person must not for the purpose of taking part in any process under this Act or while taking part in any process under this Act make a statement that is false or misleading in any material particular.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

## **Part 7—Statements**

### **Division 1—Follow up statements**

#### **82 Statement about failure to give written response**

- (1) The Commissioner may publish a statement setting out the name of a health service provider if the health service provider has failed to provide a written response under section 58 in the time required in a follow up report under section 56(2)(c).
- (2) The Commissioner may set out in a follow up statement any other details that are reasonably relevant to advise the public of the recommended action identified by the Commissioner.
- (3) A follow up statement must be published on the Internet site of the Commissioner.

#### **83 Submissions on publication of follow up statement**

- (1) Before publishing a follow up statement, the Commissioner must give the health service provider a reasonable opportunity to make oral or written submissions on the proposed publication of the statement.
- (2) The Commissioner must give the health service provider written notice of the opportunity to make submissions.
- (3) A notice under subsection (2) must set out—
  - (a) whether or not oral or written submissions or both may be made; and
  - (b) if written submissions may be made, the time within which and the place to which the submissions must be made; and
  - (c) if oral submissions may be made, the time and place for making the submissions.



- (4) A notice under subsection (2) must be given within a reasonable time to allow for the preparation of the submissions and, where necessary, for attendance at the place for making submissions.

## **Division 2—Public interest statements**

### **84 Public health warning statements**

- (1) The Commissioner may publish a statement setting out the name of a health service provider if—
- (a) the Commissioner has completed an investigation under Part 4 as to the health service provided by the health service provider and the Commissioner reasonably believes a person has suffered, or is likely to suffer, a detriment as a result of the provision of the health service by the provider; and
  - (b) the Commissioner reasonably believes that it is necessary to publish the statement to avoid a serious risk to—
    - (i) the life, health, safety or welfare of a person; or
    - (ii) the health, safety or welfare of the public.
- (2) The Commissioner may set out in a public health warning statement any other details that are reasonably relevant to advise the public of the serious risk identified by the Commissioner.
- (3) A public health warning statement must be published in a newspaper circulating throughout the State and on the Internet site of the Commissioner.

### **85 Revocation of public health warning statement**

- (1) The Commissioner may revoke a public health warning statement by publishing a statement setting out the reason for the revocation of the statement.
- (2) A statement under subsection (1) must be published in a newspaper circulating throughout the State and on the Internet site of the Commissioner.

### **86 Correction of public health warning statement**

- (1) If the Commissioner finds a public health warning statement to be incorrect, the Commissioner must publish a correction statement setting out the reason for the correction.
- (2) A statement under subsection (1) must be published in a newspaper circulating throughout the State and on the Internet site of the Commissioner.

### **87 General health service warning statements**

- (1) The Commissioner may publish a statement setting out the name of a general health service provider if the Commissioner has commenced an investigation under Part 4 and the Commissioner reasonably believes that—
  - (a) the general health service provider has contravened a code of conduct applying to the general health service; and
  - (b) it is necessary to publish the statement to avoid an imminent and serious risk to—
    - (i) the life, health, safety or welfare of a person; or
    - (ii) the health, safety or welfare of the public.

- (2) The Commissioner may publish a statement setting out the name of a general health service provider—
- (a) if—
    - (i) the general health service provider has been convicted or found guilty of a prescribed offence; or
    - (ii) after completing an investigation under Part 4, the Commissioner is satisfied that the general health service provider has contravened a code of conduct applying to the general health service; and
  - (b) the Commissioner reasonably believes that it is necessary to publish the statement to avoid a serious risk to—
    - (i) the life, health, safety or welfare of a person; or
    - (ii) the health, safety or welfare of the public.
- (3) The Commissioner may set out in a general health warning statement any other details that are reasonably relevant to advise the public of the serious risk identified by the Commissioner.
- (4) A general health warning statement must be published in a newspaper circulating throughout the State and on the Internet site of the Commissioner.

### **88 Revocation of general health service warning statement**

- (1) The Commissioner may revoke a general health service warning statement by publishing a statement to—

- (a) advise the public that the serious risk no longer exists; and
  - (b) set out the reason for the revocation of the statement.
- (2) The Commissioner must revoke a general health service warning statement under section 87(1), if on the completion of the investigation under Part 4 the Commissioner finds that the general health service provider did not contravene any code of conduct applying to the general health service.
- (3) Revocation of a general health service warning statement under subsection (2) must be by publication of a statement setting out the reason for the revocation of the statement.
- (4) A statement under subsection (1) or (3) must be published in a newspaper circulating throughout the State and on the Internet site of the Commissioner.

**89 Correction of general health service warning statement**

- (1) If the Commissioner finds a general health service warning statement to be incorrect, the Commissioner must publish a correction statement setting out the reason for the correction.
- (2) A statement under subsection (1) must be published in a newspaper circulating throughout the State and on the Internet site of the Commissioner.

## **Part 8—Prohibition or regulation of the provision of general health services**

### **Division 1—Interim prohibition orders**

#### **90 Power to make an interim prohibition order**

- (1) If the Commissioner is, in an investigation under Part 4, investigating whether or not a code of conduct applying to a general health service has been contravened, the Commissioner may make an order—
  - (a) prohibiting the general health service provider from providing all or part of the general health service being investigated for up to 12 weeks; or
  - (b) imposing the conditions that the Commissioner is satisfied are appropriate on the provision by the general health service provider of all or part of the general health service being investigated for up to 12 weeks.
- (2) As soon as possible after the order is made, the Commissioner must serve a written copy of the order on the general health service provider to whom it applies.
- (3) An order under this section takes effect on the service of the order on the general health service provider to whom it applies.

**91 Matters to be considered for making interim prohibition order**

The Commissioner must not make an interim prohibition order—

- (a) unless—
  - (i) the Commissioner reasonably believes that the general health service provider has contravened a code of conduct applying to the general health service being provided; or
  - (ii) the general health service provider has been convicted or found guilty of a prescribed offence; and
- (b) unless the Commissioner is satisfied that it is necessary to make the order to avoid a serious risk to—
  - (i) the life, health, safety or welfare of a person; or
  - (ii) the health, safety or welfare of the public.

**92 Publication of information as to interim prohibition order**

- (1) As soon as practicable after an interim prohibition order is made, the Commissioner must publish—
  - (a) the name of the general health service provider on whom the order is imposed; and
  - (b) the effect of the order; and
  - (c) the date on which the order takes effect; and
  - (d) the date on which the order expires.
- (2) A publication under subsection (1) must be made in the Government Gazette and on the Internet site of the Commissioner.

**93 Offence for contravention of interim prohibition order**

A general health service provider who has been served with an interim prohibition order must comply with the order.

Penalty: In the case of a natural person,  
240 penalty units or 2 years  
imprisonment or both;

In the case of a body corporate,  
1200 penalty units.

**94 Revocation of interim prohibition order**

- (1) The Commissioner must revoke an interim prohibition order, by order, if the Commissioner is satisfied that the order is no longer required to avoid a serious risk to—
  - (a) the life, health, safety or welfare of a person;  
or
  - (b) the health, safety or welfare of the public.
- (2) An order under subsection (1) must—
  - (a) set out the name of the general health service provider; and
  - (b) set out the date and time at which the order takes effect under subsection (4); and
  - (c) advise the public—
    - (i) that the serious risk no longer exists;  
and
    - (ii) of the reason why the interim prohibition order is revoked.

- (3) As soon as possible after making an order under subsection (1), the Commissioner must—
  - (a) serve a copy of the order on the general health service provider to whom it applies; and
  - (b) publish the order in the Government Gazette and on the Internet site of the Commissioner.
- (4) An order under subsection (1) takes effect on the service of the order on the general health service provider to whom it applies.

## **Division 2—Prohibition orders**

### **95 Power to make a prohibition order**

- (1) If the Commissioner has conducted an investigation under Part 4 into a possible contravention by a general health service provider of a code of conduct applying to the general health service, the Commissioner may make an order—
  - (a) prohibiting the general health service provider from providing all or part of the general health service permanently or for the period specified by the Commissioner in the order; or
  - (b) imposing the conditions that the Commissioner is satisfied are appropriate on the provision of all or part of the general health service by the general health service provider, either permanently or for the period specified by the Commissioner in the order.
- (2) As soon as possible after the order is made, the Commissioner must serve a written copy of the order on the general health service provider to whom it applies.



- (3) An order under this section takes effect on the service of the order on the general health service provider to whom it applies.

**96 Matters to be considered for making prohibition order**

The Commissioner must not make a prohibition order—

- (a) unless—
- (i) the Commissioner is satisfied that the general health service provider has contravened a code of conduct applying to the general health service; or
  - (ii) the general health service provider has been convicted or found guilty of a prescribed offence; and
- (b) unless the Commissioner is satisfied that it is necessary to make the order to avoid a serious risk to—
- (i) the life, health, safety or welfare of a person; or
  - (ii) the health, safety or welfare of the public.

**97 Publication of information as to prohibition order**

- (1) As soon as practicable after a prohibition order is made, the Commissioner must publish—
- (a) the name of the general health service provider on whom the order is imposed; and
  - (b) the effect of the order; and
  - (c) the date on which the order takes effect under section 95(3); and
  - (d) if the order expires on a specified date, that date.

- (2) A publication under subsection (1) must be made in the Government Gazette and on the Internet site of the Commissioner.

### **98 Offence for contravention of prohibition order**

A general health service provider who has been served with a prohibition order must comply with the order.

Penalty: In the case of a natural person,  
240 penalty units or 2 years  
imprisonment or both;

In the case of a body corporate,  
1200 penalty units.

### **99 Variation of prohibition order**

- (1) The Commissioner, by order, must vary a prohibition order if the Commissioner is satisfied that the restrictions contained in the prohibition order should be reduced.
- (2) An order under subsection (1) varying a prohibition order must set out—
- (a) the name of the general health service provider; and
  - (b) when variation of the prohibition order takes effect under subsection (4); and
  - (c) the nature of the variation.
- (3) As soon as possible after making an order under subsection (1), the Commissioner must—
- (a) serve a copy of the order on the general health service provider to whom it applies; and
  - (b) publish the order in the Government Gazette and on the Internet site of the Commissioner.

- (4) An order under subsection (1) takes effect on the service of the order on the general health service provider to whom it applies.

### **100 Revocation of prohibition order**

- (1) The Commissioner, by order, must revoke a prohibition order if the Commissioner is satisfied that the order is no longer required to avoid a serious risk to—
- (a) the life, health, safety or welfare of a person;  
or
  - (b) the health, safety or welfare of the public.
- (2) An order under subsection (1) must—
- (a) set out the name of the general health service provider; and
  - (b) set out the date and time at which the order takes effect under subsection (4); and
  - (c) advise the public—
    - (i) that the serious risk no longer exists;  
and
    - (ii) of the reason why the prohibition order is revoked.
- (3) As soon as possible after making an order under subsection (1), the Commissioner must—
- (a) serve a copy of the order on the general health service provider to whom it applies;  
and
  - (b) publish the order in the Government Gazette and on the Internet site of the Commissioner.
- (4) An order under subsection (1) takes effect on the service of the order on the general health service provider to whom it applies.

### **Division 3—Review of orders and offence**

#### **101 Application for VCAT review of decision to impose interim prohibition order or prohibition order**

- (1) A general health service provider on whom the Commissioner has imposed an interim prohibition order or a prohibition order may apply to VCAT for a review of the Commissioner's decision to impose the order.
- (2) An application for review under subsection (1) must be made within 28 days after the later of—
  - (a) the day on which the order is served on the general health service provider; or
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

#### **102 Offence to provide certain services if prohibited from doing so in another State or Territory**

A person must not provide a general health service in Victoria if, in another State or a Territory of the Commonwealth, the person is prohibited from providing a service in the nature of that general health service.

Penalty: In the case of a natural person,  
240 penalty units or 2 years  
imprisonment or both;

In the case of a body corporate,  
1200 penalty units.

## **Part 9—Inquiries**

### **103 Power to inquire into referred health service matters**

- (1) The Commissioner may inquire into any health service matter referred to the Commissioner by—
  - (a) a House of the Parliament or a Parliamentary Committee; or
  - (b) the Minister.
- (2) On completing the inquiry the Commissioner may make recommendations about the health service matter dealt with in the inquiry to the person or body who referred the matter to the Commissioner.

### **104 Conduct of inquiry**

- (1) In conducting an inquiry under section 103, the Commissioner may hold public hearings.
- (2) In conducting a public hearing, the Commissioner—
  - (a) may take oral or written submissions from the public; and
  - (b) may send for persons, documents or other things; and
  - (c) is bound by the rules of natural justice; and
  - (d) is not bound by the rules of evidence; and
  - (e) must keep a record of all submissions and evidence given before the Commissioner and decisions made by the Commissioner.

## **Part 10—Complaint data review**

### **105 Power to conduct a complaint data review**

- (1) The Commissioner may conduct a review of any information given to the Commissioner in dealing with a complaint or in the conduct of an investigation under Part 4, if the Commissioner reasonably believes persistent or recurrent issues related to the provision of a health service may be identified by the conduct of a review.
- (2) The Commissioner may provide advice based on the results of a complaint data review to a health service provider regarding the provision of a health service.

### **106 Conduct of a complaint data review**

- (1) In conducting a complaint data review about data relating to a health service provider the Commissioner must give written notice to the health service provider of—
  - (a) the process to be followed in conducting the complaint data review; and
  - (b) the matter that is to be reviewed.
- (2) The Commissioner in conducting a complaint data review—
  - (a) must act as expeditiously and with as little formality as is reasonably possible; and
  - (b) is bound by the rules of natural justice; and
  - (c) is not bound by the rules of evidence; and
  - (d) before making a decision affecting a person, must give the person an opportunity to make submissions to the Commissioner about the decision.

**107 Commissioner's report on complaint data review**

- (1) On completing a complaint data review the Commissioner may prepare a written report of the review.
- (2) In the report the Commissioner must set out—
  - (a) a description of the matter reviewed; and
  - (b) any findings made as a result of the review; and
  - (c) any recommendation of action that a health service provider should take and the time within which to carry out the recommendation; and
  - (d) the time within which a written response under section 109 (if any) must be given to the Commissioner; and
  - (e) if so requested by a person who made submissions in the review and against whom the Commissioner has made an adverse decision, a summary of the submissions made in relation to that decision.

**108 Persons to whom complaint data review report to be given**

The Commissioner—

- (a) must give a complaint data review report to the health service provider to whom notice has been given under section 106; or
- (b) if there is more than one health service provider, give that part of a complaint data review report that relates to a health service provider to that health service provider.

### **109 Response by health service provider**

A health service provider who has received a complaint data review report setting out recommendations that apply to the health service provider may give a written response to that report to the Commissioner, within the time set out in the report by the Commissioner, which—

- (a) states the action that has been taken to implement the recommendations; and
- (b) if a recommendation has not been implemented gives a reason why the recommendation has not been implemented and sets out a plan—
  - (i) to implement the recommendation; or
  - (ii) to address the issue dealt with in the recommendation.



## **Part 11—Health Complaints Commissioner**

### **Division 1—Appointment, terms and conditions**

#### **110 Health Complaints Commissioner**

There is to be a Health Complaints Commissioner.

#### **111 Appointment**

The Governor in Council, on the recommendation of the Minister, may by instrument appoint a person as Health Complaints Commissioner.

#### **112 Remuneration**

The Commissioner is entitled to the remuneration and allowances determined from time to time by the Governor in Council.

#### **113 Terms and conditions of appointment**

- (1) The Commissioner—
  - (a) holds office for the period, not exceeding 5 years, that is specified in the instrument of appointment; and
  - (b) is eligible for reappointment; and
  - (c) is appointed on a full-time or part-time basis and holds office on the terms and conditions that are specified in the instrument of appointment.
- (2) If the Commissioner was immediately before the Commissioner's appointment an officer within the meaning of the **State Superannuation Act 1988**, the Commissioner continues to be such an officer during the term of office as the Commissioner.
- (3) The Commissioner is not, in respect of the office of Commissioner, subject to the **Public Administration Act 2004**.

#### **114 Acting appointment**

- (1) The Governor in Council may appoint a person to act as the Commissioner—
  - (a) during a vacancy in the office of the Commissioner; or
  - (b) during any period when—
    - (i) the Commissioner is absent; or
    - (ii) the Commissioner is for any other reason unable to perform the duties of the office of Commissioner.
- (2) The Minister may appoint a person to act as the Commissioner for a period of not more than 6 months during any period when the Commissioner is absent.
- (3) A person appointed under subsection (1) is entitled to the remuneration and allowances that are determined from time to time by the Governor in Council.
- (4) A person appointed under subsection (2) is entitled to the remuneration and allowances that are determined by the Minister.
- (5) While a person is acting as the Commissioner, the person has all the powers and may perform any of the functions of the Commissioner.
- (6) The Governor in Council may revoke an appointment under subsection (1) at any time.
- (7) The Minister may revoke an appointment under subsection (2) at any time.

#### **115 Vacancy and resignation**

The Commissioner ceases to hold office if the Commissioner—

- (a) resigns by writing delivered to the Minister;  
or

- (b) becomes insolvent under administration; or
- (c) is convicted of an indictable offence or of an offence that, if committed in Victoria, would be an indictable offence; or
- (d) nominates for election for or is elected to—
  - (i) the Parliament of Victoria; or
  - (ii) the Parliament of the Commonwealth or of another State or a Territory of the Commonwealth; or
  - (iii) a Council, within the meaning of the **Local Government Act 1989**; or
- (e) is removed from office under section 116.

#### **116 Removal from office**

The Governor in Council, on the recommendation of the Minister, may remove the Commissioner from office on any of the following grounds—

- (a) any misconduct of the Commissioner in carrying out the duties of the office;
- (b) a conflict of interest of the Commissioner when carrying out the duties of the office;
- (c) any neglect of the Commissioner in carrying out the duties of the office;
- (d) an inability of the Commissioner to perform the duties of the office;
- (e) the Commissioner engaging in paid employment outside the duties of the office without the consent of the Minister.

#### **117 Validity of decisions**

A decision of the Commissioner is not invalid merely because of a defect or irregularity in, or in connection with, the appointment of the Commissioner.

## **Division 2—Functions and powers**

### **118 Functions and powers of the Commissioner**

- (1) The Commissioner has the following functions—
- (a) to assist in the formulation of complaints;
  - (b) to receive complaints;
  - (c) to determine how complaints should be dealt with in accordance with this Act;
  - (d) to deal with complaints in accordance with this Act;
  - (e) to conduct investigations under Part 4, complaint data reviews and inquiries in accordance with this Act;
  - (f) to publish complaint handling standards;
  - (g) to provide information and education to health service providers about their responsibilities in handling complaints;
  - (h) to provide information and education to the public regarding the health service principles, the complaint handling standards, the complaints process and the responsibilities of health service providers;
  - (i) to provide information to the public about the measures the Commissioner may take to protect the public from any risks posed by a health service;
  - (j) to provide advice to the Minister on or in relation to any code of conduct;
  - (k) to conduct and support research in respect of complaint handling and matters relevant to the improvement of the quality of health service systems;

- (l) to report any findings to the Secretary relevant to the delivery of a health service identified as a result of the analysis of, investigation of or dealing with complaints about the health service or the conduct of an inquiry or complaint data review under this Act;
  - (m) any other function conferred on the Commissioner by this or any other Act.
- (2) The Commissioner has all the powers that are necessary or convenient to perform his or her functions under this or any other Act.

### **119 Recommendations to the Commissioner**

An Assistant Commissioner may make a recommendation to the Commissioner in respect of the exercise of any function or power of the Commissioner under Part 7 or 8.

### **120 Power to delegate**

- (1) The Commissioner must not delegate—
- (a) any function or power of the Commissioner under any of the following provisions—
    - (i) Part 7;
    - (ii) Part 8;
    - (iii) section 103;
    - (iv) section 124;
    - (v) section 128;
    - (vi) Division 4 of Part 11;

S. 120  
substituted by  
No. 52/2017  
s. 97.

S. 120(1)(a)(vi)  
amended by  
No. 4/2018  
s. 25(1).

S.  
120(1)(a)(vii)  
inserted by  
No. 4/2018  
s. 25(2).

(vii) section 156A; or

(b) this power of delegation.

(2) The Commissioner, by instrument, may delegate to an Assistant Commissioner—

(a) any function or power of the Commissioner under—

(i) section 24; or

(ii) section 29; or

(iii) section 30; or

(iv) section 31; or

(v) section 35; or

(vi) section 39; or

(vi) section 41; or

(vii) section 62; or

(viii) section 65; or

(ix) section 69; or

(b) any function or power that the Commissioner may delegate under subsection (3).

(3) The Commissioner, by instrument, may delegate to a person referred to in section 121 (other than an Assistant Commissioner) or to a class of that person any function or power of the Commissioner under this Act except a function or power referred to in subsection (1) or (2)(a).

## 121 Staff

(1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees that are necessary to enable the Commissioner to perform a function or a power.

- (2) There may be employed under Part 3 of the **Public Administration Act 2004** one or more persons as Assistant Health Complaints Commissioners.
- (3) The Commissioner may enter into an agreement or arrangement for the use of the services of any person with suitable qualifications or experience to assist the Commissioner in the performance of the Commissioner's functions and powers under this Act.
- (4) An agreement or arrangement under subsection (3) may be on any terms and conditions that the Commissioner is satisfied are appropriate.

## **122 Protection from liability for Commissioner and Assistant Commissioners**

- (1) The Commissioner or an Assistant Commissioner is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a power or the performance of a function under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under this Act.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to the Commissioner or Assistant Commissioner attaches instead to the State.
- (3) Nothing in this section derogates from the protection for the Commissioner or an Assistant Commissioner under section 74.
- (4) In this section, *Commissioner* includes a person appointed to act as the Commissioner under section 114.

S. 122(4)  
inserted by  
No. 4/2018  
s. 26.

## **Division 3—Performance of the Commissioner**

### **123 Guiding principles of the Commissioner**

The Commissioner in carrying out a function or power under this Act must—

- (a) act in a fair, impartial and independent manner; and
- (b) act in the public interest; and
- (c) encourage complainants and health service providers to participate in the complaint process; and
- (d) seek to resolve complaints promptly and improve the quality of health services; and
- (e) as far as is practicable, protect the public from any serious risk that a health service provider poses to the health, safety or welfare of the public; and
- (f) act in a manner that is transparent, accountable and consistent; and
- (g) act in an efficient, effective and flexible manner that avoids unnecessary formality; and
- (h) take as far as practicable the least intrusive and onerous measures that are appropriate in the circumstances; and
- (i) act in a consultative and collaborative manner to the extent that is consistent with the carrying out of a function or power.

### **124 Preparation of practice protocol**

- (1) The Commissioner must prepare a practice protocol that—
  - (a) sets out the measures to be taken to enhance the transparency and accountability of the Commissioner; and



- (b) describes what complainants, the public and health service providers can reasonably expect in respect of the processes of the Commissioner; and
  - (c) establishes the measures that are to be applied to ensure that the guiding principles are given effect.
- (2) The Commissioner must prepare the practice protocol within 2 years of this section coming into operation.
  - (3) Before preparing the practice protocol, the Commissioner must consult with any person that the Commissioner is satisfied has a relevant interest.
  - (4) The Commissioner must have regard to the guiding principles in preparing the practice protocol.

#### **125 Approval of practice protocol**

- (1) The Commissioner must give the practice protocol prepared under section 124 to the Minister for approval.
- (2) The Minister may approve the practice protocol.

#### **126 Publication of approved practice protocol**

The Commissioner must publish the approved practice protocol on the Internet site of the Commissioner.

#### **127 Review of approved practice protocol**

The approved practice protocol must be reviewed at least once every 3 years by the Commissioner in consultation with any person the Commissioner is satisfied has a relevant interest.

**128 Amended practice protocol after review**

- (1) On completing a review of the approved practice protocol, the Commissioner may prepare an amended practice protocol.
- (2) Sections 124(1), (3) and (4), 125 and 126 apply to an amended practice protocol as if the amended practice protocol were the practice protocol prepared under section 124(1).

**Division 4—Information gathering,  
reports and standards**

**129 Power to require information to be given**

- (1) The Commissioner, by written notice, may require a health service provider to give to the Commissioner non-identifying information in respect of complaints received or dealt with by the health service provider.
- (2) A notice under subsection (1) must—
  - (a) specify the nature of the information to be given, which must be information that it is reasonable for the Commissioner to require; and
  - (b) set out a reasonable period of time within which the health service provider must give the information to the Commissioner.
- (3) The Commissioner may extend the time within which a health service provider must comply with a requirement under this section.

- (4) A health service provider must comply with a requirement under this section within the time specified by the Commissioner, unless the health service provider has a reasonable excuse not to do so.

Penalty: In the case of a natural person,  
10 penalty units;  
In the case of a body corporate,  
50 penalty units.

### **130 Making public a report or findings**

The Commissioner may from time to time make available to the public any report of the results of the analysis of information given under section 129 or any findings that arose as a result of the analysis.

### **131 Interim complaint handling standards**

- (1) Schedule 1 sets out the interim standards for complaint handling by a health service provider.
- (2) The interim standards for complaint handling set out in Schedule 1 apply to the handling of complaints by health service providers until standards referred to in paragraph (a) of the definition of complaint handling standards take effect.

### **132 Standards for complaint handling**

- (1) The Commissioner must prepare a document that sets out the standards to be met by health service providers in handling complaints in respect of the following matters—
  - (a) the provision of information regarding the making of complaints in an accessible form;
  - (b) the acknowledgement of complaints in a prompt manner;

- (c) the requirements to resolve complaints promptly;
  - (d) keeping each complainant informed about the handling of a relevant complaint;
  - (e) advising each complainant of the outcome of the relevant complaint;
  - (f) keeping personal information confidential;
  - (g) keeping records of all complaints, complaint handling and outcomes;
  - (h) any other matter for or with respect to the handling of complaints by health service providers.
- (2) The Commissioner must prepare a document under subsection (1) within 2 years of section 131 and Schedule 1 coming into effect.

### **133 Making of standards**

- (1) The Commissioner must give the document prepared under section 132 to the Minister.
- (2) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may make standards for or with respect to the matters set out in section 132(1).

### **134 Review of standards**

The Commissioner must review complaint handling standards at least once every 3 years in consultation with—

- (a) any relevant health service provider; and
- (b) any other person the Commissioner is satisfied has a relevant interest.

**135 Amendment or revocation of standards**

The Commissioner may prepare a document of amended complaint handling standards or a document of revocation of complaint handling standards—

- (a) on the Commissioner's initiative; or
- (b) on completing a review under section 134.

**136 Amending or revoking complaint handling standards**

- (1) The Commissioner must give a document prepared under section 135 to the Minister.
- (2) On the recommendation of the Minister, the Governor in Council, by order published in the Government Gazette, may—
  - (a) make amended complaint handling standards for or with respect to the matters set out in section 132(1); or
  - (b) revoke the complaint handling standards.

**137 Date on which order takes effect**

An order making complaint handling standards under section 133 or 136 or revoking complaint handling standards under section 136 takes effect—

- (a) on the day that is 20 business days after the day that the order is made; or
- (b) if a later day is specified in the order, on that later day.

**138 Annual report**

- (1) The Commissioner in respect of each financial year must prepare a report on the performance of the Commissioner's functions under this Act during the financial year.

- (2) The report must include—
- (a) information regarding the frequency of the exercise of the powers and functions of—
    - (i) the Commissioner in relation to the making, publication or issuing or giving of statements, notices or orders under Part 7 or 8 (except section 83) during the financial year; and
    - (ii) the Secretary or the Commissioner under sections 150(2)(b)(ii), 150(3), 151(2)(c), 151(2)(f), 152(2)(b) and 152(2)(d) during the financial year; and
  - (b) any information requested by the Minister to be included in the report; and
  - (c) any other information determined by the Commissioner.

### **139 Giving the report to Parliament**

- (1) As soon as practicable after the end of each financial year but not later than 30 November, the Commissioner must give a copy of a report under section 138 to the clerk of each House of the Parliament.
- (2) The clerk of each House of the Parliament must cause the report to be laid before the House on—
  - (a) the day on which it is received; or
  - (b) the next sitting day of the House.

## **Part 12—Health Complaints Commissioner Advisory Council**

### **140 Establishment of Health Complaints Commissioner Advisory Council**

The Health Complaints Commissioner Advisory Council is established.

### **141 Membership of the Council**

- (1) The Council consists of not less than 5 members and not more than 7 members appointed by the Minister.
- (2) The Minister must ensure that persons appointed as members have appropriate knowledge and experience to be members of the Council.
- (3) The Minister must appoint one of the members who is an Australian lawyer to be President of the Council.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the Council in respect of the office of the member.

### **142 Terms and conditions of office**

- (1) A member of the Council holds office for the period, not exceeding 3 years, specified in the member's instrument of appointment.
- (2) A member of the Council is eligible for reappointment but must not serve more than 9 consecutive years as a member.
- (3) A member of the Council, other than a member who is an employee of the public service, is entitled to receive the remuneration and allowances fixed from time to time by the Minister, in respect of that member, that are specified in the member's instrument of appointment.

### **143 Quorum and proceedings**

- (1) The Council President may convene meetings of the Council.
- (2) A quorum of the Council consists of a majority of the members of the Council.
- (3) A resolution may be made at a meeting at which there is a quorum by a majority of the members present, unless the rules of the Council provide otherwise.
- (4) Subject to this Act, the Council may regulate its own proceedings.

### **144 Resignation and removal**

- (1) A member of the Council may resign by writing given to the Minister.
- (2) The Minister may remove a member of the Council from office at any time.

### **145 Ceasing to hold office**

A member of the Council ceases to hold office if the member—

- (a) fails to attend 3 consecutive meetings of the Council without leave from the Council; or
- (b) has become insolvent under administration; or
- (c) has been convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.

### **146 Effect of a vacancy or defect**

An act or decision of the Council is not invalid only because of—

- (a) a vacancy, including an initial vacancy, in its membership; or



- (b) a defect or irregularity in the appointment of its members.

**147 Functions of the Health Complaints Commissioner Advisory Council**

The functions of the Council are to—

- (a) liaise with health service providers and consumers of health services to advise the Commissioner on the development of the practice protocol under section 124 and complaint handling standards; and
- (b) provide advice to the Commissioner, on the request of the Commissioner, regarding any function or power of the Commissioner.

## **Part 13—General**

### **Division 1—Disclosure of information**

#### **148 Commissioner may give information or copies of orders to other bodies or jurisdictions**

- (1) For the purposes of this Act, the National Law or a relevant law, the Commissioner may give information obtained in the course of administering this Act that is or may be the subject of or relevant to a complaint, investigation or inquiry under the National Law or a relevant law to—
  - (a) in the case of the National Law, the Australian Health Practitioner Regulation Agency or any relevant National Board; or
  - (b) in any other case, the person or body responsible for dealing with the matter under the relevant law.
- (2) If the Commissioner makes an interim prohibition order or a prohibition order, the Commissioner may give a copy of the order to—
  - (a) the Australian Health Practitioner Regulation Agency or any relevant National Board; and
  - (b) any person or body dealing with health complaints under the jurisdiction of another State or a Territory of the Commonwealth, if the person or body has the power to make orders in the nature of the order.

#### **149 Commissioner is authorised to receive information under the National Law**

- (1) To avoid doubt, the Commissioner is a State entity for the purposes of sections 219 and 220 of the National Law.

- (2) A disclosure of protected information (within the meaning of the National Law) to the Commissioner is authorised and permitted for the purposes of section 216(2)(b) and (c) of the National Law.

**150 Non-disclosure of information—investigations, complaint data reviews**

- (1) A person must not disclose any information gained by that person in the course of an investigation or a complaint data review, except as authorised under this section.

Penalty: In the case of a natural person,  
60 penalty units;

In the case of a body corporate,  
300 penalty units.

- (2) Despite subsection (1), the Commissioner or a member of the staff of the Commissioner is authorised and may disclose information to which subsection (1) applies—
- (a) if the Commissioner reasonably believes that the disclosure is necessary for or in connection with the administration of this Act; or
- (b) in the following circumstances—
- (i) the disclosure is for the purposes of any legal proceedings arising out of this Act;
- (ii) the disclosure is with the written authority of the Secretary, if the Secretary reasonably believes it is in the public interest to do so;
- (iii) the disclosure is with the written authority of the person to whom the information relates;

- (iv) the disclosure is to the Australian Health Practitioner Regulation Agency or a relevant National Board and is made for the purposes of section 148.
- (3) Despite subsection (1), the Commissioner is authorised and may disclose information to which subsection (1) applies if the Commissioner reasonably believes that the disclosure is necessary to avoid a serious and imminent risk to—
  - (a) the life, health, safety or welfare of a person; or
  - (b) the health, safety or welfare of the public.

**151 Non-disclosure of information—complaint resolution processes**

- (1) The Commissioner or a member of the staff of the Commissioner must not disclose any information gained by that person in the course of a complaint resolution process, except as authorised under this section.  
Penalty: 60 penalty units.
- (2) Despite subsection (1), the Commissioner is authorised and may disclose information to which subsection (1) applies if—
  - (a) the Commissioner reasonably believes that the disclosure is necessary for or in connection with the administration of this Act; or
  - (b) the disclosure is for the purposes of any legal proceedings arising out of this Act; or
  - (c) the disclosure is made with the written authority of the Secretary, and the Secretary reasonably believes it is in the public interest to do so; or

- (d) the disclosure is made with the written authority of the person to whom the information relates; or
- (e) the disclosure is to the Australian Health Practitioner Regulation Agency or a relevant National Board and is made for the purposes of section 148; or
- (f) the Commissioner reasonably believes that the disclosure is necessary to avoid a serious and imminent risk to—
  - (i) the life, health, safety or welfare of a person; or
  - (ii) the health, safety or welfare of the public.

**152 Non-disclosure of information given in conciliation**

- (1) Each of the following persons must not disclose outside a conciliation any information gained by the person in the conciliation, other than information as to the terms of or about an undertaking given in the conciliation—
  - (a) the Commissioner;
  - (b) any member of the staff of the Commissioner.

Penalty: 60 penalty units.

- (2) Despite subsection (1), a person listed in subsection (1) is authorised and may disclose information to which subsection (1) applies if—
  - (a) the disclosure is made with the written authority of the person to whom the information relates; or
  - (b) the disclosure is made with the written authority of the Secretary, and the Secretary reasonably believes it is in the public interest to do so; or

- (c) the disclosure is made by a member of the staff of the Commissioner to the Commissioner or an Assistant Commissioner for the purposes of the Commissioner's functions under Part 3; or
- (d) the Commissioner reasonably believes that the disclosure is necessary to avoid a serious and imminent risk to—
  - (i) the life, health, safety or welfare of a person; or
  - (ii) the health, safety or welfare of the public.

**153 Non-disclosure of identifying information**

- (1) The Commissioner may decide that, as to any process under this Act, any of the following information is not to be disclosed in the conduct of that process by the Commissioner—
  - (a) the name of any complainant;
  - (b) the name of any person who received or sought a health service;
  - (c) the name of any person who was the subject of conduct dealt with in a Commissioner initiated investigation or a referral investigation;
  - (d) any identifying information about a person to whom paragraph (a), (b) or (c) applies.
- (2) The Commissioner must not make a decision under subsection (1) unless the Commissioner is satisfied that—
  - (a) there are special circumstances; and
  - (b) it is in the complainant's or the person's interests not to disclose the information.

- (3) In making a decision under this section, the Commissioner must consider whether not disclosing the information would unreasonably limit another person's right to natural justice.
- (4) The Commissioner may revoke a decision under subsection (1) if the Commissioner is no longer satisfied of the matters set out in subsection (2).

### **Division 2—General code of conduct**

#### **154 General code of conduct**

- (1) Schedule 2 sets out the general code of conduct in respect of general health services.
- (2) The general code of conduct set out in Schedule 2 applies until a general code of conduct in respect of general health services is prescribed by the regulations.

#### **Note**

Additional codes of conduct may be prescribed by regulation see the definition of *code of conduct* in section 3.

### **Division 3—Criminal record check**

#### **155 Criminal record check**

- (1) For the purposes of section 87, 91 or 96, the Commissioner may—
  - (a) request the Chief Commissioner of Police to give the Commissioner information concerning any criminal record of a general health service provider; and
  - (b) for the purpose of the request, give the Chief Commissioner of Police any information concerning the general health service provider that is necessary to conduct a check on any criminal record of the health service provider.

(2) On a request under subsection (1), the Chief Commissioner of Police may give the information sought to the Commissioner.

(3) In this section—

*Chief Commissioner of Police* means the Chief Commissioner of Police appointed under section 17 of the **Victoria Police Act 2013**.

## **Division 4—General matters and regulations**

### **156 Method of service**

If a statement, notice, order or other document is required to be served under this Act, it may be served in the prescribed manner or by—

- (a) leaving a copy with the person to be served;  
or
- (b) if the person does not accept the copy, by putting the copy down in the person's presence and telling the person the nature of the order.

S. 156A  
inserted by  
No. 4/2018  
s. 27.

### **156A Power to bring proceedings**

The following persons may bring proceedings for an offence against this Act or the regulations—

- (a) the Commissioner;
- (b) a person appointed to act as the Commissioner under section 114;
- (c) a police officer.

### **157 Review of Act**

- (1) The Minister must conduct a review of the operation of this Act.
- (2) The review must be conducted in the fourth year of the operation of the Act and be a review of the first 3 years of operation of the Act.



- (3) On completing the review, the Minister must cause a report of the review to be tabled before each House of the Parliament.

### **158 Regulations**

- (1) The Governor in Council may make regulations for or with respect to the following—
- (a) prescribing codes of conduct for general health services that make provision for or with respect to the following matters—
    - (i) the safe and ethical delivery of services;
    - (ii) the making of false claims;
    - (iii) the standards of infection control;
    - (iv) the keeping of records;
    - (v) the giving of correct and accurate information to the public;
  - (b) prescribing offences for the purposes of Parts 7 and 8;
  - (c) prescribing services as health services;
  - (d) any other matter or thing required by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
- (a) be of general or limited application; and
  - (b) differ according to differences in time, place or circumstances; and
  - (c) confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
  - (d) apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification

or method formulated, issued, prescribed or published by any person—

- (i) wholly or partially or as amended by the regulations; or
- (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
- (iii) as formulated, issued, prescribed or published from time to time.

## **Part 14—Transitional provisions**

### **159 Transitional provision for repeal of Health Services (Conciliation and Review) Act 1987**

- (1) Despite the commencement of section 160, the 1987 Act continues to apply to a complaint made under section 16 of that Act that is in existence immediately before the commencement day, as if a reference in that Act to the Health Services Commissioner (whether by title or otherwise) were a reference to the Health Complaints Commissioner.
- (2) Despite the commencement of section 160—
  - (a) the 1987 Act continues to apply in relation to an act or omission that occurred before the commencement day as if a reference in the 1987 Act to the Health Services Commissioner (whether by title or otherwise) were a reference to the Health Complaints Commissioner; and
  - (b) subject to subsection (3), the provisions of this Act (except this section) do not apply to that act or omission.
- (3) Part 3 of this Act applies in relation to a complaint made on or after the commencement day under the 1987 Act relating to an act or omission that occurred before the commencement day in place of section 20 of the 1987 Act and with any necessary modifications to the 1987 Act.
- (4) Any action that was being taken and any duty that was performed by the Health Services Commissioner under the 1987 Act before the commencement day, and that was not completed before the commencement day, may be dealt with by the Health Complaints Commissioner under that Act as continued on and after the commencement day.

- (5) A complaint that was referred to the Health Services Commissioner under section 46 of the **Health Records Act 2001**, and that was in existence immediately before the commencement day, may be dealt with by the Health Complaints Commissioner under that Act as in force on and after commencement day.
- (6) Any action that was being taken and any duty that was being performed by the Health Services Commissioner under the **Health Records Act 2001** before the commencement day, and that was not completed before the commencement day, may be dealt with by the Health Complaints Commissioner under that Act as in force on and after the commencement day.
- (7) In this section—

*commencement day* means the date of commencement of section 160;

*1987 Act* means the **Health Services (Conciliation and Review) Act 1987**.

Pt 15  
(Headings  
and  
ss 160–254)  
repealed by  
No. 22/2016  
s. 254.

\* \* \* \* \*

## **Schedule 1—Interim standards for complaint handling**

The following interim minimum standards for handling a complaint apply to a health service provider—

- (a) that a complaint made by a person about a health service provided to or sought by a person or an offer of a health service to a person, be promptly acknowledged and an attempt to resolve the complaint made in a manner that is appropriate to the circumstances;
- (b) that information about how a complaint may be made and the procedures for making a complaint is to be provided to a person who is provided or offered a health service by the health service provider;
- (c) that the complaint information is provided in an accessible and understandable form;
- (d) that a person who has made a complaint be informed of the progress of the complaint and any outcome of the complaint;
- (e) that personal information collected in respect of a complaint be kept in a confidential manner;
- (f) that a record of all complaints be kept including any action taken in respect of a complaint.

## **Schedule 2—General code of conduct in respect of general health services**

### **1 General health service providers to provide services in a safe and ethical manner**

- (1) A general health service provider must provide general health services in a safe and ethical manner.
- (2) Without limiting subclause (1), general health service providers must comply with the following—
  - (a) a general health service provider must maintain the necessary competence in the provider's field of practice;
  - (b) a general health service provider must not provide a health service of a type that is outside the provider's experience or training, or provide services that the provider is not qualified to provide;
  - (c) a general health service provider must only prescribe or recommend treatments or appliances that serve the needs of clients;
  - (d) a general health service provider must recognise the limitations of the treatment the provider can provide and refer clients to other competent health service providers in appropriate circumstances;
  - (e) a general health service provider must recommend to clients that additional opinions and services be sought, where appropriate;
  - (f) a general health service provider must assist a client to find other appropriate health care services, if required and practicable;

- (g) a general health service provider must encourage clients to inform their treating medical practitioner (if any) of the treatments or care being provided;
- (h) a general health service provider must have a sound understanding of any possible adverse interactions between the therapies and treatments being provided or prescribed and any other medications or treatments, whether prescribed or not, that the provider is, or should be, aware that a client is taking or receiving, and advise the client of these interactions;
- (i) a general health service provider must provide general health services in a manner that is culturally sensitive to the needs of the provider's clients.

## **2 General health service providers to obtain consent**

Prior to commencing a treatment or service, a general health service provider must ensure that consent appropriate to that treatment or service has been obtained and complies with the laws applying in Victoria.

## **3 Appropriate conduct in relation to treatment advice**

- (1) A general health service provider must accept the right of the provider's clients to make informed choices in relation to the health services the client seeks or receives.
- (2) A general health service provider must not attempt to dissuade a client from seeking or continuing medical treatment.
- (3) A general health service provider must communicate and co-operate with colleagues and other health service providers and agencies in the best interests of their clients.

**4 General health service providers to report concerns about the conduct of other health service providers**

A general health service provider who, in the course of providing treatment or care, forms the reasonable belief that another health service provider has placed or is placing clients at serious risk of harm must refer the matter to the Commissioner.

**5 General health service providers to take appropriate action in response to adverse events**

- (1) A general health service provider must take appropriate and timely measures to minimise harm to clients when an adverse event occurs in the course of providing treatment or care.
- (2) Without limiting subclause (1), a general health service provider must—
  - (a) ensure that appropriate first aid is available to deal with any adverse event; and
  - (b) obtain appropriate emergency assistance in the event of any serious adverse event; and
  - (c) promptly disclose the adverse event to the client and take appropriate remedial steps to reduce the risk of recurrence; and
  - (d) report the adverse event to the relevant authority, where appropriate.

**6 General health service providers to adopt standard precautions for infection control**

- (1) A general health service provider must adopt standard precautions for the control of infection in the course of providing treatment or care.
- (2) Without limiting subclause (1), a general health service provider who carries out skin penetration or other invasive procedures must comply with the laws applying in Victoria.



**7 General health service providers diagnosed with infectious medical conditions**

- (1) A general health service provider who has been diagnosed with a medical condition that can be passed on to clients must practise in a manner that does not put clients at risk.
- (2) Without limiting subclause (1), a general health service provider who has been diagnosed with a medical condition that can be passed on to clients must take and follow advice from a suitably qualified registered health practitioner on the necessary steps to be taken to modify the provider's practice to avoid the possibility of transmitting that condition to clients.

**8 General health service providers not to make claims to cure certain serious illnesses**

- (1) A general health service provider must not claim or represent that the provider is qualified, able or willing to cure cancer or other terminal illnesses.
- (2) A general health service provider who claims to be able to treat or alleviate the symptoms of cancer or other terminal illnesses must be able to substantiate such claims.

**9 General health service providers not to misinform their clients**

- (1) A general health service provider must not engage in any form of misinformation or misrepresentation in relation to the products or services the provider provides or the qualifications, training or professional affiliations the provider holds.
- (2) Without limiting subclause (1)—
  - (a) a general health service provider must not use the provider's possession of a particular qualification to mislead or deceive clients or

the public as to the provider's competence in a field of practice or ability to provide treatment; and

- (b) a general health service provider must provide truthful information as to the provider's qualifications, training or professional affiliations; and
- (c) a general health service provider must not make claims either directly to clients or in advertising or promotional materials about the efficacy of treatment or services the provider provides if those claims cannot be substantiated.

**10 General health service providers not to practise under the influence of alcohol or unlawful substances**

- (1) A general health service provider must not provide treatment or care to clients while under the influence of alcohol or unlawful substances.
- (2) A general health service provider who is taking prescribed medication must obtain advice from the prescribing health practitioner or dispensing pharmacist on the impact of the medication on the provider's ability to practise and must refrain from treating or caring for clients in circumstances where the provider's capacity is or may be impaired.

**11 General health service providers with certain mental or physical impairment**

- (1) A general health service provider must not provide treatment or care to clients while suffering from a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that places or is likely to place clients at risk of harm.

- (2) Without limiting subclause (1), if a general health service provider has a mental or physical impairment that could place clients at risk, the general health service provider must seek advice from a suitably qualified health practitioner to determine whether, and in what ways, the provider should modify the provider's practice, including stopping practice if necessary.

**12 General health service providers not to financially exploit clients**

- (1) A general health service provider must not financially exploit the provider's clients.
- (2) Without limiting subclause (1)—
- (a) a general health service provider must only provide services or treatments to clients that are designed to maintain or improve clients' health or wellbeing; and
  - (b) a general health service provider must not accept or offer financial inducements or gifts as a part of client referral arrangements with other health service providers; and
  - (c) a general health service provider must not ask clients to give, lend or bequeath money or gifts that will benefit the general health service provider directly or indirectly.

**13 General health service providers not to engage in sexual misconduct**

- (1) A general health service provider must not engage in behaviour of a sexual or close personal nature with a client.
- (2) A general health service provider must not engage in a sexual or other inappropriate close personal, physical or emotional relationship with a client.

- (3) A general health service provider should ensure that a reasonable period of time has elapsed since the conclusion of the therapeutic relationship before engaging in a sexual relationship with a client.

**14 General health service providers to comply with relevant privacy laws**

A general health service provider must comply with the relevant privacy laws that apply to clients' health information, including—

- (a) the **Health Records Act 2001**; and
- (b) the **Privacy and Data Protection Act 2014**; and
- (c) the Privacy Act 1988 of the Commonwealth.

**15 General health service providers to keep appropriate records**

- (1) A general health service provider must maintain accurate, legible and up-to-date clinical records for each client consultation and ensure that these are held securely and not subject to unauthorised access.
- (2) A general health service provider must take necessary steps to facilitate clients' access to information contained in their health records if requested.
- (3) A general health service provider must facilitate the transfer of a client's health record in a timely manner when requested to do so by the client or the client's legal representative.

**16 General health service providers to be covered by appropriate insurance**

A general health service provider should ensure that appropriate indemnity insurance arrangements are in place in relation to the provider's practice.

**17 General health service providers to provide access to code of conduct and other information**

- (1) A general health service provider must bring each of the following documents to the attention of, or make available a copy of each of the following documents to, the clients of the general health service provider when providing or offering to provide a general health service—
  - (a) a copy of this code of conduct;
  - (b) a document that gives information about the way in which clients may make a complaint to the Commissioner.
- (2) Copies of these documents must be made available in a manner that makes them easily accessible to clients.

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

*Minister's second reading speech—*

*Legislative Assembly: 10 February 2016*

*Legislative Council: 25 February 2016*

The long title for the Bill for this Act was "A Bill for an Act to provide for a complaints process and other processes about health service provision and related matters, to establish the office of Health Complaints Commissioner and the Health Complaints Commissioner Advisory Council, to repeal the **Health Services (Conciliation and Review) Act 1987**, to make minor and consequential amendments to other Acts and for other purposes."

The **Health Complaints Act 2016** was assented to on 3 May 2016 and came into operation on 1 February 2017: section 2(2).

### INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

#### Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

#### References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

#### Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

## 2 Table of Amendments

This publication incorporates amendments made to the **Health Complaints Act 2016** by Acts and subordinate instruments.

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### **Health Complaints Act 2016, No. 22/2016**

<i>Assent Date:</i>	3.5.16
<i>Commencement Date:</i>	S. 254 on 1.2.17: s. 2(2)
<i>Note:</i>	S. 254 repealed Pt 15 (ss 160–254) on 1.2.18
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Health Complaints Act 2016</b>

### **Health Legislation Amendment (Quality and Safety) Act 2017, No. 52/2017**

<i>Assent Date:</i>	24.10.17
<i>Commencement Date:</i>	S. 97 on 25.10.17: s. 2(1)
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Health Complaints Act 2016</b>

### **Health and Child Wellbeing Legislation Amendment Act 2018, No. 4/2018**

<i>Assent Date:</i>	27.2.18
<i>Commencement Date:</i>	Ss 25–27 on 28.2.18: s. 2(1)
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Health Complaints Act 2016</b>

### **Disability (National Disability Insurance Scheme Transition) Amendment Act 2019, No. 19/2019**

<i>Assent Date:</i>	25.6.19
<i>Commencement Date:</i>	S. 263 on 1.7.19: Special Gazette (No. 254) 25.6.19 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Health Complaints Act 2016</b>

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### 3 Amendments Not in Operation

This publication does not include amendments made to the **Health Complaints Act 2016** by the following Act/s.

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#### **Disability Service Safeguards Act 2018, No. 38/2018**

<i>Assent Date:</i>	28.8.18
<i>Commencement Date:</i>	Ss 288–290 not yet proclaimed
<i>Current State:</i>	This information relates only to the provision/s amending the <b>Health Complaints Act 2016</b>

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At the date of this publication, the following provisions amending the **Health Complaints Act 2016** were Not in Operation:

**Amending Act/s:**

#### **Disability Service Safeguards Act 2018, No. 38/2018**

##### **288 Health Complaints Act 2016 amendments**

- (1) After section 90(1) of the **Health Complaints Act 2016** insert—
  - "(1A) The Commissioner may make an order prohibiting a person who is subject to a prohibition order or interim prohibition order made under the **Disability Service Safeguards Act 2018** from providing all or any specified general health services for up to 12 weeks if a copy of the prohibition order or interim prohibition order made under the **Disability Service Safeguards Act 2018** was given to the Commission under section 130(2)(b) or 132(2)(b) of that Act."
- (2) In section 90(2) and (3) of the **Health Complaints Act 2016**, for "general health service provider" substitute "person".
- (3) In section 91 of the **Health Complaints Act 2016**, after "interim prohibition order" insert "in relation to a general health service provider".

- (4) In section 91(a)(ii) of the **Health Complaints Act 2016**, for "and" substitute "or".
- (5) After section 91(a)(ii) of the **Health Complaints Act 2016** insert—
- "(iii) the general health service provider is subject to a prohibition order or interim prohibition order made under the **Disability Service Safeguards Act 2018**; and".
- (6) At the end of section 91 of the **Health Complaints Act 2016** insert—
- "(2) The Commissioner must not make an interim prohibition order in relation to a person referred to in section 90(1A) unless the Commissioner is satisfied that it is necessary to make the order to avoid a serious risk to—
- (a) the life, health, safety or welfare of a person; or
- (b) the health, safety or welfare of the public.".
- (7) In sections 92(1)(a) and 93 of the **Health Complaints Act 2016**, for "general health service provider" substitute "person".
- (8) In section 94(2)(a) of the **Health Complaints Act 2016**, for "general health service provider" substitute "person to whom the order applies".
- (9) In section 94(3)(a) of the **Health Complaints Act 2016**, for "general health service provider" substitute "person".
- (10) After section 95(1) of the **Health Complaints Act 2016** insert—
- "(1A) The Commissioner may make an order prohibiting a person who is subject to a prohibition order or interim prohibition order made under the **Disability Service**

**Safeguards Act 2018** from providing all or any specified general health services permanently or for the period specified by the Commission in the order if a copy of the prohibition order or interim prohibition order made under the **Disability Service Safeguards Act 2018** was given to the Commission under section 130(2)(b) or 132(2)(b) of that Act."

- (11) In section 95(2) and (3) of the **Health Complaints Act 2016**, for "general health service provider" **substitute** "person".
- (12) In section 96 of the **Health Complaints Act 2016**, after "prohibition order" **insert** "in relation to a general health service provider".
- (13) In section 96(a)(ii) of the **Health Complaints Act 2016**, for "and" **substitute** "or".
- (14) After section 96(a)(ii) of the **Health Complaints Act 2016 insert—**
- "(iii) the general health service provider is subject to a prohibition order or interim prohibition order made under the **Disability Service Safeguards Act 2018**; and".
- (15) At the end of section 96 of the **Health Complaints Act 2016 insert—**
- "(2) The Commissioner must not make a prohibition order in relation to a person referred to in section 95(1A) unless the Commissioner is satisfied that it is necessary to make the order to avoid a serious risk to—
- (a) the life, health, safety or welfare of a person; or
- (b) the health, safety or welfare of the public."

- (16) In sections 97(1)(a) and 98 of the **Health Complaints Act 2016**, for "general health service provider" **substitute** "person".
- (17) In section 99(2)(a) of the **Health Complaints Act 2016**, for "general health service provider" **substitute** "person to whom the order applies".
- (18) In section 99(3)(a) and (4) of the **Health Complaints Act 2016**, for "general health service provider" **substitute** "person".
- (19) In section 100(2)(a) of the **Health Complaints Act 2016**, for "general health service provider" **substitute** "person to whom the order applies".
- (20) In section 100(3)(a) and (4) of the **Health Complaints Act 2016**, for "general health service provider" **substitute** "person".
- (21) In section 101(1) and (2)(a) of the **Health Complaints Act 2016**, for "general health service provider" **substitute** "person".

**289 Health Complaints Act 2016—new section 91A**

After section 91 of the **Health Complaints Act 2016** insert—

**"91A Show cause process**

- (1) If the Commissioner proposes to make an interim prohibition order under section 90(1A), the Commissioner—
  - (a) must give a written notice of the proposed order to the person to whom that order is to apply; and
  - (b) must invite the person to make a written or verbal submission to the Commissioner, within the reasonable time stated in the notice, about the proposed order.

- (2) After considering any submission made by the person in accordance with subsection (1), the Commissioner must decide whether—
  - (a) to take no action in relation to the matter; or
  - (b) to make the interim prohibition order."

**290 Health Complaints Act 2016—new section 95A**

After section 95 of the **Health Complaints Act 2016** insert—

**"95A Show cause process**

- (1) If the Commissioner proposes to make a prohibition order under section 95(1A), the Commissioner—
  - (a) must give a written notice of the proposed order to the person to whom that order is to apply; and
  - (b) must invite the person to make a written or verbal submission to the Commissioner, within the reasonable time stated in the notice, about the proposed order.
- (2) After considering any submission made by the person in accordance with subsection (1), the Commissioner must decide whether—
  - (a) to take no action in relation to the matter; or
  - (b) to make the prohibition order."

**4 Explanatory details**

No entries at date of publication.