

Health Complaints Bill 2016

Introduction Print

EXPLANATORY MEMORANDUM

Clause Notes

Part 1—Preliminary

Clause 1 sets out the purposes of the Bill.

The main purposes of the Bill are to provide for a complaints process and other processes about health service provision and related matters, to establish the Health Complaints Commissioner and the Health Complaints Commissioner Advisory Council, and to repeal the **Health Services (Conciliation and Review) Act 1987**.

The Bill also makes minor and consequential amendments to other Acts.

Clause 2 is the commencement provision, which provides for provisions of the Bill to come into operation on a day or days to be proclaimed, or on 1 February 2017 if not proclaimed before that date.

Clause 3 defines various words and expressions used in the Bill.

A key defined term in the Bill is *health service* that is defined to mean any of the following services—

- 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 to—
- assess, predict, maintain or improve the person's physical, mental or psychological health or status (examples of the kind of services that may be included within the definition include surgery,

- prescribing medication, or an activity that is claimed to "cure" autism);
 - diagnose the person's illness, injury or disability; or
 - prevent or treat the person's illness, injury or disability or suspected illness, injury or disability; or
- a health related disability, palliative care or aged care service;
- a surgical or related service;
- the prescribing or dispensing of a drug or medicinal preparation;
- the prescribing or dispensing of an aid or piece of equipment for therapeutic use;
- health education services;
- therapeutic counselling and psychotherapeutic services (for example, gay conversion therapy);
- support services necessary to implement any services referred to in the definition;
- services—
 - that are ancillary to any other services to which this definition applies (for example, laundry services, cleaning services and catering services); and
 - that affect or may affect persons who are receiving other services to which this definition applies;
 - any other prescribed services.

The definition of *health service* does not make a distinction between services provided in the public and private sectors and includes provision by both individual practitioners and the legal entities that employ or engage health service providers to provide health services (examples include hospitals and community health centres).

The Bill defines *general health service* to be a health service that is not a service provided in the practice of one of the health professions regulated under the Health Practitioner Regulation National Law (Victoria).

Under the Bill, the definition of *general health service* includes for example services provided by, speech therapists, naturopaths, psychotherapists and reiki therapists amongst others who are not practising a health profession. The definition does not make a distinction between individuals who have previously been, but are no longer, registered under the Health Practitioner Regulation National Law (Victoria) and may also apply to registered practitioners in so far as they are practising outside the scope of their registration, for instance, a midwife who also works under the title of a doula which is not a registered profession.

These definitions are important in determining the scope of the Commissioner's jurisdiction and the health service providers to whom the new regulatory scheme under the Bill will apply.

Another key defined term in the Bill is *code of conduct*, which is defined to mean the general code of conduct (which is set out in Schedule 2 of the Bill and applies to general health service providers until a general code of conduct is prescribed by regulations) and any other code of conduct in respect of a general health service that is prescribed. At any time there may be more than one code of conduct in operation, for example, a general code of conduct and specific codes of conduct for particular classes of health service providers or health services that may apply.

Another key defined term in the Bill is *relevant law* which specifies that for the purposes of clauses 19(1)(b), 25(1) and (2), and 148(1), the **Disability Act 2006**, the **Health Records Act 2001**, the **Privacy and Data Protection Act 2014**, and the **Mental Health Act 2014** are relevant laws.

Clause 4 sets out a number of health service principles that apply to a health service provider for the purposes of the Bill.

Part 2—Complaints

Division 1—Making a complaint

- Clause 5 subclause (1) provides for the making of complaints to a health service provider by a person who received or sought health services from the health service provider, and specifies the grounds on which a person may make such a complaint.
- Subclause (2) provides for the making of complaints to the Commissioner by a person who sought or received health services from a health service provider, and specifies the grounds on which a person may make such a complaint.
- Clause 6 subclause (1) provides for the making of complaints to a health service provider by a person in respect of someone else who received or sought health services from the health service provider, and specifies the grounds on which a person may make such a complaint.
- Subclause (2) provides for the making of complaints to the Commissioner by a person in respect of someone else who received or sought health services from a health service provider, and specifies the grounds on which a person may make such a complaint.
- Clause 7 provides that the carer of a person who received or sought health services may make a complaint to a health service provider.
- Subclause (2) sets out the grounds on which the carer of a person who has received or sought health services from a health service provider may make a complaint to the Commissioner.
- Clause 8 specifies the time within which a complaint under clauses 5(2), 6(2) or 7(2) may be made to the Commissioner. A complaint must be made within 12 months of—
- the completion of the provision of the health service; or
 - where no health service was provided, 12 months after the health service was sought.
- Subclause (2) provides that the Commissioner has discretion to accept a complaint outside these time limits if satisfied that the circumstances of the case require it.

- Clause 9 provides that a complaint made to the Commissioner may be made orally or in writing.
- The clause includes a note that a complaint may be made by electronic communication within the meaning of section 3(1) of the **Electronic Transactions (Victoria) Act 2000**, which would include emails.
- Subclause (2) provides that a person who makes an oral complaint must confirm the complaint as recorded in writing by the Commissioner as required under clause 10 as soon as practicable.
- Subclause (3) provides that the Commissioner may waive the requirement for a person to comply with subclause (2) if the Commissioner is satisfied that it is appropriate in the circumstances.
- Subclause (4) provides that the Commissioner must make a written record of any waiver given under subclause (3).
- Clause 10 provides that the Commissioner must make a written record on receiving a complaint, which must include the date the complaint was received by the Commissioner.
- Clause 11 provides that the Commissioner must give reasonable assistance to a person who is making or confirming a complaint. It is intended that the Commissioner will assist a complainant to identify relevant parties to the complaint and may provide reasonable assistance such as refining the grounds upon which the complaint is made.

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

- Clause 12 provides that, on a complaint being recorded by the Commissioner under clause 10 and confirmed by the complainant under clause 9(2) (if required), the Commissioner may—
- seek further information about the complaint by interviewing the complainant or requiring the complainant to give the Commissioner more information;

- provide advice about the options available to resolve the complaint;
- attempt early resolution of the complaint, in any manner and using any means that the Commissioner considers appropriate, with all or any of the following persons; the complainant, the health service provider about whom the complaint is made and the person who sought or received the health service if that person is not the complainant.

This clause allows the Commissioner, prior to making a decision whether to deal with the complaint or not, to attempt to resolve complaints quickly and with the least formality possible as appropriate in the circumstances, and will assist with prompt resolution of complaints. If a complaint cannot be resolved at this preliminary stage, the Commissioner may decide whether or not to deal with the complaint and if dealing with a complaint, whether a complaint resolution process or an investigation under Part 4 should be commenced.

Clause 13 subclause (1) provides that the Commissioner must decide whether or not to deal with a complaint.

Subclause (2) provides that the Commissioner must make a decision under subclause (1) as soon as practicable after the complaint is made or, after the complaint fails to be resolved if the Commissioner attempted an unsuccessful early resolution of the complaint under clause 12.

Subclause (3) provides that the Commissioner must give written notice of a decision to deal with a complaint under subclause (1) to the complainant as soon as possible after making the decision. Division 4 of Part 2 provides for the deferral of the requirement to give notice in certain circumstances.

Clause 14 sets out the grounds on which the Commissioner may refuse to deal with, or cease to deal with, a complaint. For example, the Commissioner may refuse to deal with a complaint that the Commissioner is satisfied is frivolous, vexatious, misconceived, lacking in substance or otherwise does not warrant action.

Clause 15 provides that as soon as possible after the Commissioner decides to deal with a complaint under clause 13, the Commissioner must seek the agreement of the complainant to a formal description of the complaint.

Subclause (2) provides that the Commissioner may decide not to deal with a complaint if agreement about the description of the complaint cannot be reached within 10 business days or any longer period determined by the Commissioner.

Subclause (3) provides that the Commissioner must give written notice of a decision under subclause (2) to the complainant as soon as possible after the decision is made.

Clause 16 provides that the Commissioner may alter or vary the formal description of the complaint with the agreement of the complainant. The intention of the clause is to allow further information that may come to light to be taken into consideration by a variation to the formal description of the complaint originally agreed.

Clause 17 provides that as soon as possible after the formal description of the complaint is agreed under clause 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.

Subclause (2) provides that if the agreed formal description of the complaint is altered or varied under clause 16, the Commissioner must give a copy of the altered or varied complaint to the health service provider.

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

Clause 18 provides that in order to determine how to deal with a complaint the Commissioner may seek further information from the complainant, the health service provider, the person who sought or received the healthcare if they are not the complainant, and any other person whom the Commissioner reasonably believes has relevant information.

Clause 19 provides that the Commissioner may divide a complaint—

- into two or more complaints if the Commissioner believes it is in the interests of the person who received or sought the health service; or

- into a part that may be dealt with under this Bill and a part that is or may be the subject of a notification, complaint, investigation or inquiry under the Health Practitioner Regulation National Law (Victoria) or a relevant law for the purpose of referring part of the complaint to the entity responsible for dealing with the matter under that law.

Subclause (2) provides that the Commissioner may concurrently deal with two or more complaints if the Commissioner reasonably believes that the complainant or complainants are not disadvantaged, the health service provider's rights are not adversely affected and the person who received or sought the health service is not disadvantaged.

Subclause (3) provides that if the Commissioner acts under this clause, 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. Division 4 of Part 2 provides for the deferral of the requirement to give notice in certain circumstances.

Clause 20 provides that at the same time as, or as soon as possible after, a copy of a formal description of a complaint is given to a health service provider under clause 17 the Commissioner must decide how the complaint should be dealt with.

Subclause (2) provides that the Commissioner may decide that the complaint is suitable for a complaint resolution process if the parties agree to participate in that process or that the complaint is to be the subject of a complaint investigation.

Subclause (3) provides that the Commissioner must give notice of a decision under subclause (1) to the parties to the complaint as soon as possible after making the decision. Division 4 of Part 2 provides for the deferral of the requirement to give notice in certain circumstances.

Clause 21 provides for when the Commissioner may decide to deal with a complaint which the Commissioner has already decided not to deal with under clause 14 if the Commissioner becomes aware of new information in respect of the complaint or reasonably believes that further action should be taken in respect of the complaint.

Subclause (2) provides that if the Commissioner makes a decision under this clause the Commissioner must inform any relevant complainant, health service provider and person who received or sought the health service as soon as possible. Division 4 of Part 2 provides for the deferral of the requirement to inform the relevant parties in certain circumstances.

- Clause 22 provides for a person who is not the complainant to notify the Commissioner that they do not wish to be a party to a complaint, and upon notice, the person ceases to be a party to the complaint.
- Clause 23 provides that a complainant may withdraw a complaint at any time by giving written notice to the Commissioner.
- Clause 24 provides that if a complaint has been withdrawn the Commissioner may proceed with the complaint if the Commissioner reasonably believes—
- that it is in the public interest to do so; or
 - that the complaint involves a contravention of a prohibition order or interim prohibition order made by the Commissioner in respect of a general health service provider; or
 - that the complaint involves a contravention by a general health service provider of a code of conduct; or
 - the complaint may have been withdrawn because of victimisation, coercion, duress or intimidation.

Division 3—Referral of complaints

- Clause 25 provides for the referral of a complaint where the subject matter of the complaint would also be a reason for making a complaint or conducting an investigation or inquiry under a relevant law to the relevant person or body responsible for dealing with the matter under the relevant law.
- Clause 26 provides that the Commissioner is a "health complaints entity" within the meaning of the Health Practitioner Regulation National Law (Victoria), and permits the Commissioner to refer complaints to the Australian Health Practitioner Regulation Agency or the relevant National Board under the Health Practitioner Regulation National Law (Victoria).

Clause 27 provides that, despite a referral of a complaint to another person or entity under clauses 25 or 26, the Commissioner may continue to exercise functions and powers under Parts 4, 7 and 8 (to the extent that the complaints relates to a contravention by a general health service provider of a code of conduct) and Part 10.

Clause 28 provides that the Commissioner must notify the following persons or bodies as soon as practicable after a referral is made under clause 25—

- the complainant;
- the Australian Health Practitioner Regulation Agency or any relevant National Board if the matter is relevant to the administration of the Health Practitioner Regulation National Law (Victoria); and
- the person who received or sought the health service if that person is not the complainant and it is appropriate to do so in the circumstances;
- the health service provider.

Subclause (2) provides that the Commissioner must notify the following persons or bodies as soon as practicable after a referral is made under clause 26—

- the complainant;
- the person who received or sought the health service if that person is not the complainant and it appropriate to do so in the circumstances;
- the health service provider.

Division 4 of Part 2 may provide for deferral of the giving of notice under subclauses 28(1)(a),(c) and (d) and (2) in certain circumstances.

Division 4—Deferral of notifications

Clause 29 subclause (1) provides the Commissioner with discretion to decide to defer the provision of a relevant notice or information to a party to the complaint until such time when the Commissioner executes a search warrant under Division 3 of Part 5, publishes a general health service warning statement under clause 87 or serves an interim prohibition order under

clause 90, if the Commissioner reasonably believes that advising the party of the complaint before that time may—

- prejudice an investigation by the Commissioner; or
- place at serious risk the life, health, safety or welfare of a person or health, safety or welfare of the public.

If the Commissioner makes a decision under subclause (1), the suspension of the obligation to provide a relevant notice or information lasts until the Commissioner ceases to hold the reasonable belief referred to in subclause (1), at which time the Commissioner must provide the notice or information.

Clause 30 provides the Commissioner with discretion to decide to defer the provision of a relevant notice or information to a person if a National Board requests that the Commissioner do so on the grounds specified in subclause (2).

The intent of this provision is to ensure the giving of information or a notice under clauses 13(3), 17(1) or (2), 19(3), 20(3), 21(2), 28(1)(a), (c) or (d) or (2), or 49(1) or (3) does not undermine the operation of section 161(4) of the Health Practitioner Regulation National Law (Victoria) where the National Board has been notified of, or referred, part of a complaint. The grounds in subclause (2) under which the National Board may request the Commissioner to exercise his or her discretion under subclause (3) reflect the grounds in section 161(4) of the Health Practitioner Regulation National Law (Victoria).

If the Commissioner makes a decision under subclause (3), the suspension of the obligation to provide a relevant notice or information lasts until the National Board advises that it no longer holds the reasonable belief referred to in subclause (2), at which time the Commissioner must provide the notice or information.

Clause 31 provides the Commissioner with discretion to decide to defer the provision of a relevant notice or information to a specified party or parties if the Disability Services Commissioner requests on the grounds specified in subclause (2) that the Commissioner do so.

The intent of this provision is to not undermine the operation of section 120 of the **Disability Act 2006**. The grounds in subclause (2) under which the Disability Services Commissioner may request the Commissioner to exercise his or her discretion

under subclause (3) reflect the grounds in section 120 of the **Disability Act 2006**, under which the requirement to give notice need not be complied with by the Disability Services Commissioner.

If the Commissioner makes a decision under subclause (3), the suspension of the obligation to provide a relevant notice or information lasts until one of the following applies, at which time the Commissioner must provide the notice or information—

- the Disability Services Commissioner advises that he or she no longer holds the view referred to in subclause (2);
- the end of the investigation by the Disability Services Commissioner under the **Disability Act 2006**;
- at the end of the period of 6 months after the receipt of the complaint by the Disability Services Commissioner.

Part 3—Complaint resolution process

Division 1—Complaint resolution process

Clause 32 provides that if the Commissioner makes a decision under clause 20(2)(a) that the complaint is to be the subject of a complaint resolution process, the Commissioner may seek an agreed resolution to the complaint by either or both of—

- by the parties to the complaint identifying the issues in dispute and by the Commissioner promoting discussion or negotiation of the complaint between the parties; or
- a conciliation process, which is a process of negotiation between the parties to the complaint in which the Commissioner proposes options for resolution of issues and proposes terms for agreement.

Subclause (2) provides that the Commissioner must decide how to conduct a complaint resolution process.

Subclause (3) provides that in deciding how to conduct a complaint resolution process the Commissioner must prefer the least formal action to be taken that is appropriate in the circumstances.

Clause 33 provides that the Commissioner must give notice of any decision under clause 32 to the parties to the complaint as soon as possible after making the decision.

Subclause (2) specifies the information the notice of the decision must contain, including specifying what information must be provided to the parties if conciliation is to be undertaken. The intent behind this provision is that the parties should not be asked to consent to a conciliation process without having first being notified of what is involved.

Subclause (3) provides that notice must be given in a reasonable time before any time fixed by the notice having regard to the complexity of the matter and allowing appropriate time for the parties to prepare.

Clause 34 provides that if at any time during the complaint resolution process a party to the complaint resolution process withdraws, the Commissioner may cease the complaint resolution process and, if the Commissioner believes it is necessary to commence an investigation, or decide to take no further action in respect of the complaint.

Clause 35 subclause (1) provides that 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.

Subclause (2) provides that the notice under subclause (1) must specify the time within which the written response must be provided, which must be no more than 20 business days after the notice is given.

Subclause (3) provides that a health service provider to whom a notice is given under this clause must comply with the requirements of the notice. A failure to comply with the notice is an offence. A penalty of 20 penalty units for a natural person and 100 penalty units for a body corporate applies to the offence.

Clause 36 provides that the Commissioner has the discretion to extend the time within which a person must comply with a written notice given to a person under clause 35.

Clause 37 provides that at any time during a complaint resolution process (other than during a conciliation) if 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 conciliation.

Subclause (2) provides that notice of a decision under subclause (1) must be provided to the parties as soon as possible after making the decision.

Subclause (3) provides that the notice must set out the specific matters listed in clause 33(2)(c) if conciliation is to be undertaken. The intent behind this provision is that the parties should not be asked to consent to a conciliation process without having first been notified of what is involved.

Clause 38 provides that if agreement is reached on the resolution of a complaint during the complaint resolution process, the Commissioner must make a written record of the agreement and must give a copy of the written record to each party to the complaint.

Subclause (2) provides that if a health service provider gives an undertaking to the Commissioner in the course of a complaint resolution process (including during conciliation), the Commissioner must make a written record of the undertaking that is signed by the provider.

Subclause (3) provides that if agreement is not reached in a complaint resolution process the Commissioner may either decide to take no further action in respect of the complaint or conduct an investigation under Part 4 into the complaint.

Subclause (4) provides that if the Commissioner decides to take no further action in respect of the complaint, the Commissioner must give written notice of the reasons for that decision to the parties to the complaint.

Clause 39 provides that if, as part of resolving a complaint in a complaint resolution process a health service provider gives an undertaking, the Commissioner may in writing require the health service provider to report to the Commissioner on the implementation of the undertaking within the time fixed by the Commissioner, which may be no more than 12 months after the undertaking is given.

Subclause (3) provides that a health service provider to whom a requirement to report under subclause (1) has been given must comply with the requirement. Failure to comply with the requirement without a reasonable excuse is an offence for which a penalty of 60 penalty units for a natural person and 300 penalty units for a body corporate applies.

Division 2—Conciliation

Clause 40 provides that the Commissioner must not commence conciliation in respect of a complaint unless the parties have agreed to participate in the conciliation, and the parties have been provided with notice under clause 33 or 37 before the party agreed to participate in conciliation.

Clause 41 provides that in a conciliation process the Commissioner, by written notice, may require the health service provider to produce any document or any other evidence specified in the notice held by the health service provider that—

- forms part of the health information about the person who received or sought the health service;
- is about policies or protocols of the health service provider that applied to the subject matter of the complaint; or
- is about investigations into the subject matter of the complaint by the health service provider.

Subclause (2) provides that the notice 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.

Subclause (3) provides that a health service provider to whom a notice is given must comply with the notice. It is an offence to fail to comply with the notice and a penalty of 20 penalty units for a natural person and 100 penalty units for a body corporate applies.

Clause 42 provides that the Commissioner has the discretion to extend the time within which a health service provider must comply with a written notice given to them under clause 41.

Clause 43 provides that a party must not disclose anything said or done or any agreement reached in a conciliation process outside the process. It is an offence to fail to comply with this requirement and a penalty of 20 penalty units applies to a natural person and 100 penalty units applies to a body corporate.

Subclause (2) provides a disclosure of anything said or done in a conciliation may be made with the consent of the person to whom the information relates.

Subclause (3) provides that evidence of anything said or done in a conciliation process is not admissible in any hearing or proceeding in a court or tribunal. This is a necessary protection to encourage maximum participation by all parties in the conciliation process.

Subclause (4) specifies that this clause does not apply in respect of an undertaking made under clause 38(2) in the course of conciliation.

Clause 44 provides that on the completion of a conciliation the Commissioner must provide written notice to the parties that specifies the date the conciliation ceased and the outcome of the conciliation.

Part 4—Investigations by the Commissioner

Division 1—Investigations

Clause 45 provides that the Commissioner may conduct a complaint investigation if the Commissioner reasonably believes that a complaint should be investigated and—

- the complaint is not suitable for a complaint resolution process; or
- a complaint resolution process has not been successful; or
- a health service provider who is a party to the complaint fails without reasonable excuse to participate in a complaint resolution process; or
- a health service provider who is a party to the complaint fails to comply with a request for further information under clause 18, or a notice requiring a written response

under clause 35 or a notice requiring the production of a document or other evidence under clause 41; or

- a general health service provider has contravened a code of conduct applying to the general health service.

Clause 46 provides that the Minister may refer to the Commissioner for investigation any matter that a person would be able to make a complaint about under clause 6.

Subclause (2) provides that the Commissioner may investigate a matter referred by the Minister under subclause (1).

Clause 47 provides that the Commissioner may, on the Commissioner's own initiative, conduct an investigation into any matter that a person would be able to make a complaint about under clause 5, 6 or 7.

Clause 48 provides that the Commissioner must not commence a Commissioner initiated investigation without first consulting with the President of the Health Complaint Commissioner Advisory Council.

Clause 49 provides that if the Commissioner has decided to conduct a complaint investigation, the Commissioner must give written notice of the investigation to the parties to the complaint as soon as possible. Division 4 of Part 2 provides for the deferral of the giving of the notice in certain circumstances.

Subclause (2) provides that the notice under subclause (1) must be accompanied by a copy of the formal description of the complaint.

Subclause (3) provides that if the Commissioner has decided to conduct a referral investigation or a Commissioner initiated investigation the Commissioner must give written notice of the investigation and a description of the matter being investigated to the health service provider as soon as possible.

Clause 50 provides that on conducting a complaint investigation, a referral investigation or a Commissioner initiated investigation the Commissioner must prepare a written report of the investigation.

Subclause (2) specifies the information that must be included in the investigation report.

Clause 51 provides that the Commissioner must give the investigation report prepared under clause 50 to the health service provider or if there is more than one health service provider give the relevant part of the report to each health service provider to that health service provider.

Subclause (2) provides that the Commissioner may give all or part of the investigation report to—

- the Australian Health Practitioner Regulation Agency or any relevant National Board if the report is relevant to the administration of the Health Practitioner Regulation National Law (Victoria); and
- an employer of the health service provider if the report is relevant to the health service provider's employment by that employer; and
- a person who engages the health service provider if the report is relevant to the health service provider's engagement by that person; and
- the Secretary.

Subclause (3) provides that, in respect of a complaint investigation, the Commissioner may give all or part of the investigation report to—

- the complainant; and
- the person who sought or received the health service if that person is not the complainant if that person agreed to be notified about the outcome of the complaint.

Subclause (4) provides that, in respect of a referral investigation, the Commissioner may give the investigation report to the Minister.

Clause 52 provides that a health service provider who receives an investigation report under clause 51 setting out recommendations must provide a written response to the report within the time specified in the report and setting out the information specified in the clause.

The clause provides that the response must describe what action has been taken to implement the recommendations and explain why any recommendations have not been implemented. In the later case, the response must set out a plan for either implementation of each recommendation or addressing the issue dealt with in each recommendation.

A failure by a health service provider, without reasonable excuse, to provide a written response that includes the required information within the time specified is an offence to which a penalty of 60 penalty units for a natural person and 300 penalty units for a body corporate applies.

Division 2—Follow up investigation

Clause 53 provides that the Commissioner may conduct a follow up investigation as to whether there has been a failure of a health service provider to take any action in respect of which the provider made an undertaking under clause 38(2) or recommended in an investigation report or in a follow up report.

Clause 54 provides that if the Commissioner has decided to conduct a follow up investigation the Commissioner must give written notice of the investigation and a description of the matter being investigated to the health service provider as soon as possible.

Clause 55 provides that the Commissioner must not commence a follow up investigation under clause 53(a) unless the health service provider—

- has not given the report to the Commissioner on the undertaking under clause 39 within the time fixed by the Commissioner under that clause; or
- has not, in the report given to the Commissioner under clause 39, substantively addressed the implementation of the undertaking given by the provider to the Commissioner.

Subclause (2) provides that the Commissioner must not commence a follow up investigation under clause 53(b) unless the health service provider—

- has not given the response to the Commissioner within the time set out in the investigation report or the follow up report; or

- has not, in the response required to be given to the Commissioner under clause 52 or 58 substantively addressed the implementation of the recommendations made to the provider by the Commissioner.

Clause 56 provides that on completing a follow up investigation the Commissioner must prepare a written report of the investigation.

Subclause (2) specifies the information that must be included in the follow up report.

Clause 57 provides that the Commissioner must give the follow up report prepared under clause 56 to the health service provider or if there is more than one health service provider give the part of the report that relates to a health service provider to that health service provider.

Subclause (1)(b) provides that, in respect of a follow up report that relates to a referral investigation, the Commissioner may give the report to the Minister.

Subclause (2) provides that the Commissioner may give all or part of the follow up report to—

- in respect of a complaint investigation, the complainant and the person who sought or received the health service if that person is not the complainant if that person agreed to be notified about the outcome of the complaint; and
- the Australian Health Practitioner Regulation Agency or any relevant National Board if the report is relevant to the administration of the Health Practitioner Regulation National Law (Victoria); and
- an employer of the health service provider if the report is relevant to the health service provider's employment by that employer; and
- a person who engages the health service provider if the report is relevant to the health service provider's engagement by that person; and
- the Secretary.

Clause 58 provides that a health service provider who receives a follow up report under clause 57 setting out recommendations must provide a written response to the report within the time specified in the report and setting out the information specified in the provision.

The clause provides that the response must describe what action has been taken to implement the recommendations and explain why any recommendations have not been implemented. In the later case, the response must set out a plan for either implementation of each recommendation or addressing the issue dealt with in each recommendation.

A failure by a health service provider, without reasonable excuse, to provide a written response that includes the required information within the time specified is an offence to which a penalty of 60 penalty units for a natural person and 300 penalty units for a body corporate applies.

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

Division 1—Conduct of investigations

Clause 59 provides that in conducting 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.

Subclause (2) provides that in an investigation under Part 4, the Commissioner must act as expeditiously and with as little formality as is reasonably possible, is bound by the rules of natural justice, is not bound by the rules of evidence and must before making a decision affecting a person give the person an opportunity to make submissions to the Commissioner about the decision.

Subclause (3) provides that in an investigation under Part 4 the Commissioner may conduct a hearing.

Clause 60 provides that if the Commissioner decides not to conduct a hearing in an investigation under Part 4, for purposes of clause 59(2)(d), the Commissioner may take oral or written submissions, send for persons, documents or other things, and must keep a record of all submissions and evidence given before the Commissioner and the decisions of the Commissioner.

The intention of this clause is to set out the process by which a person who will be affected by a decision made in an investigation will be accorded natural justice where the investigation did not proceed to a hearing.

Clause 61 provides that if the Commissioner decides to conduct a hearing in an investigation under Part 4, the Commissioner must give written notice of the hearing to those listed in subclauses (a) or (b) at least 10 business days before the date on which the hearing is to commence.

Subclause (2) provides that the notice must specify the date on which the hearing is to commence and the place at which it will be held.

Division 2—Authorised persons

Clause 62 provides that the Commissioner may authorise persons to exercise powers under the Bill.

Clause 63 provides that the Commissioner must issue a document to an authorised person that identifies that person and contains a photograph of the person.

Clause 64 provides that an authorised person must produce their identification for inspection before exercising a power under Division 3 of Part 5 and at any other time during the exercise of a power under Division 3 of Part 5, if requested to do so.

Division 3—Entry and search under warrant

Clause 65 provides for the powers of the Commissioner to seek and execute search warrants for specified purposes.

The clause sets out the requirements for search warrants and specifies that, except if otherwise provided by the Bill, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** apply to warrants issued under this clause.

Subclause (1) provides the Commissioner may apply to a magistrate for a search warrant if the Commissioner reasonably believes that there is on the premises evidence relevant to an investigation under Part 4.

Subclause (3) provides that the person executing a warrant may require the production of a document named in a warrant, may examine, make copies or take extracts from a document named in a warrant, or may remove a document for so long as necessary to make copies or take extracts.

Subclause (4) sets out that a warrant must state the purpose for which the search is required, any condition to which the warrant is subject, when entry is authorised to take place and the day on which the warrant ceases to have effect.

Subclause (6) provides that a warrant issued under this clause must not authorise the person executing the warrant to arrest a person.

Clause 66 provides that a person executing a warrant issued under clause 65 must announce that the person is authorised by the warrant to enter the premises and 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.

Clause 67 provides that if the occupier is present at the premises where a warrant issued under clause 65 is being executed, the person executing the warrant must identify himself or herself to the occupier and give the occupier a copy of the warrant.

Subclause (2) provides that if the occupier is not present at the premises where a warrant issued under clause 65 is being executed the person executing the warrant must identify himself or herself to a person at the premises and give the person a copy of the warrant.

Clause 68 provides that it is an offence for a person, without reasonable excuse, to hinder or obstruct a person who is executing a warrant issued under clause 65. A penalty of 60 penalty units in relation to a natural person and 300 penalty units in relation to a body corporate applies for failure to comply.

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

Clause 69 provides that for the purpose of an investigation hearing, the Commissioner may by serving written notice on a person require the person—

- to produce a specified document or thing to the Commissioner by a specified time and in a specified manner; or
- to attend the investigation hearing at a specified time and place to produce a specified document or thing; or
- to attend the investigation hearing at a specified time and place, and from then on until excused, to give evidence; or
- to attend the investigation hearing at a specified time and place, and from then on until excused, to give evidence and to produce a specified document or thing.

Subclause (2) provides that an investigation hearing notice must be in the prescribed form (if any) and specifies the information that must be included.

Clause 70 provides that it is an offence for a person served with an investigation hearing notice, without reasonable excuse, to refuse or fail to comply with the notice. A penalty of 120 penalty units or 12 months imprisonment or both in relation to a natural person and 600 penalty units in relation to a body corporate apply.

Clause 71 provides that a person served with an investigation hearing notice may claim at the hearing that they have or will have reasonable excuse for not complying with the notice or that the document or thing to be produced is not relevant to the subject matter of the hearing.

Subclause (2) provides that the Commissioner may, if satisfied that the person's claim under subclause (1) is made out, by further written notice vary or revoke the investigation hearing notice.

Subclause (3) provides that the Commissioner, by further written notice, may at any time vary or revoke an investigation hearing notice.

Clause 72 provides that in an investigation hearing the Commissioner may require a person attending the hearing to give evidence or answer questions on oath or by affirmation.

Subclause (2) provides that the Commissioner or member of the staff of the Commissioner may administer an oath or affirmation to a person for the purpose of subclause (1).

Clause 73 provides that, in respect of documents or things produced at an investigation hearing, the Commissioner may inspect, copy and retain the document or thing for as long as reasonably necessary for the purposes of the investigation hearing.

Subclause (2) provides that if the retention of a document or thing ceases to be reasonably necessary for the purposes of the investigation hearing, at the request of any person who appears to be entitled to the document or thing, the Commissioner must arrange for the document or thing to be delivered to the person.

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

Clause 74 provides that a person who is or was the Commissioner or a member of the staff of the Commissioner cannot be compelled to give evidence in a court in relation to an investigation under Part 4 unless the court grants leave to do so.

Clause 75 provides that 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 in a proceeding in the Supreme Court.

Clause 76 provides that 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.

Subclause (2) provides that a person who produces a document or gives any information or evidence to the Commissioner in the process of 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.

Subclause (3) provides for the avoidance of doubt that nothing in clause 76 derogates from the protection of a person under clause 75.

- Clause 77 provides that 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 clause 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.
- Clause 78 provides that 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 clause 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.
- Clause 79 provides that a person may be accompanied or represented by another person in any process under this Bill.
- Subclause (2) provides that a person may be represented by an Australian legal practitioner in any process under this Bill if the Commissioner authorises it.
- Subclause (3) provides that a person may be represented by an Australian legal practitioner when the person is giving evidence or producing documents to the Commissioner or an Assistant Commissioner under an investigation hearing notice. In these circumstances authorisation by the Commissioner is not required.
- Clause 80 provides that a person must not, by threat or intimidation, persuade or attempt to persuade another person not to make a complaint under the Bill or not to continue with any process under the Bill. A penalty of 60 penalty units in relation to a natural person and 300 penalty units in relation to a body corporate applies in respect of the offence.
- Subclause (2) provides that a person must not refuse to employ, or dismiss another person, or subject another person to any detriment because the other person intends to make, makes or has made a complaint under the Bill or intends to take part in, or takes part in, or has taken part in any process under the Bill. A penalty of 60 penalty units in relation to a natural person and 300 penalty units in relation to a body corporate applies in respect of the offence.

Clause 81 provides that a person must not for the purpose of taking part in any process under the Bill or while taking part in any process under the Bill make a statement that is false or misleading in any material particular. A penalty of 60 penalty units in relation to a natural person and 300 penalty units in relation to a body corporate applies for failure to comply.

Part 7—Statements

Division 1—Follow up statements

Clause 82 provides that the Commissioner may publish a statement naming a health service provider if the health service provider has failed to provide a written response under clause 58 to a follow up report in the time required in the follow up report. This will enable the Commissioner to publicly name a health service provider who has failed to report on their progress in carrying out an action recommended by the Commissioner.

Subclause (2) provides that 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.

Subclause (3) provides that the follow up statement must be published on the internet site of the Commissioner.

Clause 83 provides that before publishing a follow up statement the Commissioner must give the health service provider a reasonable opportunity to make submissions on the proposed publication of the statement.

Subclause (2) provides that the Commissioner must provide the health service provider with written notice of the opportunity to make submissions.

Subclause (3) sets out what a notice provided under subclause (2) must include.

Subclause (4) provides that a notice provided under subclause (2) must be given within a reasonable time to allow for submissions to be prepared and for attendance.

Division 2—Public interest statements

Clause 84 provides that the Commissioner may publish a public health warning statement setting out the name of a health service provider and sets out the circumstances in which this may occur. These circumstances are—

- if the Commissioner has completed an investigation under Part 4 as to the health service provided by that health service provider and the Commissioner reasonably believes that a person has suffered or is likely to suffer a detriment as a result of the provision of the health services; and
- the Commissioner reasonably believes that the publication of the statement is necessary to avoid serious risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

Subclause (2) provides that the Commissioner may set out in the public health warning statement any details that are reasonably relevant to advise the public of the serious risk identified.

Subclause (3) provides that a public health warning statement must be published in a newspaper circulating throughout the State and on the Commissioner's internet site.

Clause 85 provides that the Commissioner may revoke a public health warning statement by publishing a statement setting out the reason for revocation of the public health warning statement.

Subclause (2) provides that the revocation of a public health warning statement under subclause (1) must be published in a newspaper circulating throughout the State and on the internet site of the Commissioner.

Clause 86 provides that if a public health warning statement is found to be incorrect, the Commissioner must publish a correction statement setting out the reason for the correction.

Subclause (2) provides that the correction of a public health warning statement under subclause (1) must be published in a newspaper circulating throughout the State and on the internet site of the Commissioner.

Clause 87 provides that the Commissioner may publish a general health warning statement setting out the name of a general health service provider if—

- the Commissioner has commenced an investigation under Part 4; and
- reasonably believes that the general health service provider has contravened a code of conduct and it is necessary to publish the statement to avoid imminent and serious risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

Subclause (2) provides that the Commissioner may publish a general health warning statement setting out the name of a general health service provider if—

- the general healthcare provider has been convicted or found guilty of a prescribed offence and the Commissioner reasonably believes that it is necessary to publish the statement to avoid a serious risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public; or
- the Commissioner has completed an investigation under Part 4, is satisfied the general health service provider has contravened a code of conduct, and reasonably believes that it is necessary to publish the statement to avoid a serious risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

Subclause (3) provides that the Commissioner may set out in a general health service warning statement any details that are reasonably relevant to advise the public of the serious risk identified.

Subclause (4) provides that a general health warning statement must be published in a newspaper circulating throughout the State and on the internet site of the Commissioner.

Clause 88 provides that the Commissioner may revoke a general health warning statement by publishing a statement to advise the public that the serious risk no longer exists and setting out the reason for the revocation.

Subclause (2) provides that the Commissioner must revoke a general health warning statement if after completing the investigation under Part 4 the Commissioner finds that the general health service provider did not contravene any code of conduct.

Subclause (3) provides that a statement revoking a general health service warning statement must set out the reason for the revocation.

Subclause (4) provides that a statement made under subclauses (1) or (3) must be published in a newspaper circulating throughout the State and on the internet site of the Commissioner.

Clause 89 provides that if a general health warning statement is found to be incorrect, the Commissioner must publish a correction statement setting out the reason for the correction.

Subclause (2) provides that a statement correcting a general health warning statement 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

Clause 90 provides that if the Commissioner is conducting an investigation under Part 4 into whether a code of conduct has been contravened by a general health service provider, the Commissioner may make an interim prohibition order prohibiting the general health service provider from providing all or part of the general health service for up to 12 weeks, or imposing 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 or up to 12 weeks.

Subclause (2) provides that as soon possible after the interim prohibition order is made the Commissioner must serve a copy on the general health service provider to whom it applies.

Subclause (3) provides that the order takes effect from the time it is served upon the general health service provider to whom it applies.

Clause 91 provides that the Commissioner must not make an interim prohibition order unless the Commissioner reasonably believes that the general health service provider has contravened a code of conduct or the general health service provider has been convicted or found guilty of a prescribed offence. The Commissioner must also be satisfied that it is necessary to make the order to avoid serious risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

It is envisaged that offences to be prescribed for the purposes of this clause may include offences under the **Crimes Act 1958** and the **Drugs, Poisons and Controlled Substances Act 1981**, for example.

Clause 92 provides that as soon as practicable after an interim prohibition order is made, the Commissioner must publish the name of the general health service provider on whom it is imposed, the effect of the order, the date on which it took effect and the date on which the order expires.

Subclause (2) provides that publication must be made in the Government Gazette and on the internet site of the Commissioner.

Clause 93 provides that a health service provider who has been served with an interim prohibition order must comply with the order. A penalty of 240 penalty units or 2 years imprisonment or both in relation to a natural person and 1200 penalty units in relation to a body corporate apply for failure to comply.

Clause 94 provides that 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 the life, health, safety or welfare of a person or the health, safety or welfare of the public.

Subclause (2) provides that a revocation order under subclause (1) must publish the name of the general health service provider, the date and time at which it takes effect, and advise the public that the serious risk no longer exists and the reason why the interim prohibition order is revoked.

Subclause (3) provides that as soon possible after a revocation order under subclause (1) is made, the Commissioner must serve a copy on the general health service provider to whom it applies

and publish the revocation order in the Government Gazette and on the internet site of the Commissioner.

Subclause (4) provides that a revocation order takes effect on the service of the order on the general health service provider to whom it applies.

Division 2—Prohibition orders

Clause 95 provides that if the Commissioner has conducted an investigation under Part 4 into whether a code of conduct has been contravened by a general health service provider, the Commissioner may make a prohibition order—

- prohibiting the general health service provider from providing all or part of the general health service permanently or for the period specified in the order; or
- imposing 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 in the order.

Subclause (2) provides that as soon as the prohibition order is made the Commissioner must serve a written copy on the general health service provider to whom it applies.

Subclause (3) provides that the prohibition order takes effect from the time it is served upon the general health service provider to whom it applies.

Clause 96 provides that the Commissioner must not make a prohibition order unless the Commissioner is satisfied that the general health service provider has contravened a code of conduct or the general health service provider has been convicted or found guilty of a prescribed offence. The Commissioner must also be satisfied that it is necessary to make the order to avoid a serious risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

It is envisaged that offences to be prescribed for the purposes of this clause may include offences under the **Crimes Act 1958** and the **Drugs, Poisons and Controlled Substances Act 1981**, for example.

Clause 97 provides that as soon as practicable after a prohibition order is made, the Commissioner must publish the name of the general health service provider on whom it is imposed, the effect of the order, the date on which it takes effect and the date on which the order expires (if any).

Subclause (2) provides that publication must be made in the Government Gazette and on the internet site of the Commissioner.

Clause 98 provides that a general health service provider who has been served with a prohibition order must comply with the order. A penalty of 240 penalty units or 2 years imprisonment or both in relation to a natural person and 1200 penalty units in relation to a body corporate for apply for failure to comply.

Clause 99 provides that the Commissioner must vary a prohibition order, by order, if the Commissioner is satisfied that the restrictions contained in the prohibition order should be reduced.

Subclause (2) provides that a variation order under subclause (1) must publish the name of the general health service provider, the time at which it takes effect, and the nature of the variation.

Subclause (3) provides that as soon possible after a variation order under subclause (1) is made, the Commissioner must serve a copy on the general health service provider to whom it applies and publish the revocation order in the Government Gazette and on the internet site of the Commissioner.

Subclause (4) provides that a variation order takes effect on the service of the order on the general health service provider to whom it applies.

Clause 100 provides that the Commissioner must revoke a prohibition order, by order, if the Commissioner is satisfied that the order is no longer required to avoid a serious risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

Subclause (2) provides that a revocation order under subclause (1) must publish the name of the general health service provider, the date and time at which it takes effect, and advise the public that the serious risk no longer exists and the reason why the prohibition order is revoked.

Subclause (3) provides that as soon possible after a revocation order under subclause (1) is made, the Commissioner must serve a copy on the general health service provider to whom it applies and publish the revocation order in the Government Gazette and on the internet site of the Commissioner.

Subclause (4) provides that a revocation order 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

Clause 101 provides that 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. VCAT may vary the terms of an interim prohibition order or a prohibition order if it is satisfied on hearing the application that this is required.

Subclause (2) provides that an application for review must be made within 28 days after the later of—

- the day on which the order is served on the general health service provider; or
- 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.

Clause 102 provides that 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. Penalties of 240 penalty units or 2 years imprisonment or both in relation to a natural person and 1200 penalty units in relation to a body corporate apply for failure to comply.

Part 9—Inquiries

Clause 103 provides that the Commissioner may inquire into any health service matter referred to the Commissioner by a House of the Parliament or a Parliamentary Committee or the Minister.

Subclause (2) provides that 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.

Clause 104 provides that in conducting the inquiry under clause 103 the Commissioner may conduct public hearings.

Subclause (2) provides that in conducting a public hearing the Commissioner may take oral or written submissions from the public and send for persons, documents or other things, is bound by the rules of natural justice, is not bound by the rules of evidence, and must keep a record of all submissions and evidence given before the Commissioner and decisions made by the Commissioner.

These powers reflect the distinction between any investigation dealing with the conduct of a specific health service provider under Part 4 and inquiries dealing with broader health care issues, where the Commissioner will not be making recommendations or taking action against specific health service providers.

Part 10—Complaint data review

Clause 105 provides that the Commissioner may conduct a review of any information given to the Commissioner in the course of dealing with a complaint or in the conduct of an investigation under Part 4 if the Commissioner reasonably believes persistent or recurrent issues regarding the provision of a health service may be identified by the conduct of a review.

Subclause (2) provides that 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.

Clause 106 provides that in conducting a complaints data review the Commissioner must give written notice of the investigation to the health service provider of the process to be followed in conducting the review and setting out the matter that is to be reviewed.

Subclause (2) provides that in conducting complaint data review the Commissioner must act as expeditiously and with as little formality as is reasonably possible, is bound by the rules of natural justice, is not bound by the rules of evidence and before

making a decision affecting a person must give the person an opportunity to make submissions to the Commissioner about the decision.

Clause 107 provides that on completing a complaint data review the Commissioner may prepare a written report of the review.

Subclause (2) specifies the information that must be included in the report, which includes a description of the matter reviewed, any findings made as a result of the review, any recommendations of action that should be taken by the health service provider and the time within which to carry out the recommendation, the time within which a written response under clause 109 (if any) is to be provided, and, if requested by a person against whom the Commissioner has made an adverse decision, a summary of any submissions made to the Commissioner in relation to that decision.

Clause 108 provides that the Commissioner must provide a copy of the complaint data review report to the health service provider, or if there is more than one health service provider, that part of the report that relates to that health service provider.

Clause 109 provides that a health service provider who has received a complaint data review report may give a written response to that report to the Commissioner within a time specified by the Commissioner.

The clause provides that the response must describe what action has been taken to implement the recommendations made by the report and, if a recommendation has not been implemented, gives reasons why the recommendations have not been implemented and set out a plan to implement each recommendation or address the issue dealt with in the recommendation.

Part 11—Health Complaints Commissioner

Division 1—Appointment, terms and conditions

Clause 110 provides for the establishment of the office of Health Complaints Commissioner.

Clause 111 provides that the Governor in Council, on recommendation of the Minister, may by instrument appoint a person as the Commissioner.

Clause 112 provides that the Commissioner is entitled to the remuneration and allowances determined from time to time by the Governor in Council.

Clause 113 provides for the terms and conditions of the appointment of the Commissioner that are the Commissioner—

- holds office for the term specified in the instrument of appointment, which may not be more than 5 years; and
- is eligible for reappointment; and
- is appointed on a full-time or part-time basis and holds office on the terms and conditions specified in the instrument of appointment.

Subclause (2) provides that if the Commissioner was an officer within the meaning of the **State Superannuation Act 1988** immediately before being appointed, the Commissioner will continue to be such an officer during his or her term as Commissioner.

Subclause (3) provides that the **Public Administration Act 2004** does not apply to the Commissioner in respect of the office of Commissioner.

Clause 114 provides that the Governor in Council may appoint a person to act as the Commissioner in the following circumstances—

- during a vacancy in the office of the Commissioner; or
- during any period when the Commissioner is absent; or
- during any period when the Commissioner is unable to perform the duties of office for any reason.

Subclause (2) provides that the Minister may appoint a person to act as the Commissioner for not more than 6 months during any period where the Commissioner is absent.

Subclause (3) provides that a person appointed under subclause (1) is entitled to the remuneration and allowances determined by the Governor in Council.

Subclause (4) provides that a person appointed under subclause (2) is entitled to the remuneration and allowances determined by the Minister.

Subclause (5) provides that a person acting as the Commissioner has all the powers and may perform any functions of the Commissioner.

Subclause (6) provides that the Governor in Council may revoke an appointment made under subclause (1) at any time.

Subclause (7) provides that the Minister may revoke an appointment made under subclause (2) at any time.

Clause 115 provides that the Commissioner will cease to hold office in the following circumstances—

- the Commissioner resigns by writing delivered to the Minister;
- the Commissioner becomes insolvent under administration;
- the Commissioner is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence;
- the Commissioner nominates for, or is elected to, the Parliament of Victoria, or the Parliament of the Commonwealth or another State or Territory of the Commonwealth, or a Council within the meaning of the **Local Government Act 1989**;
- is removed from office under clause 116.

Clause 116 provides that the Governor in Council on recommendation of the Minister may remove the Commissioner from office in the following circumstances—

- any misconduct of the Commissioner in carrying out the duties of office;
- a conflict of interest of the Commissioner when carrying out the duties of office;
- any neglect of the Commissioner in carrying out the duties of office;
- an inability of the Commissioner to perform the duties of office; or

- the Commissioner engaging in paid employment outside the duties of the office without the consent of the Minister.

Clause 117 provides that a decision of the Commissioner is not invalid merely because of a defect or irregularity in connection with the appointment of the Commissioner.

Division 2—Functions and powers

Clause 118 provides that the Commissioner has the following functions—

- to assist in the formulation of complaints;
- to receive complaints;
- to determine how complaints should be dealt with in accordance with the Bill;
- to deal with complaints in accordance with the Bill;
- to conduct investigations under Part 4, complaint data reviews and inquiries in accordance with the Bill;
- to publish complaint handling standards;
- to provide information and education to health service providers about their responsibilities in handling complaints;
- to provide information and education to the public regarding the health service principles, complaint handling standards, the complaints process and the responsibilities of health service providers;
- 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;
- to provide advice to the Minister on or in relation to any code of conduct;
- to conduct and support research in respect of complaint handling and matters relevant to the improvement of the quality of health service systems;

- 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 or the conduct of an inquiry or complaint data review under the Bill;
- any other function conferred on the Commissioner under the Bill or any other Act.

Subclause (2) provides that the Commissioner has all the powers that are necessary or convenient to perform his or her functions under this Bill or any other Act.

Clause 119 provides that an Assistant Commissioner may make recommendations to the Commissioner in respect of any function or power of the Commissioner under Part 7 or 8.

Clause 120 provides that the Commissioner may by instrument delegate to an Assistant Commissioner any function or power of the Commissioner under the Bill except a function or power under Part 7 or 8 or Division 4 of Part 11. The power to delegate excludes the power of delegation due to the operation of section 42A(1) of the **Interpretation of Legislation Act 1984**.

Clause 121 provides that 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.

Subclause (2) provides that there may be employed under Part 3 of the **Public Administration Act 2004** one or more persons as Assistant Health Complaints Commissioners.

Subclause (3) provides the Commissioner may enter into agreements or arrangements for the use of the services of any person with suitable qualifications or experience to assist the Commissioner in the performance of his or her functions and powers.

Subclause (4) provides that an agreement or arrangement under subclause (3) may be on any terms and conditions that the Commissioner is satisfied are appropriate.

Clause 122 provides that the Commissioner or an Assistant Commissioner is not personally liable for anything done or omitted to be done in good faith—

- in the exercise of or the performance of a function under the Bill; or
- in the reasonable belief that the act or omission was in the exercise of a power, or performance of a function, under the Bill.

Subclause (2) provides that any liability resulting from any act or omission that, but for subclause (1), would attach to the Commissioner or the Assistant Commissioner will attach to the State.

Subclause (3) clarifies that nothing in this clause detracts from the protection for the Commissioner or an Assistant Commissioner under clause 74.

Division 3—Performance of the Commissioner

Clause 123 provides that the Commissioner, when carrying out a function or power under this Act, must—

- act in a fair, impartial and independent manner;
- act in the public interest;
- encourage complainants and health service providers to participate in the complaint process;
- seek to resolve complaints promptly and improve the quality of health services;
- as far as practicable, protect the public from any serious risk that a health service provider poses to the health, safety or welfare of the public;
- act in a manner that is transparent, accountable and consistent;
- act in an efficient, effective and flexible manner that avoids unnecessary formality;

- take as far as practicable the least intrusive and onerous measures that are appropriate in the circumstances; and
- act in a consultative and collaborative manner to the extent that is consistent with carrying out of a function or power.

Clause 124 provides that within 2 years of this clause coming into operation the Commissioner must prepare a practice protocol that—

- sets out the measures to be taken to enhance the transparency and accountability of the Commissioner;
- describes what complainants, the public and health service providers can reasonably expect in respect of the processes of the Commissioner; and
- establishes the measures to ensure that the guiding principles are given effect.

Subclause (3) provides that the Commissioner must consult with any person that the Commissioner is satisfied has a relevant interest before preparing the practice protocol.

Subclause (4) provides that the Commissioner must have regard to the guiding principles in developing the statement.

Clause 125 provides that the Commissioner must give the practice protocol prepared under clause 124 to the Minister for approval.

Subclause (2) provides that the Minister may approve the practice protocol prepared by the Commissioner.

Clause 126 provides that the Commissioner must publish the approved practice protocol on the internet site of the Commissioner.

Clause 127 provides that the approved practice protocol must be reviewed at least once every 3 years by the Commissioner in consultation with any person that the Commissioner is satisfied has a relevant interest.

Clause 128 provides that on completing a review of an approved practice protocol the Commissioner may prepare an amended practice protocol.

Subclause (2) provides that clauses 124(1), (3) and (4), 125 and 126 apply in respect of 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

Clause 129 provides that the Commissioner may by providing written notice to a health service provider require the health service provider to provide specified non-identifying information in respect of complaints received or dealt with by the health service provider.

Subclause (2) sets out what information a notice under subclause (1) must contain.

Subclause (3) provides that the Commissioner may extend the time within which a health service provider must comply with a notice under subclause (1).

Subclause (4) provides that a health service provider must comply with a notice given under subclause (1) unless the health service provider has a reasonable excuse not to do so. There are penalties of 10 penalty units in relation to a natural person and 50 penalty units in relation to a body corporate that apply for failure to comply without a reasonable excuse.

Clause 130 provides that the Commissioner may from time to time make available to the public any report of the analysis of information provided under clause 129.

Clause 131 provides that the interim standards for complaint handling by a health service provider set out in Schedule 1 apply to health service providers until a standard takes effect under clause 133.

Clause 132 provides that the Commissioner must prepare standards for health service providers in handling complaints, and specifies the matters that are to be included in the standards.

Subclause (2) provides that the commissioner must prepare standards within 2 years of the interim standards coming into effect under clause 131.

Clause 133 provides that the Commissioner must give to the Minister a standard prepared under clause 132, and that on recommendation by the Minister, the Governor in Council by order published in the Government Gazette may make the standard.

Clause 134 provides that the Commissioner must review complaint handling standards at least once every 3 years in consultation with any relevant health service provider and any other person the Commissioner is satisfied has a relevant interest.

Clause 135 provides that the Commissioner may prepare an amendment or revocation of a standard.

Clause 136 provides that the Commissioner must give to the Minister an amended standard prepared under clause 135, and that on recommendation by the Minister, the Governor in Council by order published in the Government Gazette may make the amended standard or revoke a standard.

Clause 137 provides that a complaint handling standard made under clause 133 or 136, or revoked under clause 136, takes effect—

- on the day that is 20 business days after the day the order is made; or
- such later day as specified in the order.

Clause 138 provides for the Commissioner to prepare a report on the performance of the Commissioner's functions under the Bill during the financial year and specifies what is to be included in the annual report.

Clause 139 provides that the Commissioner must give a copy of the annual report to the clerk of each House of Parliament within 12 months of the end of the financial year to which the report applies.

Subclause (2) provides that the clerk of each House of Parliament must cause the report to be laid before the House on the day on which it is received or the next sitting day of the House.

Part 12—Health Complaints Commissioner Advisory Council

Clause 140 provides for the establishment of the Health Complaints Commissioner Advisory Council.

Clause 141 provides for the membership of the Council, which must consist of not less than 5 members and not more than 7 members, appointed by the Minister. The Minister must ensure members have appropriate knowledge and experience to be members of the Council.

Subclause (3) provides that the Minister must appoint one of the members who is an Australian lawyer to be President of the Council.

Subclause (4) provides that the **Public Administration Act 2004** (other than Part 3) applies to a member of the Council in respect of the office of the member.

Clause 142 provides that a member of the Council holds office for the term specified in the instrument of appointment, which may not be more than 3 years.

Subclause (2) provides that a member of the Council is eligible for reappointment, but must not serve more than 9 consecutive years as a member.

Subclause (3) provides that a member of the Council, other than a member who is an employee of the public service, is entitled to the remuneration and allowances fixed by the Minister and specified in the instrument of appointment.

Clause 143 provides that the Council President may convene meeting of the Council.

Subclause (2) provides that a quorum of the Council is a majority of its members.

Subclause (3) provides that a resolution may be made at a meeting at which there is a quorum present unless the rules of the Council provide otherwise.

Subclause (4) provides that the Council may regulate its own proceedings, subject to the Bill.

Clause 144 provides that a member of the Council may resign the office by writing given to the Minister.

Subclause (2) provides that the Minister may remove a member from the Council at any time.

Clause 145 provides that a member of the Council ceases to hold office if the member—

- has failed to attend 3 consecutive meetings of the Council without leave from the Council;
- has become an insolvent under administration; or

- has been convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.

Clause 146 provides that an act or decision of the Council is not invalid only because of a vacancy in its membership or a defect or irregularity in the appointment of its members.

Clause 147 provides that the Council has the following functions—

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

Part 13—General

Division 1—Disclosure of information

Clause 148 provides that for the purpose of this Bill, the Health Practitioner Regulation National Law (Victoria) or a relevant law, the Commissioner may give information obtained in the course of administering the Bill that is or may be the subject of or relevant to a complaint, investigation or inquiry under the Health Practitioner Regulation National Law (Victoria) or relevant law to—

- the Australian Health Practitioner Regulation Agency or any relevant National Board; or
- the person or body responsible for dealing with the matter under the relevant law.

Subclause (2) provides that the Commissioner may provide a copy of an interim prohibition order or prohibition order to the following—

- the Australian Health Practitioner Regulation Agency or any relevant National Board; and

- any person or body dealing with health complaints under the jurisdiction of another State or Territory of the Commonwealth, if the person or body has the power to make orders in the nature of the order.

Clause 149 provides that the Commissioner is a State entity for the purposes of section 219 and 220 of the Health Practitioner Regulation National Law (Victoria), and that a disclosure of protected information within the meaning of the Health Practitioner Regulation National Law (Victoria) is authorised and permitted for the purposes of sections 216(2)(b) and (c) of the Health Practitioner Regulation National Law (Victoria).

Clause 150 provides that a person must not disclose any information gained by that person in the course of an investigation or complaint data review except as authorised under this clause. There is a penalty of 60 penalty units in relation to a natural person and 300 penalty units in relation to a body corporate for failure to comply.

Subclause (2) provides that the Commissioner or a member of staff of the Commissioner is authorised and may disclose information to which subclause (1) applies if—

- the Commissioner reasonably believes that the disclosure is necessary for or in connection with the administration of the Bill; or
- the disclosure is for the purposes of any legal proceedings arising out of the Bill (for example, prosecution for contravention of the Bill or VCAT appeal under clause 101); or
- the disclosure is with the written authority of the Secretary, if the Secretary reasonably believes it is in the public interest to do so; or
- the disclosure is with the written authority of the person to whom the information relates; or
- the disclosure is to the Australian Health Practitioner Regulation Agency or a National Board and is for the purposes of clause 148.

Subclause (3) provides that despite subclause (1), the Commissioner is authorised and may disclose information to which subclause (1) applies if the Commissioner reasonably believes that the disclosure is necessary to avoid a serious and

imminent risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

Clause 151 subclause (1) provides that the Commissioner and members of staff of the Commissioner must not disclose any information gained by that person in the course of a complaint resolution process (other than conciliation) except as authorised under this clause. A penalty of 60 penalty units applies to a failure to comply.

Subclause (2) provides that the Commissioner is authorised and may disclose information to which subclause (1) applies if—

- the Commissioner reasonably believes that the disclosure is necessary for or in connection with the administration of the Bill; or
- the disclosure is for the purposes of any legal proceedings arising out of the Bill (for example, prosecution for breach of the Bill or VCAT appeal under clause 101); or
- the disclosure is with the written authority of the Secretary, if the Secretary reasonably believes it is in the public interest to do so; or
- the disclosure is with the written authority of the person to whom the information relates; or
- the disclosure is to the Australian Health Practitioner Regulation Agency or a National Board of a health profession established under the Health Practitioner Regulation National Law (Victoria) and is for the purposes of clause 148; or
- the Commissioner reasonably believes that the disclosure is necessary to avoid a serious and imminent risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

Clause 152 subclause (1) provides that the Commissioner and members of staff of the Commissioner must not disclose outside a conciliation any information gained in a conciliation process, other than information about an undertaking given in conciliation. A penalty of 60 penalty units applies to a failure to comply.

Subclause (2) provides that the Commissioner or a member of staff of the Commissioner may disclose information to which subclause (1) applies if—

- the disclosure is with the written authority of the person to whom the information relates; or
- the disclosure is with the written authority of the Secretary, if the Secretary reasonably believes it is in the public interest to do so; or
- 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
- the Commissioner reasonably believes that the disclosure is necessary to avoid a serious and imminent risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

Clause 153 provides that in respect of any process under the Bill, the Commissioner may decide that the name of a complainant or any person who sought or received a health service or was the subject of conduct dealt with in a Commissioner initiated investigation or referral investigation, or any identifying information about such a person, must not be disclosed.

Subclause (2) provides that the Commissioner must not make a decision under subclause (1) unless the Commissioner is satisfied that—

- there are special circumstances; and
- it is in the complainant's or person's interests not to disclose the information.

Subclause (3) provides that in deciding whether or not to disclose information under this clause, the Commissioner must consider whether the non-disclosure would unreasonably limit another person's right to natural justice.

Subclause (4) provides that the Commissioner may revoke a decision under subclause (1) if the Commissioner is no longer satisfied of the matters set out in subclause (2).

Division 2—General code of conduct

Clause 154 provides that the general code of conduct in respect of general health services is set out in Schedule 2 of the Bill.

Subclause (2) provides that the general code of conduct set out in Schedule 2 applies to general health service providers until a general code of conduct in respect of general health service providers is prescribed by regulations.

Division 3—Criminal record check

Clause 155 provides that the Commissioner may for the purposes of clauses 87, 91 or 96—

- request the Chief Commissioner of Police appointed under section 17 of the **Victoria Police Act 2013** to provide the Commissioner with information concerning any criminal record of a general health service provider; and
- for the purpose of a request, to provide the Chief Commissioner of Police with any information concerning the general health service provider necessary to conduct a check on any criminal record of the general health service provider.

Subclause (2) provides that the Chief Commissioner of Police may give information requested to the Commissioner.

Division 4—General matters and regulations

Clause 156 provides for the method of service for any statement, notice, order, or other document required to be served under the Bill.

Clause 157 provides a requirement that in the fourth year of the operation of the Bill the Minister must conduct a review of the first 3 years of its operation.

Subclause (3) provides that on completing the review the Minister must table the report of the review before each House of the Parliament.

Clause 158 provides that the Governor in Council may make regulations for the operation of the Bill. The clause provides for regulations to be made prescribing codes of conduct, prescribing offences for

the purposes of Parts 7 and 8, prescribing services to be health services, and for any matter or thing necessary to give effect to the Bill.

Part 14—Transitional provisions

Clause 159 makes transitional provisions on the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Subclause (1) provides that despite the commencement of clause 160 that repeals the **Health Services (Conciliation and Review) Act 1987** that repealed Act continues to apply to a complaint made under section 16 of that Act that is in existence immediately prior to the commencement of clause 160, as if a reference in that Act to the Health Services Commissioner should be read as a reference to the Commissioner.

Subclause (2) provides that despite the commencement of clause 160 the **Health Services (Conciliation and Review) Act 1987** continues to apply in respect of an act or omission that occurred prior to the commencement of clause 160, as if a reference in that Act to the Health Services Commissioner should be read as a reference to the Commissioner, and that subject to subclause (3), the provision of the Bill (except this clause) do not apply to the act or omission.

Subclause (3) provides that Part 3 of the Bill applies in relation to a complaint made on or after the commencement of clause 160 under the **Health Services (Conciliation and Review) Act 1987** relating to an act or omission that occurred prior to the commencement of clause 160 instead of section 20 of that Act and with any necessary modifications to that Act.

Subclause (4) provides that any action or duty of the Health Services Commissioner under the **Health Services (Conciliation and Review) Act 1987** not completed before the commencement of clause 160 may be dealt with by the Commissioner under that Act as continued on or after that commencement.

Subclause (5) provides that a complaint referred to the Health Services Commissioner under section 46 of the **Health Records Act 2001** in existence immediately prior to the commencement of clause 160 may be dealt with by the Commissioner under that Act as in force on or after that commencement.

Subclause (6) provides that any action or duty of the Health Services Commissioner that was being performed under the **Health Records Act 2001** not completed before the commencement of clause 160 may be dealt with by the Commissioner under that Act as in force on or after that commencement.

Part 15—Repeals and consequential amendments

Division 1—Repeal of the Health Services (Conciliation and Review) Act 1987

Clause 160 repeals the **Health Services (Conciliation and Review) Act 1987**. A series of amendments are made by Part 15 of the Bill as a consequence of the repeal made by this clause.

Division 2—Amendment of the Assisted Reproductive Treatment Amendment Act 2016

Clause 161 substitutes the proposed definition of *Health Services Commissioner* with a definition of *Health Complaints Commissioner* in section 4(2) of the **Assisted Reproductive Treatment Amendment Act 2016** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 162 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in proposed section 100A(2) of the **Assisted Reproductive Treatment Amendment Act 2016** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 3—Amendment of Commission for Children and Young People Act 2012

Clause 163 substitutes section 53(1)(e) of the **Commission for Children and Young People Act 2012** with a new provision that substitutes references to "Health Services Commissioner" and "**Health Services (Conciliation and Review) Act 1987**" with "Health Complaints Commissioner" and "**Health Complaints Act 2016**" as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 4—Amendment of Corrections Act 1986

Clause 164 repeals the definition of *Health Services Commissioner* and inserts a definition of *Health Complaints Commissioner* in section 3(1) of the **Corrections Act 1986** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 165 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 47(1)(j), (m)(v) of the **Corrections Act 1986** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 166 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 47B(2)(b) of the **Corrections Act 1986** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 5—Amendment of Crimes Act 1958

Clause 167 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 464ZGH(2)(g)(ii) of the **Crimes Act 1958** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 168 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 464ZGK(2)(g)(ii) of the **Crimes Act 1958** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 6—Amendment of Disability Act 2006

Clause 169 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 20(3)(e) of the **Disability Act 2006** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 170 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 108(a) of the **Disability Act 2006** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 7—Amendment of Freedom of Information Act 1982

Clause 171 repeals the definition of *Health Services Commissioner* and inserts a definition of *Health Complaints Commissioner* in section 5(1) of the **Freedom of Information Act 1982** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 172 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of Division 2 of Part VI of the **Freedom of Information Act 1982** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 173 substitutes a reference to **Health Services Commissioner** with **Health Complaints Commissioner** in the heading of section 49Q of the **Freedom of Information Act 1982** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 174 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 49Q of the **Freedom of Information Act 1982** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 175 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 50(3C) of the **Freedom of Information Act 1982** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 176 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 61M(b)(ii) of the **Freedom of Information Act 1982** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 8—Amendment of Health Practitioners (Special Events Exemption) Act 1999

Clause 177 substitutes a reference to "**Health Services (Conciliation and Review) Act 1987**" with "**Health Complaints Act 2016**" in section 17(1) of the **Health Practitioners (Special Events Exemption) Act 1999** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 9—Amendment of Health Records Act 2001

Clause 178 subclause (a) repeals the definitions of *Health Services Commissioner* and *Health Services Review Council* in clause 3(1) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Subclause (b) inserts definitions of *Health Complaints Commissioner* and *Health Complaints Commissioner Advisory Council* in clause 3(1) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Subclauses (c) and (d) repeal and insert the definition of *registered health service provider* with the definition of *registered health practitioner* in clause 3(1) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Subclause (e) substitutes the definition of *registration board* with a new definition of *registration board* at clause 3(1) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 179 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 20(6)(b) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

- Clause 180 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 21 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 181 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of section 22 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 182 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 22 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 183 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 23 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 184 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 24 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 185 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 26 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 186 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 45 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 187 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of section 46 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

- Clause 188 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 46 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 189 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in sections 47(1)(b)(iii) and (3)(b) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 190 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of section 48 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 191 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 48 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 192 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 49 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 193 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 50 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 194 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of section 51 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 195 substitutes references to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in section 51 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

- Clause 196 substitutes references to "registered health service provider" with "registered health practitioner", and references to "Health Services Commissioner" with "Health Complaints Commissioner", in section 52 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 197 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of section 53 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 198 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 53 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 199 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 54(1) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 200 substitutes a reference to "**registered health service provider**" with "**registered health practitioner**" in the heading of section 55 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 201 substitutes a reference to "registered health service provider" with "registered health practitioner", and references to "Health Services Commissioner" with "Health Complaints Commissioner", in section 55 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 202 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 56 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

- Clause 203 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 57 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 204 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 58 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 205 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 59 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 206 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 60 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 207 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 61 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 208 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 63 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 209 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 64 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 210 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 65 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 211 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 66 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

- Clause 212 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 67 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 213 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 68 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 214 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 69(1) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 215 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 72 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 216 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 73(1) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 217 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 74(1)(a) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 218 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 75(2) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 219 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 78 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

- Clause 220 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 83(a)(ii) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 221 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of section 84 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 222 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 84 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 223 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 86(2) of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 224 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of section 87 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 225 substitutes references to "Health Services Review Council" with "Health Complaints Commissioner Advisory Council", and references to "Health Services Commissioner" with "Health Complaints Commissioner", in section 87 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 226 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 88 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

- Clause 227 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of section 89 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 228 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 89 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 229 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 90 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 230 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 91 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 231 substitutes references to "Health Services Commissioner" with "Health Complaints Commissioner" in section 94 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.
- Clause 232 substitutes a reference to "registered health service provider" with "registered health practitioner", and references to "Health Services Commissioner" with "Health Complaints Commissioner", in Schedule 1 of the **Health Records Act 2001** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 10—Amendment of Health Services Act 1988

- Clause 233 substitutes in section 18B(1)(a) of the **Health Services Act 1988** with a new paragraph that substitutes a reference to "a registered provider within the meaning of the **Health Services (Conciliation and Review) Act 1987**" with "a registered health practitioner within the meaning of the Health Practitioner Regulation National Law" as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 234 substitutes reference to "registered provider within the meaning of the **Health Services (Conciliation and Review) Act 1987**" with "registered health practitioner within the meaning of the Health Practitioner Regulation National Law" in section 65T(4)(a) of the **Health Services Act 1988** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 235 substitutes reference to "registered provider within the meaning of the **Health Services (Conciliation and Review) Act 1987**" with "registered health practitioner within the meaning of the Health Practitioner Regulation National Law" in section 65ZB(3)(a) of the **Health Services Act 1988** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 236 substitutes reference to "registered provider within the meaning of the **Health Services (Conciliation and Review) Act 1987**" with "registered health practitioner within the meaning of the Health Practitioner Regulation National Law" in subsection 134R(3) of the **Health Services Act 1988** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 11—Amendment of Judicial Commission of Victoria Act 2016

Clause 237 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in Item 3 of Schedule 1 of the **Judicial Commission of Victoria Act 2016** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 12—Amendment of Mental Health Act 2014

Clause 238 substitutes section 233(1)(e) of the **Mental Health Act 2014** with a new paragraph that substitutes references to "Health Services Commissioner" and "**Health Services (Conciliation and Review) Act 1987**" with "Health Complaints Commissioner" and "**Health Complaints Act 2016**" as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 13—Amendment of Ombudsman Act 1973

Clause 239 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in Item 9 of Schedule 3 of the **Ombudsman Act 1973** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 14—Amendment of Privacy and Data Protection Act 2014

Clause 240 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 63(1)(e) of the **Privacy and Data Protection Act 2014** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 15—Amendment of Protected Disclosure Act 2012

Clause 241 substitutes section 16(d) of the **Protected Disclosure Act 2012** with a new subclause that substitutes references to "Health Services Commissioner" and "**Health Services (Conciliation and Review) Act 1987**" with "Health Complaints Commissioner" and "**Health Complaints Act 2016**" as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 16—Amendment of Public Administration Act 2004

Clause 242 substitutes section 6(1)(c) of the **Public Administration Act 2004** with a new paragraph that substitutes references to "the office of the Health Services Commissioner" with "the office of the Health Complaints Commissioner within the meaning of the **Health Complaints Act 2016**" as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 17—Amendment of Public Health and Wellbeing Act 2008

Clause 243 substitutes section 41(1)(b) of the **Public Health and Wellbeing Act 2008** with a new subclause that substitutes references to "Health Services Commissioner", "**Health Services (Conciliation and Review) Act 1987**" and inquiries under

section 9(1)(m) of the **Health Services (Conciliation and Review) Act 1987**, with "Health Complaints Commissioner", "**Health Complaints Act 2016**" and investigations under clause 46 of the Bill as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 18—Amendment of Radiation Act 2005

Clause 244 substitutes section 136(1)(a) of the **Radiation Act 2005** with a new paragraph that substitutes references to "Health Services Commissioner" and "**Health Services (Conciliation and Review) Act 1987**" with "Health Complaints Commissioner" and "**Health Complaints Act 2016**" as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 19—Amendment of Serious Sex Offenders (Detention and Supervision) Act 2009

Clause 245 substitutes a definition of "*health service provider*" that includes a reference to the **Health Services (Conciliation and Review) Act 1987** with a definition of "*health service provider*" as defined in the Bill in section 3 of the **Serious Sex Offenders (Detention and Supervision) Act 2009** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 246 subclause (1) substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 142(3)(b)(vii) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Subclause (2) repeals the definition of "*Health Services Commissioner*" in subsection 142(8) of the **Serious Sex Offenders (Detention and Supervision) Act 2009** and inserts a new definition of "*Health Complaints Commissioner*" as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

**Division 20—Amendment of Victims of Crime
Assistance Act 1996**

Clause 247 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in section 49(2) of the **Victims of Crime Assistance Act 1996** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

**Division 21—Amendment of Victorian Civil and
Administrative Tribunal Act 1998**

Clause 248 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of clause 11F of Part 5B of Schedule 1 of the **Victorian Civil and Administrative Tribunal Act 1998** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 249 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in clause 11F of Part 5B of Schedule 1 of the **Victorian Civil and Administrative Tribunal Act 1998** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 250 subclause (1) substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in clause 11G(1) of Part 5B of Schedule 1 of the **Victorian Civil and Administrative Tribunal Act 1998** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Subclause (2) substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in clause 11G(2) of Part 5B of Schedule 1 of the **Victorian Civil and Administrative Tribunal Act 1998** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 251 substitutes a reference to "**Health Services Commissioner**" with "**Health Complaints Commissioner**" in the heading of clause 11H of Part 5B of Schedule 1 of the **Victorian Civil and Administrative Tribunal Act 1998** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 252 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in clause 11H of Part 5B of Schedule 1 of the **Victorian Civil and Administrative Tribunal Act 1998** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Clause 253 substitutes a reference to "Health Services Commissioner" with "Health Complaints Commissioner" in clause 11I of Part 5B of Schedule 1 of the **Victorian Civil and Administrative Tribunal Act 1998** as a consequence of the repeal of the **Health Services (Conciliation and Review) Act 1987** by clause 160.

Division 22—Repeal of Part

Clause 254 provides for the automatic repeal of this Part on 1 February 2018. The repeal of this Part does not affect in any way the continuing operation of the amendments made by this Part (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Schedule 1—Interim standards for complaint handling

Schedule 1 sets out interim complaint handling standards for health service providers. The intention of the Bill is that these interim standards are replaced within 2 years of them coming into effect.

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

Schedule 2 sets out the general code of conduct for all general health service providers, which is based on the National Code of Conduct for health care workers agreed by the Council of Australian Governments Health Council.