NORTHERN TERRITORY OF AUSTRALIA

HEALTH AND COMMUNITY SERVICES COMPLAINTS ACT 1998

As in force at 13 August 2026

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 13 August 2026

HEALTH AND COMMUNITY SERVICES COMPLAINTS ACT 1998

An Act relating to the rights and responsibilities of users and providers of health services and community services and providing for the resolution of complaints arising out of the provision of those services, and for related purposes

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Health and Community Services Complaints Act 1998*.

2 Commencement

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3 Objectives

The objectives of this Act are:

(a) to establish a health and community services complaints system that:

(i) provides an independent, just, fair and accessible mechanism for resolving complaints between users and providers of health services and community services; and

(ii) encourages and assists users and providers to resolve complaints directly with each other; and

(iii) leads to improvements in health services and community services and enables users and providers to contribute to the review and improvement of health services and community services; and

(iv) promotes the rights of users of health services and community services; and

(v) encourages an awareness of the rights and responsibilities of users and providers of health services and community services; and

(b) to set out the powers and functions of the Commissioner; and

(c) to develop the Code of Health and Community Rights and Responsibilities.

4 Interpretation

(1) In this Act:

applicable organisation, see section 4 of the *Carers Recognition Act 2006*.

Board means a National Board.

Carers Charter, see section 4 of the *Carers Recognition Act 2006*.

charter, in relation to a provider, means the charter of patient rights issued by or on behalf of the provider or a provider of that kind.

Chief Executive Officer means a Chief Executive Officer as defined in the *Public Sector Employment and Management Act 1993*.

Code means the Code of Health and Community Rights and Responsibilities approved under section 104.

community service means a service for aged people or a service for people with a disability.

Commissioner means the Commissioner for Health and Community Services Complaints referred to in section 9.

complainant means the person who makes a complaint under section 22.

conciliator means a person appointed under section 35.

contractor means:

(a) a person engaged by the Commissioner under section 14(2)(b); or

(b) an employee or other member of the staff of a person engaged by the Commissioner under section 14(2)(b).

disability means a disability that:

(a) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments; and

(b) is permanent or likely to be permanent; and

(c) results in a substantially reduced capacity for communication, learning or mobility and the need for continuing support services; and

(d) may or may not be of a chronic episodic nature.

health service means a service provided or to be provided in the Territory for, or purportedly for, the benefit of the health of a person and includes:

(a) a service specified by the Regulations as being a health service; and

(b) an administrative service directly related to a health service;

but does not include a service specified by the Regulations as not being a health service.

Information Commissioner means the Information Commissioner under the *Information Act 2002*.

investigator means a person authorised under section 50.

National Board means a National Health Practitioner Board established by section 31 of the Health Practitioner Regulation National Law.

provider means a person who, or body that, provides, or holds out as being able to provide, a health service or community service and includes:

(a) an employer of a provider; and

(b) a volunteer who provides a health service or community service on behalf of a provider.

registered provider means a provider registered by a relevant Board.

relevant Board, in relation to a registered provider, means the Board that registered the provider.

service for aged people means a service provided in the Territory specifically for aged people or their carers and includes a service specified by the Regulations as a service for aged people but does not include a service specified by the Regulations as not being a service for aged people.

service for people with a disability means a service provided in the Territory specifically for people with a disability or their carers and includes a service specified by the Regulations as a service for people with a disability but does not include a service specified by the Regulations as not being a service for people with a disability.

special needs group includes any of the following:

(a) persons of Aboriginal or Torres Strait Islander background;

(b) persons with disabilities;

(c) persons who:

(i) cannot communicate in English;

(ii) have difficulty communicating in English; or

(iii) have a cultural background significantly different to that which generally applies in the community;

(d) persons who, because of the nature of the class to which they belong, suffer disadvantage in the provision of health services or community services.

staff member means a person:

(a) provided to the Commissioner under section 14(1); or

(b) used by the Commissioner under section 14(2)(a).

user means a person who seeks, uses or receives a health service or community service or to whom a health service or community service is administered.

(2) A person is not a user merely because the person arranges a health service or community service for another person.

5 Reasonableness of provider's actions

(1) In determining whether or not a provider has acted reasonably in providing a health service or community service, the Commissioner must have regard to the following:

(a) the Code;

(b) until the Code is approved – the charter or the principles set out in the Regulations, or both;

(c) after the Code is approved – the charter and the principles set out in the Regulations that are not dealt with by the Code;

(d) the generally accepted standard of health service or community service delivery expected of a provider of that kind;

(e) the Carers Charter;

(f) another matter or information the Commissioner considers relevant.

(2) In addition, in respect of a community service that is a service for people with a disability, the Commissioner may have regard to any or all of the following:

(a) the principles set out in Schedule 2 to the *Disability Services Act 1993*;

(b) the objectives to be complied with in relation to the design and implementation of programs and services relating to people with disabilities set out in Schedule 3 to that Act;

(c) any standards of service for people with a disability that are specified in any law in force in the Territory.

(3) In addition, in respect of a community service that is a service for aged people, the Commissioner may have regard to either or both of the following:

(a) the Home and Community Care National Standards (known as the HACC Standards);

(b) any standards of service for aged people that are specified in any law in force in the Territory.

6 Act binds Crown

This Act binds the Crown not only in right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 3 Commissioner for Health and Community Services Complaints

9 Establishment of Commissioner

There is to be a Commissioner for Health and Community Services Complaints.

Notes for section 9

1 *Section 11 of the Integrity and Ethics Commissioner Act 2025 provides that while a person holds office as the Integrity and Ethics Commissioner, the person also holds office as the Commissioner for Health and Community Services Complaints.*

2 *Section 21 of the Integrity and Ethics Commissioner Act 2025 provides that while a person is appointed to act as the Integrity and Ethics Commissioner, the person also acts as the Commissioner for Health and Community Services Complaints.*

3 *Section 58 of the Integrity and Ethics Commissioner Act 2025 also provides for the appointment of an acting Commissioner for Health and Community Services Complaints.*

12 Powers and functions of Commissioner

(1) The Commissioner has the following functions:

(a) to inquire into and report on any matter relating to health services or community services on receiving a complaint or on a reference from the Minister or the Legislative Assembly;

(b) to encourage and assist users and providers to resolve complaints directly with each other;

(c) to conciliate and investigate complaints;

(d) to record all complaints received by the Commissioner or shown on returns supplied by providers and to maintain a central register of those complaints;

(e) to suggest ways of improving health services and community services and promoting community and health rights and responsibilities;

(f) to review and identify the causes of complaints and to:

(i) suggest ways to remove, resolve and minimise those causes; and

(ii) suggest ways of improving policies and procedures; and

(iii) detect and review trends in the delivery of health services and community services;

(g) to consider, promote and recommend ways to improve the health and community services complaints system;

(h) to assist providers to develop procedures to effectively resolve complaints;

(j) to provide information, education and advice in relation to:

(i) this Act; and

(ii) the Code; and

(iii) the procedures for resolving complaints;

(k) to provide information, advice and reports to:

(i) the Boards; and

(ii) the purchasers of community services or health services; and

(iii) the Minister; and

(iv) the Legislative Assembly;

(m) to collect, and publish at regular intervals, information concerning the operation of this Act;

(n) to consult with:

(i) providers; and

(ii) organisations that have an interest in the provision of health services and community services; and

(iii) organisations that represent the interests of users;

(p) to consider action taken by providers where complaints are found to be justified;

(q) to ensure, as far as practicable, that persons who wish to make a complaint are able to do so;

(r) to consult and co-operate with any public authority that has a function to protect the rights of individuals in the Territory consistent with the Commissioner's functions under this Act.

(2) The functions in subsection (1) are in addition to any other functions conferred on the Commissioner by this or any other Act.

(3) The Commissioner has power to do all things necessary or convenient to be done in connection with the performance of his or her functions.

13 Independence of Commissioner

(1) Except as provided by this Act, the Commissioner is not subject to the direction of any person when exercising his or her powers or performing his or her functions.

(2) The Commissioner must act independently, impartially and in the public interest when exercising his or her powers or performing his or her functions.

(3) Subsections (1) and (2) have effect despite anything to the contrary in the *Public Sector Employment and Management Act 1993.*

14 Staff for Commissioner

(2) To assist in the performance of the Commissioner's functions, the Commissioner may engage consultants and make arrangements for the provision of advice and services to the Commissioner.

(3) In exercising a power or performing a function under this Act, a staff member is subject to direction only from:

(a) the Commissioner; or

(b) another staff member.

(4) Subsection (3) has effect despite anything to the contrary in the *Public Sector Employment and Management Act 1993.*

15 Delegation

The Commissioner may, in writing, delegate to a person any of the Commissioner's powers and functions under this Act.

17 Commissioner and staff members not liable

(1) The Commissioner, a staff member or a delegate of the Commissioner is not liable, whether on the grounds of want of jurisdiction or any other ground, to civil or criminal proceedings (other than proceedings by way of judicial review) in respect of any act done or purported to be done under this Act or an authority under this Act unless the act was done in bad faith.

(2) No civil or criminal proceedings may be brought against the Commissioner, a staff member or a delegate of the Commissioner in respect of an act mentioned in subsection (1) without the leave of the Supreme Court.

(3) The Supreme Court must not give leave unless it is satisfied that there is substantial ground for the contention that the person to be proceeded against has acted in bad faith.

(4) Subject to this Act, the Commissioner, a staff member or a delegate of the Commissioner cannot be called to give evidence or produce a document in a court or in proceedings of a judicial nature in respect of any matter coming to his or her knowledge in the exercise of his or her powers or the performance of his or her functions under this Act.

(5) In an application for judicial review, access to evidence or documents held by the Commissioner, a staff member or a delegate of the Commissioner is subject to the terms and conditions that the Court thinks fit to protect the confidentiality of the evidence or document as is envisaged and provided for under this Act.

(6) A person who is or has been the Commissioner, a staff member or a delegate of the Commissioner is entitled to be indemnified by the Territory against liability or costs incurred in contesting an action, claim or demand brought or made in respect of an act done or omitted to be done, in good faith, in exercising or performing, or purportedly exercising or performing, his or her powers or functions under this Act.

18 Non-disclosure of certain matters

(1) The Commissioner cannot require a person to provide any information or to answer questions concerning a matter or to produce documents or records to the Commissioner if the Administrator provides the Commissioner with a certificate under this section in respect of the matter, documents or records.

(2) The Administrator may issue a certificate certifying that the disclosure of information concerning a specified matter (including providing information in answer to a question) or the disclosure of the contents of any document or record would be contrary to the public interest:

(a) by reason that it would involve the disclosure of communications between:

(i) a member of the Executive Council and the Administrator; or

(ii) a Minister and a Minister of the Commonwealth or of a State or another Territory; or

(iii) a Minister of the Commonwealth and a Minister of a State or another Territory; or

(b) by reason that it would involve the disclosure of deliberations or decisions of:

(i) the Executive Council; or

(ii) a committee of the Legislative Assembly formed for the purpose of advising the Administrator or the Minister; or

(iii) the Commonwealth or Territory Cabinet or a committee of the Commonwealth or Territory Cabinet.

19 Annual and special report

(1) As soon as practicable after the end of each financial year, the Commissioner must report in writing to the Minister on the exercise of his or her powers and the performance of his or her functions during the financial year.

(2) The Commissioner may report at any time to the Minister on any of the following:

(a) the exercise of his or her powers or the performance of his or her functions;

(b) complaints dealt with under this Act;

(c) the progress and results of conciliations and investigations undertaken under this Act;

(d) contraventions of this Act;

(e) any other matter relating to health services or community services that the Commissioner considers appropriate.

(3) The Minister must table in the Legislative Assembly a copy of the report within 6 sitting days after receiving it.

(4) The Speaker may authorise the Commissioner to publish a report, in the public interest or in the interest of an Agency, authority, organisation, person or body, relating:

(a) generally to the exercise of his or her powers or the performance of his or her functions; or

(b) to any particular matter investigated by the Commissioner.

(5) A report may be published under subsection (4) whether or not a matter dealt with in the report has been the subject of a report that has been tabled in the Legislative Assembly.

Part 4 References to Commissioner

20 Reference by Minister

(1) The Minister may, in writing, refer to the Commissioner any matter relating to a health service or community service.

(2) As soon as practicable after a matter is referred under subsection (1), the Commissioner must investigate the matter and make a report to the Minister on the investigation.

21 Reference by Legislative Assembly

(1) The Legislative Assembly may refer to the Commissioner any matter relating to a health service or community service.

(2) As soon as practicable after a matter is referred under subsection (1), the Commissioner must investigate the matter and make a report to the Speaker on the investigation.

Part 5 Complaints

Division 1 Making complaints

22 Persons who may make complaint

The following persons may make a complaint to the Commissioner about a health service or community service:

(a) the user;

(b) a parent or guardian of the user;

(c) the donee of a power of attorney from the user whose authority, either expressly or implicitly, includes the power to make a complaint;

(d) a person who, under any other law or an order of a court, has the care of the affairs of the user;

(e) a person as a representative of the user who is:

(i) a person the Commissioner is satisfied has been chosen by the user; or

(ii) where the Commissioner is satisfied that it would be difficult or impossible for the user to choose anybody to make a complaint in the user's place – a person the Commissioner is satisfied has a sufficient interest in the subject matter of the complaint;

(f) the Chief Executive Officer of the Agency allotted responsibility for the administration of the *Public and Environmental Health Act 2011* by an Administrative Arrangements Order;

(g) the Minister;

(h) a provider;

(j) any other person, if the Commissioner considers that the public interest requires that the person should be permitted to make a complaint.

23 Basis of complaint

(1) A complaint may be made in respect of one or more of the following:

(a) that a provider acted unreasonably by not providing a health service or community service;

(b) that the provision of a health service or community service or a part of a health service or community service was not necessary;

(c) that a provider acted unreasonably in providing a health service or community service;

(d) that a provider acted unreasonably in the manner of providing a health service or community service;

(e) that a provider acted unreasonably by denying or restricting a user access to his or her records that were in the provider's possession;

(f) that a provider acted unreasonably by not making available to a user information about the user's condition that the provider was able to make available;

(g) that a provider acted unreasonably in disclosing information in relation to a user;

(h) that a provider or manager acted unreasonably in respect of a complaint made by a user about the provider's action that is of a kind mentioned in this section by:

(i) not taking, or causing to be taken, proper action in relation to the complaint; or

(ii) not properly investigating the complaint or causing it to be properly investigated;

(j) that a provider acted in disregard of, or in a manner inconsistent with, any of the matters that the Commissioner may have regard under section 5 in determining whether or not a provider has acted reasonably in providing a health service or community service;

(k) that an applicable organisation failed to comply with the Carers Charter.

(2) A reference in subsection (1)(c) to a provider acting unreasonably in providing a health service or community service includes the provider failing to do any of the following:

(a) to exercise due care and skill;

(b) to treat a user in an appropriate professional manner that took into account the user's needs, wishes and background;

(c) to respect a user's privacy or dignity;

(d) to provide a user with information on treatment or health services available, in language and terms that the user understands, sufficient to enable the user to make an informed decision;

(e) to provide a user with a reasonable opportunity to make an informed choice of the treatment or services available;

(f) to provide a user with adequate information on the availability of further advice on his or her condition or of relevant education programs;

(g) to provide a user with adequate information on the treatment or services received;

(h) to provide a user with a prognosis that it would have been reasonable for him or her to be provided with.

(3) In subsection (1)(h):

manager means a person who manages or is the chief executive officer (however described) of:

(a) a body by which or an institution in which a health service or community service is rendered or provided; or

(b) a prescribed body or institution or a body or institution of a prescribed class that provides a health service or community service.

24 Form of complaint

(1) A complaint may be made:

(a) orally (either in person or by any form of distance communication); or

(b) in writing signed by the complainant.

(2) A complaint must disclose:

(a) the name and address of the complainant; and

(b) sufficient details of the matter of the complaint to enable the complaint to be assessed.

(3) The Commissioner must ensure that assistance is given to a person to make a complaint if the person requests assistance.

(4) If a complaint is made orally, the complainant must confirm the complaint in writing as soon as practicable after it is made unless the complainant satisfies the Commissioner that there are good reasons for not doing so.

(5) If a complainant is unable to confirm a complaint in writing, the Commissioner must ensure that the complaint is reduced to writing and a copy is provided to the complainant.

(6) A complainant must notify the Commissioner of a change of his or her name or address as soon as possible after the change.

(7) The Commissioner may require a complainant to provide his or her name and address if the Commissioner becomes aware that the complainant has changed his or her name or address without notifying the Commissioner.

(8) A complaint is not to be taken to have been received until the information required by subsection (2) is received.

25 Complainant to provide information when required

(1) The Commissioner may require a complainant:

(a) to provide information or documents relating to the complaint; or

(b) to verify all or any part of the complaint by statutory declaration.

(2) The Commissioner must specify a reasonable period within which a complainant must comply with subsection (1).

(3) The Commissioner may extend the period specified under subsection (2), whether before or after it expires.

25A Referral of complaints by Information Commissioner and Ombudsman

(1) This section applies if a complaint is referred to the Commissioner by:

(a) the Information Commissioner under section 108 of the *Information Act 2002*; or

(b) the Ombudsman under section 32 of the *Ombudsman Act 2009*.

(2) The Commissioner must deal with the complaint as if it had been made under this Act.

Division 2 Assessment of complaints

26 Preliminary and minor inquiries

The Commissioner may, as he or she thinks fit, make inquiries in respect of a complaint:

(a) in order to be satisfied that:

(i) all reasonable steps have been taken by the complainant to resolve the complaint with the provider; or

(ii) a reasonable opportunity has been given to the provider to resolve the complaint with the complainant; or

(iii) it is not practical for the steps mentioned in subparagraph (i) to be taken or for the opportunity mentioned in subparagraph (ii) to be given; or

(b) for the purposes of:

(i) determining whether he or she is authorised to deal with the complaint; or

(ii) if satisfied he or she is authorised to deal with the complaint, determining whether or not to consider the matter further; or

(iii) determining the complaint, if, having regard to the nature and seriousness of the complaint, he or she considers it may be resolved expeditiously.

27 Assessment

(1) The Commissioner must assess a complaint and make a determination in accordance with this section within 60 days after receiving it.

(2) Subject to subsections (3), (4) and (4A), the Commissioner must do one of the following:

(a) refer the complaint to a conciliator under Part 6;

(b) investigate the complaint under Part 7;

(c) if the complaint is against or directly involves a registered provider, notify the relevant Board in accordance with Part 8 and deal with the complaint as provided for in that Part;

(d) in accordance with section 30, take no further action on the complaint.

(3) If, in the opinion of the Commissioner, the complaint:

(a) was made by a person mentioned in section 22; and

(b) relates to a matter mentioned in section 23; and

(c) is a matter that falls within the functions conferred by a law of the Territory, the Commonwealth, a State or another Territory on the Ombudsman, the Information Commissioner or any other person or body;

the Commissioner may refer the complaint to the Ombudsman, Information Commissioner, person or body.

(4) If, in the opinion of the Commissioner, the complaint was not made by a person mentioned in section 22 or does not relate to a matter mentioned in section 23 but relates to a matter that falls within the functions conferred by a law of the Territory, the Commonwealth, a State or any other Territory on:

(a) the Ombudsman; or

(aa) the Information Commissioner; or

(b) a relevant Board; or

(c) any other person or body;

the Commissioner must refer the complaint to the Ombudsman, Information Commissioner, Board, person or body.

(4A) If, in the opinion of the Commissioner, the complaint is about a matter that could be the subject of a complaint under the *Children's Commissioner Act 2013*, the Commissioner:

(a) may refer the complaint to the Children's Commissioner; or

(b) if the complaint is to be dealt with under this Act – must, as soon as practicable, give written notice about the complaint to the Children's Commissioner.

(5) In subsection (1), a reference to a complaint being received includes a complaint that has been referred, or referred back, to the Commissioner by the Ombudsman, Information Commissioner or a relevant Board.

28 Provider to give response

(1) For sections 26 and 27, the Commissioner may require a provider to provide a written response to issues raised in a complaint.

(2) The Commissioner must specify a reasonable period within which a provider must comply with subsection (1).

(3) The Commissioner may extend the period specified under subsection (2), whether before or after it expires.

(4) A provider must comply with a requirement of the Commissioner under this section.

Maximum penalty: 40 penalty units.

29 Notice of determination and basis of complaint

(1) The Commissioner must, within 14 days of making a determination under section 27 (other than a determination to take no further action on a complaint):

(a) give written notice of the determination to the complainant and the provider; and

(b) give the provider written details of the basis of the complaint.

(2) The Commissioner must, within 14 days of making a determination under section 27 to take no further action on a complaint, give written notice of the determination to:

(a) the complainant; and

(b) the provider, if the provider has been notified of the complaint having been made.

30 No further action on complaint

(1) The Commissioner must take no further action on a complaint if satisfied that any of the following apply:

(a) the complainant is not a person mentioned in section 22;

(b) the complaint does not relate to a matter mentioned in section 23;

(c) the user became aware of the circumstances giving rise to the complaint more than 2 years before the complaint was made;

(d) the complainant has failed, without good reason or cause, to take reasonable steps to resolve with the provider the matter on which the complaint is based;

(e) having regard to the circumstances of the case and to any inquiries that the Commissioner has made, investigating further the matter raised in the complaint is unnecessary or unjustified;

(f) the complaint lacks substance;

(g) the complaint is frivolous, vexatious or was not made in good faith;

(h) the complaint is resolved.

(2) Subsection (1)(c) does not apply if the Commissioner is satisfied that the complainant had good reasons for not making the complaint within the period mentioned in that subsection.

(3) If an issue raised in a complaint has been determined by a court, tribunal or board, or by a person or other body established by a law of the Territory, the Commonwealth, a State or any other Territory, the Commissioner must take no further action on the complaint to the extent to which it relates to the issue unless, in his or her opinion, the issue relates to a matter that was not raised before the court, tribunal or board, or the person or other body.

(4) Subject to subsection (5), the Commissioner must take no further action on a complaint or an issue arising from a complaint if the user has commenced civil proceedings seeking redress for the subject matter of the complaint or the issue and the court has begun to hear the substantive matter.

(5) The Commissioner may still consider an issue arising from a complaint, if satisfied that the issue will not be determined specifically by the civil proceedings.

(6) The Commissioner may take no further action on a complaint if:

(a) a requirement under section 25 is unsatisfied and the period for satisfying the requirement has expired; and

(b) the Commissioner has notified the complainant in writing that the Commissioner may decide to take no further action on the complaint unless the outstanding requirement is satisfied within 14 days after the notice is given; and

(c) the requirement is unsatisfied at the expiry of the period and remains unsatisfied when the Commissioner decides to refuse to entertain the complaint.

31 Withdrawal of complaint

(1) A complainant may withdraw a complaint by notifying the Commissioner orally or in writing.

(2) The Commissioner must, within 14 days of being notified orally of a complaint being withdrawn, by written notice to the complainant confirm that the complaint has been withdrawn.

(3) The Commissioner must, within 14 days of being notified of a complaint being withdrawn, notify the provider, if the provider has been notified of the complaint having been made.

(4) The Commissioner cannot investigate a matter the subject of a complaint that is withdrawn.

32 Splitting of complaints

(1) This section applies to a complaint that:

(a) deals with more than one subject matter; or

(b) deals with more than one set of circumstances; or

(c) makes allegations against more than one provider; or

(d) makes more than one allegation against a provider; or

(e) for any reason is susceptible to being dealt with in separate parts.

(2) The Commissioner may determine that a complaint to which this section applies is to be treated as 2 or more complaints if it is administratively or otherwise convenient to do so.

(3) The Commissioner must determine that a complaint to which this section applies is to be treated as 2 or more complaints if it is in the interest of the user to do so.

(4) The Commissioner must not make a determination under subsection (2) or (3) unless satisfied that any attempt at resolution or conciliation of the complaint is not likely to be prejudiced by the determination.

33 Confidentiality of user's and complainant's particulars

(1) Despite anything in this Act, the Commissioner must not disclose any information if he or she believes on reasonable grounds that disclosing the information will, directly or indirectly:

(a) put the health or safety of any person at risk; or

(b) result in a person receiving a health service or community service of a lower standard than he or she would otherwise receive; or

(c) prejudice the assessment of a complaint or an investigation under this Act; or

(d) prejudice proceedings that may be conducted by a board, person or body.

(2) The Commissioner may keep information given under section 24(1) and (2) confidential if there are special circumstances and the Commissioner considers it is in the complainant's interest to do so.

34 Action on referral of complaint

(1) If the Commissioner refers a complaint to a board, person or body under this Division, the Commissioner must:

(a) give the board, person or body all documents and information in his or her possession that relate to the complaint; and

(b) take no further action in relation to the complaint unless it is referred back to the Commissioner.

(2) The Commissioner may:

(a) make and retain a record of information mentioned in subsection (1); and

(b) make copies of, or take extracts from, a document mentioned in subsection (1) and retain those copies or extracts.

Part 6 Conciliation of complaints

35 Appointment of conciliators

The Commissioner may, in writing, appoint a person to be a conciliator.

36 Objection to conciliator

(1) A party to a complaint may object to the complaint being referred to a conciliator for conciliation if the conciliator has previously been involved in a conciliation involving a party to the complaint.

(2) The Commissioner may, on receiving an objection under subsection (1), refer the complaint to another conciliator.

37 Referral to conciliators

The Commissioner may refer a complaint to more than one conciliator for conciliation.

38 Function of conciliators

(1) A conciliator is to encourage settlement of a complaint by:

(a) explaining the conciliation process and the voluntary nature of the conciliation process; and

(b) arranging discussions and negotiations between the complainant and the provider; and

(c) assisting in the conduct of discussions and negotiations; and

(d) assisting the complainant and provider to reach agreement; and

(e) assisting in resolving the complaint in any other way.

(2) A conciliator must not perform, or continue to perform, the functions of conciliation mentioned in subsection (1) if a conflict of interest exists or may arise.

39 Public interest

(1) Before the conciliation process commences, the Commissioner must inform the conciliator of any issue raised by the complaint that the Commissioner considers involves a matter mentioned in section 48(1)(c).

(2) On commencing the conciliation process, the conciliator must draw to the attention of the complainant and the provider any issue that the conciliator has been informed of under subsection (1).

(3) During the conciliation process, the conciliator must, at times he or she considers appropriate, draw to the attention of the complainant and the provider any matter mentioned in section 48(1)(c) that the conciliator considers is raised by the complaint.

(4) During the conciliation process, the conciliator must report to the Commissioner any matter mentioned in section 48(1)(c) that he or she considers is raised by the complaint, other than an issue that the conciliator has been informed of under subsection (1).

(5) Nothing in this section prohibits or prevents the conciliator addressing all issues between the parties to the complaint in the course of the conciliation process.

40 Representation at conciliation

(1) A complainant or provider cannot be represented by another person in the conciliation process unless the permission of the Commissioner is obtained.

(2) The Commissioner is not to give permission under subsection (1) unless satisfied that:

(a) representation is likely to assist substantially in resolving the complaint; and

(b) the person proposed has sufficient knowledge of the matters the subject of the complaint to enable the person to represent the complainant or provider effectively; and

(c) the person proposed has authority to make appropriate admissions on behalf of the complainant or provider and to enter into binding conciliation agreements on behalf of the complainant or provider; and

(d) the complainant or provider had notified the other party, in writing, not less than 48 hours before the request is made.

(3) The permission of the Commissioner is subject to the conditions determined by the Commissioner.

(4) A person representing a complainant or provider must not contravene a condition to which the permission is subject.

(5) The Commissioner may revoke permission given under subsection (1) if a person representing a complainant or provider:

(a) contravenes a condition to which the permission is subject; or

(b) does anything that the Commissioner considers may inappropriately impede the conciliation process.

(6) A conciliator may allow a person to attend the conciliation process in order to assist a party who is from a special needs group.

41 Progress report from conciliator

A conciliator must provide the Commissioner with a written report of the progress of the conciliation process when requested to do so by the Commissioner.

42 Results report from conciliator

(1) A conciliator must provide the Commissioner with a written report of the results of the conciliation process within 28 days after:

(a) the conciliation is completed; or

(b) he or she is satisfied that agreement cannot be reached.

(2) The report must contain details of:

(a) any agreement reached; and

(b) any issue of complaint, if agreement has not been reached; and

(c) progress made towards agreement on any issue in respect of which agreement has not been reached.

(3) The report may contain details of action that the conciliator considers appropriate for the Commissioner to take on receiving the report.

(4) The conciliator must provide a copy of the report to the complainant and the provider within 28 days after it is provided to the Commissioner.

43 Enforceable agreements

(1) If agreement is reached between a complainant and provider in the course of the conciliation process, the agreement may be put in a form that is binding on them in accordance with subsection (2).

(2) An agreement is not binding unless it is:

(a) in writing; and

(b) signed by all parties or their authorised representatives; and

(c) entered into at least 14 days after the first agreement was reached.

(3) Subsections (1) and (2) do not affect the effectiveness of an agreement reached outside the conciliation process.

(4) A conciliator:

(a) cannot be a party to an agreement between a complainant and provider relating to a matter that has been dealt with in the course of the conciliation process; and

(b) cannot attest the signature of a party to a document that evidences the agreement.

44 Commissioner may end conciliation

(1) On receiving a report under section 41 or 42 the Commissioner may terminate the conciliation process if satisfied that it is not likely to bring about agreement between the complainant and provider.

(2) If the conciliation process is terminated, the Commissioner must dispose of the complaint in accordance with section 27.

45 Professional mentor

(1) The Commissioner may appoint a person to be a professional mentor to a conciliator.

(2) A conciliator may discuss any issue arising out of the performance of his or her functions with, and may seek advice from, his or her professional mentor.

(3) A person is not to be appointed a professional mentor unless he or she has, in the opinion of the Commissioner, expertise in dispute resolution or experience as a conciliator.

(4) A person must not act as a professional mentor to a conciliator to whom a complaint is referred if the person has carried out investigations of complaints under Part 7 and the investigations have involved or may have involved:

(a) a party to the complaint; or

(b) a matter mentioned in the complaint.

(5) A person must not act as a professional mentor to a conciliator to whom a complaint is referred unless the person has made a statement in the prescribed form.

46 Administrative support staff

The Commissioner may arrange for a staff member or contractor to provide administrative support to a conciliator performing his or her functions under this Act.

47 Privilege and confidentiality

(1) A conciliator must not disclose information obtained or evidence of anything said or admitted during the course of the conciliation process except:

(a) in a report made under this Part; or

(b) to his or her professional mentor or a staff member or contractor mentioned in section 46.

Maximum penalty: 85 penalty units.

(2) A professional mentor or a staff member or contractor mentioned in section 46 must not disclose information obtained from a conciliator as permitted by subsection (1)(b).

Maximum penalty: 85 penalty units.

(3) A person, other than a conciliator, professional mentor or a staff member or contractor mentioned in section 46, must not divulge or communicate to a person information obtained during the conciliation process other than for the purposes of conciliation.

Maximum penalty: 85 penalty units.

(4) Evidence of anything said or admitted during the conciliation process:

(a) is not admissible in proceedings before any court, tribunal or board; and

(b) may not be used by the Commissioner as a ground for an investigation or inquiry.

(5) Nothing in this section prohibits the use of information obtained during the conciliation process for the purposes of the prosecution of a person for an offence against this Act.

Part 7 Investigations

Division 1 Preliminary matters

48 Matters that may be investigated

(1) The Commissioner may, as he or she thinks fit, investigate:

(a) any matter referred under section 20(1) or 21(1); or

(b) a complaint that the Commissioner has decided to investigate under section 27; or

(c) an issue or question arising from a complaint or a group of complaints if it appears to the Commissioner:

(i) to be a significant issue of public health or safety or public interest; or

(ii) to be a significant question as to the practice and procedures of a provider.

(2) An investigation mentioned in subsection (1)(c) is not to be carried out in a way that interferes with any conciliation process in respect of a complaint.

49 Limitation of powers

The powers conferred by this Part may be exercised only for the purpose of an investigation under this Part.

Division 2 Conduct of investigation

50 Authorisation of persons to carry out investigations

(1) The Commissioner may, in writing, authorise a person to carry out an investigation of a complaint under this Part.

(2) An investigator must not carry out an investigation if the investigator has been involved in any conciliation process in respect of the complaint.

(3) An investigator when carrying out an investigation may exercise all the powers that the Commissioner has when carrying out an investigation.

51 Professional mentor

(1) The Commissioner may, in writing, appoint a person to be a professional mentor to an investigator.

(2) An investigator may discuss any issue arising out of the performance of his or her functions with, and may seek advice from, his or her professional mentor.

(3) A person is not to be appointed a professional mentor unless he or she has, in the opinion of the Commissioner, relevant professional expertise.

(4) If a complaint is made against a registered provider, the relevant Board may request the Commissioner to appoint a professional mentor to the investigator appointed to carry out the investigation of the complaint.

(5) On receiving a request under subsection (4), the Commissioner must consult with the Board and, unless there are compelling reasons for not doing so, must appoint a professional mentor.

(6) If a person is appointed a professional mentor to an investigator and the person is a member of a relevant Board, the person must not take part in any proceedings of the Board in respect of a registered provider who is the subject of an investigation by the investigator.

(7) A person must not act as a professional mentor to an investigator to whom a matter is referred unless the person has made a statement in the prescribed form.

52 Expert assistance

(1) The Commissioner, when carrying out an investigation, may obtain a report from a person (including a registered provider) who, in the opinion of the Commissioner, is sufficiently qualified or experienced to give expert advice on the matter being investigated.

(2) The Commissioner must not obtain a report from a person who has a financial or personal connection with a person who is the subject of an investigation or who has any other connection with the person that may affect the impartiality of the report.

(3) A person who gives a report under this section must include in it, or annex to it, a statement in the prescribed form.

(4) A report given under this section may be used in disciplinary or related proceedings before a Board.

(5) A report given under this section may be admitted or used in other proceedings with the consent of the person giving the report, the complainant and the provider against whom the complaint is made.

(6) A person who gives a report under this section cannot be compelled to give evidence in relation to the report, or its contents, in proceedings mentioned in subsection (5).

53 Conduct of investigation

An investigation must be carried out in the manner determined by the Commissioner.

54 Representation

A person required to appear or produce documents under this Part may be assisted or represented by another person.

55 Use and obtaining information

(1) If the Commissioner obtains a document or information under this Act, other than under section 41 or 42, the Commissioner may use the document or information for the purposes of this Part.

(2) If the Commissioner believes that a person may be able to provide information or produce a document or other record relevant to a matter being investigated, the Commissioner may, by notice in writing served on the person, require the person to do one or more of the following:

(a) provide the information to the Commissioner in writing signed by the person or, if the person is a body corporate, by an officer of the body corporate;

(b) produce to the Commissioner the document or record specified in the notice;

(c) attend before the Commissioner to answer questions relevant to the investigation.

(3) A notice under subsection (2) must specify the period in which, or the time, date and place at which, the person is required to provide the information or document or attend to answer questions.

(4) A person served with a notice under subsection (2) must comply with the notice.

Maximum penalty: 40 penalty units.

56 Power to examine witnesses

(1) The Commissioner may:

(a) require a person appearing before the Commissioner to give evidence on oath; or

(b) require a person to verify by statutory declaration:

(i) any information or document produced under this Part; or

(ii) a statement that the person has no relevant information or documents or no further relevant information or documents (as the case requires).

(2) A person must comply with a direction given under subsection (1)(b).

Maximum penalty: 40 penalty units.

57 Reference to another authority for investigation

(1) The Commissioner may refer a matter raised by or in the course of an investigation to the Ombudsman or another person, tribunal or

board having powers and functions under a law of the Territory, the Commonwealth, a State or another Territory in respect of the matter if the Commissioner considers that the matter should be dealt with by the Ombudsman, person, tribunal or board.

(2) The Commissioner's powers to carry out an investigation are not affected by a matter being referred under subsection (1).

58 Powers of entry and search

(1) The Commissioner may, by information on oath, apply to a justice of the peace for a search warrant if the Commissioner:

(a) believes that entry and inspection of premises is necessary to enable the Commissioner to carry out an investigation under this Part; or

(b) suspects that:

(i) there may be on premises a document or other thing relevant to a matter the Commissioner is investigating under this Part; or

(ii) there is on premises one or more persons mentioned in subsection (6) who cannot, practically or otherwise, exercise an absolute right to leave the premises and whose health and safety may be at risk.

(2) A justice of the peace may issue a search warrant if satisfied as to the matters set out in the information.

(3) A warrant authorises a person named in the warrant and any other person assisting the person, with force if necessary, to do any of the following:

(a) to enter and remain in the premises specified in the warrant;

(b) to search those premises and any person or thing in the premises;

(c) to break open and search anything in those premises in which any document or other thing relevant to the investigation may be contained;

(d) to take photographs;

(e) to seize and remove anything in the premises that the person has reasonable grounds for believing is relevant to the investigation;

(f) to examine, seize and remove, make copies of, or take extracts from, any document in the premises that the person has reasonable grounds for believing is relevant to the investigation;

(g) to require a provider or any other person in the premises to provide information by answering questions that the person considers relevant to the investigation;

(h) if the premises are of a kind mentioned in subsection (1)(b)(ii) – to make arrangements for the health and safety of a person mentioned in the subsection.

(4) A warrant must:

(a) be in a prescribed form; and

(b) specify the premises in respect of which it is made.

(5) A warrant remains in force for 30 days after the day on which it is issued.

(6) For the purposes of subsection (1)(b)(ii), the persons are:

(a) persons with a mental or physical illness; or

(b) persons who belong to a special needs group; or

(c) persons receiving any pensions, allowances or benefits because of age, illness or disability.

59 Reimbursement of expenses

(1) A person required to attend before the Commissioner or another person under this Part is entitled to be paid fees and expenses determined under subsection (2).

(2) The Minister may, by *Gazette* notice, determine the fees and expenses to be paid to a person attending before the Commissioner or another person under this Part.

60 Use of documents

(1) If a document is produced or seized in accordance with this Part, or otherwise obtained under this Act, the Commissioner may:

(a) take possession of the document and make copies of or take extracts from the document; or

(b) retain the document for the period that is necessary for the purposes of the investigation to which it relates or any proceedings arising as a result of the investigation.

(2) If the Commissioner retains a document, the Commissioner must allow a person who would otherwise be entitled to inspect or make copies of the document to do so at any reasonable time.

61 Use of information obtained during investigations

(1) Nothing in this Act prohibits the use of information or documents obtained during an investigation for the purposes of:

(a) the prosecution of a person for an offence against this Act; or

(b) proceedings in respect of a registered provider by the relevant Board.

(2) Except as provided in subsection (1), any information or document obtained during an investigation is not admissible in any proceedings before a court, tribunal or board.

Division 3 Privilege

62 Witness privilege

A person has the same privileges and immunities with respect to providing any information or documents under this Part as he or she would have in the Supreme Court.

63 Privilege in case of unjustifiable exercise of power

A person is not required to provide or produce any information or document under this Part if the Supreme Court determines that:

(a) providing or producing the information or document is likely to:

(i) adversely affect the financial interests of the person in a very substantial way; or

(ii) intrude on the privacy of an individual by disclosing private or confidential matters relating to the individual; and

(b) the purpose for which the information or document is required does not justify the adverse effect or intrusion.

64 Supreme Court applications

(1) The Commissioner or the person claiming privilege may apply to the Supreme Court for it to determine the validity of the claim.

(2) An application under subsection (1) must be made in accordance with the Rules of the Supreme Court or, to the extent the Rules do not provide, as directed by the Supreme Court.

(3) The burden of proof is on the person seeking to withhold the information or document.

(4) In determining an application, the Supreme Court may make all orders necessary for the practical operation of this Division and, in particular, may make orders:

(a) excusing a person from providing or producing, or requiring a person to provide or produce, the whole or part of the information or document; or

(b) amending a notice issued under this Act by which the information or document was required to be provided or produced.

(5) Costs of an application are as ordered by the Supreme Court.

Division 4 Action on investigation

65 Reports

(1) The Commissioner:

(a) may prepare a report of his or her findings and conclusions at any time during an investigation; and

(b) must prepare a report of his or her findings at the conclusion of an investigation.

(2) The Commissioner must submit a report of an investigation carried out:

(a) under section 48(1)(a), to the Minister or the Speaker, as appropriate; or

(b) under section 48(1)(b), to the complainant, the provider and, where appropriate, the relevant Board; or

(c) under section 48(1)(c), to any person whom the Commissioner considers should receive the report.

(3) The Commissioner may give a copy of a report of an investigation, other than an investigation carried out under section 48(1)(a), to any of the following:

(a) the Minister;

(b) the provider mentioned in the report;

(c) the provider's employer;

(d) a person or body having under a law of the Territory, the Commonwealth, a State or another Territory a power or function that may be exercised or performed in relation to a matter raised in the report;

(e) the purchaser of a health service or community service;

(f) any other person who the Commissioner considers should receive the report.

(4) Subject to section 67, a report may contain any information, comments, opinions and recommendations for action that the Commissioner considers appropriate.

66 Notice of action to provider

(1) After investigating a complaint under this Part, the Commissioner may, irrespective of the outcome of the investigation, if he or she forms the view the complaint is justified:

(a) give a notice in accordance with subsection (3) to the provider; and

(b) advise the complainant that the notice has been given to the provider.

(2) After investigating a complaint under this Part, if the Commissioner makes recommendations to a provider in a report under section 65, he or she must:

(a) give a notice in accordance with subsection (3) to the provider; and

(b) advise the complainant that the notice has been given to the provider.

(3) A notice under subsection (1) or (2) must contain:

(a) the particulars of the complaint; and

(b) the reasons for the Commissioner's decision under subsection (1) or (2); and

(c) any action that the Commissioner considers the provider ought to take in order to resolve any issue disclosed by the investigation.

(4) A provider who is given a notice under this section must, within 45 days after receiving the notice or any longer period that the Commissioner allows under subsection (5), advise the Commissioner, in writing, of the action he or she has taken to comply with the recommendations contained in the notice.

Maximum penalty: 40 penalty units.

(5) The Commissioner may extend the period mentioned in subsection (4) by not more than 15 days on receiving a written request from the provider before the end of the period.

(6) If within a reasonable period after a notice is given to a provider under this section, the Commissioner is not satisfied that the provider has taken appropriate steps in relation to any action recommended to be taken, the Commissioner may, after considering any comments made by or on behalf of the provider, send to the Minister a copy of the notice and the recommendation together with a copy of the comments made by or on behalf of the provider.

(7) In addition to subsection (6), the Commissioner may give a report to the Minister on the matters to which the notice relates.

(8) The Minister must cause a copy of a report given under subsection (6) to be tabled in the Legislative Assembly within 6 sittings days after it is received.

(9) The Commissioner is to be taken to have given notice under subsection (1) or (2) if he or she gives the provider a copy of the report prepared under section 65 in respect of the complaint, and reference in this section to the notice includes the report.

67 Adverse comments in reports

(1) The Commissioner must not make any comment adverse to a person in a report under this Part unless:

(a) the person has been given a reasonable opportunity to be heard in the matter; and

(b) the person's explanation (if any) is fairly set out in the report.

(2) Subsection (1)(a) does not apply if the Commissioner believes, on reasonable grounds, that awareness of the proposed comment by any person would be likely to result in:

(a) the health or safety of a person being put at risk; or

(b) a person being provided with a health service or community service of a lower standard than would otherwise have been provided; or

(c) action that would prejudice the fair assessment of a complaint or investigation under this Act.

Part 8 Relationship between Commissioner and relevant Boards

68 Notification to relevant Board

(1) If a complaint is against or directly involves a registered provider, the Commissioner must notify the relevant Board as soon as practicable after it is received.

(2) The Commissioner must consult the relevant Board in relation to the management of the complaint.

(3) If the Commissioner and the relevant Board agree, the Commissioner may refer the complaint to the Board for it to deal with the complaint in accordance with its powers under the Act under which it is established.

(4) The Commissioner must take no further action in respect of a complaint that is referred to the relevant Board under subsection (3) unless the Board refers the complaint back to the Commissioner.

(5) The relevant Board must comply with sections 71 and 74 in respect of a complaint that is referred to it.

(6) Subject to this Act, information received by a relevant Board under subsection (1) must not be disclosed by the Board.

(7) If a complaint is referred to a relevant Board, the disclosure of information received under subsection (1) is subject to the Act under which the relevant Board is established.

(8) The consent of the complainant is not required before a complaint may be referred to a relevant Board under this section.

69 Referral of complaint to Commissioner

(1) A relevant Board must as soon as practicable after it receives a complaint against a registered provider that appears to be made by a person mentioned in section 22 and to disclose a ground mentioned in section 23:

(a) give the Commissioner a copy of the complaint and all other documents in its possession that relate to the complaint, where appropriate; and

(b) consult with the Commissioner as to whether the complaint should be referred to the Commissioner.

(2) Consultation under subsection (1)(b) must address the following:

(a) how the complaint may be managed by the Commissioner;

(b) whether the relevant Board should deal, or continue to deal, with the complaint.

(3) If the Commissioner and the relevant Board agree, the complaint may be:

(a) referred to the Commissioner for action under this Act; or

(b) dealt with by the relevant Board under the Act under which it is established.

(4) A complaint referred to the Commissioner under this section is taken to be a complaint made to the Commissioner on the date on which it is referred to the Commissioner and this Act, other than section 27(2)(c), applies accordingly.

(5) Despite any other Act but subject to subsection (6), the relevant Board must not take any action in respect of a complaint referred to the Commissioner under this section unless, or until, the Commissioner refers the complaint back to the relevant Board.

(6) The relevant Board may take any interim measures in respect of the registered provider's right to practice that is provided for in the Act under which it is established pending the outcome of the investigation of the complaint.

(7) The relevant Board must notify the Commissioner of any action taken under subsection (6).

(8) A complaint may be referred under this section without the consent of the person who made the complaint.

70 Establishment of consultation protocols

(1) For sections 68 and 69, the Commissioner and each relevant Board must agree appropriate written protocols:

(a) to enable consultation in respect of the management of a complaint to occur; and

(b) to facilitate the resolution of any disagreement as to how a complaint will be managed.

(2) The Commissioner in agreeing protocols with each relevant Board, must give appropriate recognition to the operation of the Board and the disciplinary functions of the Board.

(3) The protocols may provide procedures and administrative arrangements to deal with matters relating to proceedings in respect of a registered provider by the relevant Board.

71 Complaints referred after assessment

(1) The relevant Board to which a complaint is referred under this Act may exercise the powers and perform the functions it has to deal with the complaint under the Act under which it is established.

(2) The relevant Board to which a complaint is referred under this Act must, within 30 days after dealing with the complaint, provide the Commissioner with a report of:

(a) its findings; and

(b) any action it has taken or proposes to take.

72 Action on investigation reports

(1) If a report under section 65 recommends that a relevant Board exercise any of its powers or perform any of its functions, the Board must, within 60 days of receiving the report:

(a) notify the Commissioner, in writing, whether it intends to exercise the power or perform the function; and

(b) if it does not intend to do so, the reason for not doing so.

(2) The relevant Board must, within 30 days after exercising its powers or performing its functions in accordance with a recommendation in a report under section 65, notify the Commissioner, in writing, of:

(a) the results of the exercise of the power or performance of the function; and

(b) any finding made; and

(c) any action taken or proposed to be taken.

(3) The Commissioner may report to the Minister any failure or delay of a relevant Board to exercise a power or perform a function in accordance with a recommendation in a report under section 65.

(4) If a report is made under subsection (3), the Commissioner may, in addition, prepare and deliver to the Minister a report to be tabled in the Legislative Assembly.

(5) The Minister must table the report in the Legislative Assembly within 6 sittings days after receiving it.

73 Information to Board

(1) Despite sections 33 and 97, the Commissioner must give the relevant Board information received by the Commissioner in conducting an investigation of a complaint against a registered provider.

(2) The relevant Board may use the information in exercising its powers and performing its functions.

(3) The Commissioner must report on the progress and results of an investigation of a complaint against a registered provider when requested to do so by the relevant Board.

(4) The Commissioner must advise the relevant Board if no further action in respect of a complaint against a registered provider is to be taken under section 30.

74 Information from Board

(1) The relevant Board may provide to the Commissioner information, comment and recommendations in relation to a registered provider against whom a complaint is made and in relation to the complainant.

(2) The relevant Board must provide information in its possession relating to a complaint against a registered provider or relating to the registered provider when requested to do so by the Commissioner.

(3) The relevant Board must report on the progress and results of a complaint against a registered provider that is referred to it or on the exercise of its powers or the performance of its functions in respect of a recommendation in a report under section 65 when requested to do so by the Commissioner.

75 Commissioner may be party to proceedings by Board

(1) If the relevant Board takes proceedings against a registered provider in respect of a matter relating to or arising out of a complaint, or investigation of a complaint, under this Act:

(a) it must notify the Commissioner of the date, time and place of the proceedings; and

(b) the Commissioner may appear as a party to the proceeding at any stage.

(2) The Commissioner has the same status as any other party when appearing as a party in proceedings under subsection (1).

Note for section 75

For provision about the parties to proceedings taken on a notification made under the Health Practitioner Regulation National Law, see section 194 of that Law.

76 Assistance with other investigations

(1) The Commissioner may investigate a matter for a relevant Board if requested to do so by the Board and the investigation does not otherwise conflict with the Commissioner's functions and responsibilities under this Act.

(2) An investigation under subsection (1) may be conducted into a matter that is not within the Commissioner's jurisdiction.

(3) The Commissioner may recover from the relevant Board the reasonable costs of conducting the investigation.

77 Further action by Board

Nothing in this Act prevents the relevant Board from taking action in respect of a complaint against a registered provider that is contrary to, or in addition to, that taken or recommended by the Commissioner under this Act.

Part 10 Miscellaneous

85 Procedural fairness

A person when exercising a power or performing a function under this Act must have regard to the principles of procedural fairness.

86 Informality of procedures

A person when exercising a power or performing a function under this Act:

(a) must proceed with as little formality and technicality and with as much expedition as the requirements of this or any other Act and a proper consideration of the matter permits; and

(b) is not bound by the rules of evidence but may inform himself or herself of any matter in any manner that he or she considers appropriate.

87 Recommendations to have regard to available resources

(1) A recommendation of the Commissioner under this Act in relation to a health service or community service must be made in a way that to give effect to it:

(a) would not be beyond the resources appropriated for the delivery of health services and community services; or

(b) would not be inconsistent with the way in which those resources have been allocated by the Minister and the Chief Executive Officer in accordance with government policy.

(2) In subsection (1):

Chief Executive Officer means the Chief Executive Officer of the Agency allotted responsibility for the administration of the *Public and Environmental Health Act 2011* by an Administrative Arrangements Order.

88 General standards of clinical practice

Nothing in this Act gives the Commissioner power to determine or recommend general standards of clinical practice.

89 Inconsistency between Act and Health Practitioner Regulation National Law

If there is an inconsistency between this Act and the Health Practitioner Regulation National Law, that Law prevails to the extent of the inconsistency

90 Consultation with and by Commissioner

(1) The Commissioner must consult with the Minister concerning matters arising under the administration of this Act when requested by the Minister.

(2) The Commissioner must consult with the Chief Executive Officer of an Agency that provides health services or community services concerning matters arising under the administration of this Act when requested by the Chief Executive Officer.

(3) A Chief Executive Officer of an Agency that provides health services or community services must consult with the Commissioner concerning matters arising under the administration of this Act when requested by the Commissioner.

91 Offences relating to obstruction

A person must not without reasonable excuse (proof of which lies on the person):

(a) obstruct, hinder, resist or improperly influence the Commissioner or any other person when exercising a power or performing a function under this Act; or

(b) refuse or wilfully fail to comply with a lawful requirement of the Commissioner under this Act.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

92 Offences relating to provision of information

(1) A person who is required to do so under this Act must not, without reasonable excuse (proof of which lies on the person), refuse or fail:

(a) to attend before a person for the purposes of providing information; or

(b) to take an oath; or

(c) to provide information by answering a question or otherwise; or

(d) to produce a document.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

(2) A person must not, without reasonable excuse (proof of which lies on the person):

(a) provide to the Commissioner or any other person exercising a power or performing a function under this Act any information or document or make a statement that the person knows is false or misleading in a material particular; or

(b) refuse or fail to include in information provided to the Commissioner or a person exercising a power or performing a function under this Act other information without which the information provided is, to the knowledge of the person, false or misleading in a material particular; or

(c) wilfully or knowingly mislead the Commissioner or any other person exercising a power or performing a function under this Act.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

(3) A person must not provide the Commissioner or any other person performing a function or exercising a power under this Act a document containing information that the person knows is misleading in the material particular without:

(a) indicating that the document is false or misleading and the manner in which it is false or misleading; and

(b) giving correct information if the person has, or can reasonably obtain, the correct information.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

93 Offences relating to intimidation

(1) A person must not persuade or attempt to persuade, by threat or intimidation, another person:

(a) to refrain from making a complaint; or

(b) to withdraw a complaint; or

(c) to fail to co-operate with the Commissioner or any other person exercising a power or performing a function under this Act; or

(d) to fail to provide information or a document to the Commissioner or any other person exercising a power or performing a function under this Act; or

(e) to provide information or a document to the Commissioner or any other person exercising a power or performing a function under this Act that is false or misleading in a material particular or to provide information or a document in a manner that will make the information or the document false or misleading in a material particular.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

(2) It is a defence to a prosecution for an offence under subsection (1) that:

(a) the defendant had another ground for engaging in the conduct alleged; and

(b) the ground is a reasonable one.

94 Offences relating to reprisal

(1) A person must not take or conspire to take a reprisal against another person because, or in the belief that, a person:

(a) has made or may make a complaint; or

(b) has co-operated, may co-operate or is co-operating with the Commissioner or any other person exercising a power or performing a function under this Act; or

(c) has provided, may provide or is providing documents or information, by answering questions or otherwise, to the Commissioner or any other person exercising a power or performing a function under this Act.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

(2) Without limiting subsection (1), a reprisal includes any of the following:

(a) failing to employ a person;

(b) dismissing a person from employment;

(c) penalising or discriminating against a person in the course of his or her employment.

(3) It is sufficient for a contravention of subsection (1) if the ground specified in that subsection is a significant factor in inducing the person to take or conspire to take a reprisal.

(4) It is a defence to a prosecution for an offence under subsection (1) for the defendant to prove that despite a ground specified in that subsection being a significant ground for engaging in the conduct alleged to constitute the reprisal:

(a) the defendant had another ground for engaging in the conduct; and

(b) the ground is a reasonable one; and

(c) the defendant had taken a significant step towards engaging in the conduct before acting on the ground specified in that subsection.

95 Giving of information protected

(1) An action, claim or demand, either civil or criminal, cannot be commenced or continued against a person who, in good faith, provides or produces any information or document to the Commissioner or a staff member or contractor:

(a) for the purposes of a complaint; or

(b) in the course of an investigation under this Act.

(2) In proceedings for defamation in relation to a publication it is a lawful excuse that the publication was made in giving the information.

(3) A person:

(a) on whom a provision of the Act imposes a duty to maintain confidentiality with respect to a matter; or

(b) who is subject to an obligation by way of oath, rule of law or practice to maintain confidentiality with respect to the matter;

is taken not to have:

(c) committed an offence against the Act; or

(d) breached the oath, rule of law or practice or a law relevant to the oath, rule of law or practice; or

(e) rendered the person liable to disciplinary action;

merely because the person has given the information.

(4) An obligation to maintain secrecy or any other restriction on providing or producing any information or document does not apply to or in relation to providing or producing any information or document for the purposes of an investigation under this Act.

96 Protection from civil actions

(1) A person is not liable in respect of any loss, damage or injury of any kind suffered by another person as a result of any of the following done in good faith:

(a) making a complaint;

(b) making a statement, providing any information, whether by answering a question or otherwise, or producing any document for the purposes of this Act;

(c) making a report under this Act;

(d) providing a copy of a report to a person under this Act;

(e) doing, or omitting to do, anything in the exercise of a power or the performance of a function under this Act.

(2) The onus of proof of a lack of good faith is on the person alleging it.

97 Preservation of confidentiality

(1) A person must not record, disclose or use confidential information gained by the person through involvement in the administration of this Act unless it is:

(a) necessary for this Act; or

(b) expressly authorised or required under this or another Act; or

(c) expressly authorised or required under the Regulations; or

(d) expressly authorised in writing by the person to whom it relates.

Maximum penalty: 85 penalty units or imprisonment for 2 years.

(2) Except if it is necessary to do so for this Act, a person is not required:

(a) to disclose confidential information to a court or tribunal; or

(b) to produce that part of a document that contains confidential information to a court or tribunal.

(3) For this section, a person gains information through involvement in the administration of this Act if the person gains the information:

(a) in the course of the involvement; or

(b) because of opportunity provided by the involvement.

(4) For this section, the following persons are involved in the administration of this Act:

(a) the Commissioner;

(b) a staff member;

(ba) a contractor;

(c) a conciliator;

(d) a professional mentor;

(f) a member of a Board.

(5) In this section:

confidential information includes the following:

(a) information about the identity, occupation or whereabouts of a complainant or a user or provider to whom a complaint relates or of a person who assists an investigation;

(b) information disclosed by a complaint;

(c) information of personal concern to a person;

(d) information that, if disclosed, may cause detriment to a person.

(6) A person does not commit an offence against subsection (1) in respect of confidential information that is of personal concern to a person or that may cause detriment to a person if the person did not know or could reasonably have known (proof which lies on the person) that recording, disclosure or using the information would cause concern or detriment.

98 Disclosure of non-confidential information

Nothing in this Act prevents disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of any person.

99 Returns by providers

(1) A prescribed provider must lodge with the Commissioner, not later than the date determined by the Commissioner, a return containing the particulars that the Commissioner requires concerning:

(a) all complaints that the provider was notified of by the Commissioner during the financial year; and

(b) all complaints that the provider received during the financial year; and

(c) any action taken during the financial year in response to, or as a result of receiving, a complaint mentioned in paragraph (a) or (b) or such a complaint received during a previous financial year.

Maximum penalty: 40 penalty units.

(2) In subsection (1), a reference to a complaint received by a provider includes:

(a) a complaint received by a provider in relation to a health service or community service, whether or not the same or a similar complaint has been made to the Commissioner; and

(b) a complaint in respect of which the Commissioner, if the complaint had been made to him or her, would not have entertained.

100 Internal complaints procedures

A prescribed provider must implement the internal complaints procedures as set out in the Regulations.

Maximum penalty: 40 penalty units.

101 Proceedings for offence

A prosecution of an offence against this Act must be commenced within 12 months after the later of the following:

(a) the commission of the offence;

(b) the offence coming to the knowledge of the Commissioner.

102 Evidence

(1) In any proceedings, a certificate purporting to be that of the Commissioner stating that a person is a delegate in relation to a power or function specified in the certificate or a conciliator, professional mentor, staff member or contractor is evidence of the matter.

(2) In any proceedings, a certificate purporting to be that of the Commissioner or another person mentioned in subsection (1) stating that the Commissioner or the person has made or taken a decision, step or action or that a document is held by or was provided to the Commissioner or the person is evidence of those matters.

(3) Judicial notice must be taken of:

(a) the appointment of a person as the Commissioner or to act in the office of the Commissioner or as a Deputy Commissioner for Health and Community Services Complaints; and

(b) the person's signature.

104 Code of Health and Community Rights and Responsibilities

(1) The Minister may, in writing, approve a code prepared in accordance with this section to be the Code of Health and Community Rights and Responsibilities.

(2) The Code:

(a) must deal with implementing the principles specified in the Regulations; and

(b) may deal with other matters that are relevant to providing or using health services and community services.

(3) The Commissioner must develop a draft code within 2 years after the commencement of this Act or within any longer period that the Minister determines.

(4) In developing the draft code, the Commissioner must:

(a) invite submissions from, and consult with, interested persons and bodies to ensure that a wide range of views are available in developing the code; and

(b) make recommendations to the Minister relating to the content, application, enforcement and review of the draft code.

(5) The Commissioner must report to the Minister on the development of the draft code at intervals of not longer than 12 months.

105 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

106 Review of operations of Act

(1) The Minister must cause a review and report to be made on the operation of this Act as soon as practicable after the expiration of 2 years after the commencement of this Act and then at intervals not longer than 5 years.

(2) The report must contain recommendations as to whether amendments to this Act or the Regulations are necessary or desirable.

(3) The Minister must cause a copy of the report to be tabled in the Legislative Assembly as soon as practicable after it is received.

Part 11 Transitional matters

Division 1 Health and Community Services Complaints Act 1998

107 Transitional

(1) This Act applies to a health service or community service provided within 2 years before the commencement of this Act.

(2) A complaint in respect of a health service or community service referred to in subsection (1) that would otherwise be out of time may be accepted by the Commissioner if, in his or her opinion, it is made within a reasonable time after the commencement of this Act.

Division 2 Health and Community Services Complaints Amendment Act 2011

108 Definitions

In this Division:

2011 amendments means the amendments to the Act effected by the *Health and Community Services Complaints Amendment Act 2011*.

109 Commissioner and acting Commissioner

The 2011 amendments do not affect the appointment of a person holding office as Commissioner, or acting in the office of Commissioner, at the commencement of sections 6 and 7 of the *Health and Community Services Complaints Amendment Act 2011*.

110 Staff and facilities

(1) The 2011 amendments do not affect:

(a) the employment of any current employee; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred by an employee before the commencement.

(2) Without limiting subsection (1):

(a) at the commencement a current employee becomes a staff member; and

(b) an arrangement in force immediately before the commencement under section 14(2) (as then in force), continues as an arrangement under section 14(1) or (2)(a), as appropriate; and

(c) where the context permits, a reference in the Act to a staff member includes a reference to an employee.

(3) In this section:

commencement means the commencement of section 14 of the *Health and Community Services Complaints Amendment Act 2011*.

current employee means a person who is an employee immediately before the commencement.

employee means a person employed to assist the Commissioner under section 14 as in force before the commencement.

Division 3 Transitional matters for Integrity and Ethics Commissioner Act 2025

111 Application of amendment to section 10

The amendment to this Act by section 79 of the *Integrity and Ethics Commissioner Act 2025* applies to an acting Health Complaints Commissioner in office on the commencement of that section.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Health and Community Services Complaints Act 1998* (Act No. 29, 1998)**

Assent date	30 March 1998
Commenced	10 June 1998 (*Gaz* G22, 10 June 1998, p 5)

***Corporations Reform (Consequential Amendments NT) Act 2001* (Act No. 17, 2001)**

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth *Gaz* S285, 13 July 2001)

***Health and Community Services Complaints Amendment Act 2002* (Act No. 64, 2002)**

Assent date	8 November 2002
Commenced	1 July 2003 (s 2 and s 2(2) *Information Act 2002* (Act No. 62, 2002))

***Carers Recognition Act 2006* (Act No. 22, 2006)**

Assent date	19 September 2006
Commenced	29 November 2006 (*Gaz* G48, 29 November 2006, p 2)

***Legal Profession (Consequential Amendments) Act 2007* (Act No. 7, 2007)**

Assent date	17 May 2007
Commenced	s 10: 1 July 2007; rem: 17 May 2007 (s 2 and *Gaz* G26, 27 June 2007, p 3)

***Ombudsman Act 2009* (Act No. 5, 2009)**

Assent date	12 March 2009
Commenced	1 July 2009 (*Gaz* G21, 27 May 2009, p 5)

***Statute Law Revision Act 2009* (Act No. 25, 2009)**

Assent date	1 September 2009
Commenced	16 September 2009 (*Gaz* G37, 16 September 2009, p 3)

Health Practitioner (National Uniform Legislation) Implementation Act 2010 **(Act No. 18, 2010)**

Assent date	20 May 2010
Commenced	1 July 2010 (s 2)

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 **(Act No. 40, 2010)**

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

Public and Environmental Health Act 2011 **(Act No. 7, 2011)**

Assent date	16 March 2011
Commenced	1 July 2011 (*Gaz* S28, 3 June 2011)

Care and Protection of Children (Children's Commissioner) Amendment Act 2011 **(Act No. 9, 2011)**

Assent date	18 April 2011
Commenced	1 July 2011 (*Gaz* S32, 20 June 2011)

Health and Community Services Complaints Amendment Act 2011 **(Act No. 13, 2011)**

Assent date	18 April 2011
Commenced	4 May 2011 (*Gaz* S19, 4 May 2011)

Health Practitioner (National Uniform Legislation) Implementation Act 2012 **(Act No. 17, 2012)**

Assent date	22 May 2012
Commenced	1 July 2012 (s 2)

Penalties Amendment (Miscellaneous) Act 2013 **(Act No. 23, 2013)**

Assent date	12 July 2013
Commenced	28 August 2013 (*Gaz* G35, 28 August 2013, p 2)

Children's Commissioner Act 2013 **(Act No. 33, 2013)**

Assent date	18 December 2013
Commenced	1 January 2014 (*Gaz* S72, 23 December 2013)

Statute Law Revision Act 2014 **(Act No. 38, 2014)**

Assent date	13 November 2014
Commenced	13 November 2014

Local Court (Related Amendments) Act 2016 **(Act No. 8, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

Integrity and Ethics Commissioner Act 2025 **(Act No. 32, 2025)**

Assent date	27 November 2025
Commenced	ss 3 to 7 and pts 2 to 6 and 8: 1 June 2026 (s 2(2) and *Gaz* S39, 29 May 2026); rem: 28 November 2025 (s 2(1))

Attorney-General Legislation Amendment (Boards, Committees and Statutory Offices) Act 2026 **(Act No. 21, 2026)**

Assent date	12 August 2026
Commenced	13 August 2026 (s 2)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 4, 5, 22, 25A, 27 and 87.

4 LIST OF AMENDMENTS

pt 1 hdg	amd No. 13, 2011, s 20
s 3	amd No. 13, 2011, s 20
s 4	amd No. 64, 2002, s 4; No. 22, 2006, s 11; No. 5, 2009, s 167; No. 18, 2010, s 40; No. 13, 2011, s 4; No. 17, 2012, s 55; No. 32, 2025, s 100; No. 21, 2026, s 14
s 5	amd No. 22, 2006, s 12; No. 13, 2011, s 20
pt 2 hdg	rep No. 32, 2025, s 101
s 7	amd No. 13, 2011, s 5 rep No. 32, 2025, s 101
s 8	rep No. 32, 2025, s 101
s 9	amd No. 13, 2011, s 6 sub No. 32, 2025, s 102
s 10	amd No. 13, 2011, s 7; No. 32, 2025, s 79 rep No. 32, 2025, s 102
s 11	amd No. 13, 2011, s 8 rep No. 32, 2025, s 102
s 12	amd No. 13, 2011, s 20
s 13	amd No. 13, 2011, s 20; No. 32, 2025, s 103
s 14	sub No. 13, 2011, s 9 amd No. 32, 2025, s 104
s 15	sub No. 32, 2025, s 105
s 16	amd No. 40, 2010, s 118; No. 8, 2016, s 45 rep No. 32, 2025, s 105
s 17	amd No. 13, 2011, s 10
s 18	amd No. 13, 2011, s 20
s 22	amd No. 13, 2011, s 20; No. 7, 2011, s 140
s 23	amd No. 22, 2006, s 13; No. 13, 2011, s 20
ss 24 – 25	amd No. 13, 2011, s 20
s 25A	ins No. 64, 2002, s 5 sub No. 5, 2009, s 168
s 26	amd No. 13, 2011, s 20
s 27	amd No. 64, 2002, s 6; No. 13, 2011, s 20; No. 9, 2011, s 24; No. 33, 2013, s 70
s 28	amd No. 13, 2011, s 20; No. 23, 2013, s 10
s 30	amd No. 13, 2011, s 20
ss 32 – 34	amd No. 13, 2011, s 20
ss 38 – 40	amd No. 13, 2011, s 20
ss 42 – 43	amd No. 13, 2011, s 20
s 45	amd No. 13, 2011, s 20
s 46	amd No. 13, 2011, s 11
s 47	amd No. 13, 2011, s 12; No. 23, 2013, s 10
pt 7	
div 1 hdg	amd No. 13, 2011, s 20
s 48	amd No. 13, 2011, s 20
s 52	amd No. 13, 2011, s 20; No. 38, 2014, s 2
s 53	amd No. 13, 2011, s 20
s 55	amd No. 13, 2011, s 20; No. 23, 2013, s 10; No. 38, 2014, s 2
s 56	amd No. 40, 2010, s 118; No. 13, 2011, s 20; No. 23, 2013, s 10
s 57	amd No. 13, 2011, s 20

s 58	amd No. 13, 2011, s 20; No. 8, 2016, s 45
s 59	amd No. 13, 2011, s 20
ss 64 – 65	amd No. 13, 2011, s 20
s 66	amd No. 13, 2011, s 20; No. 23, 2013, s 10
s 67	amd No. 13, 2011, s 20
ss 69 – 70	amd No. 13, 2011, s 20
s 72	amd No. 13, 2011, s 20
s 73	amd No. 18, 2010, s 41
s 75	amd No. 18, 2010, s 42
pt 9 hdg	rep No. 21, 2026, s 15
s 78	amd No. 7, 2007, s 16; No. 13, 2011, s 20 rep No. 21, 2026, s 15
s 79	amd No. 13, 2011, s 20 rep No. 21, 2026, s 15
s 80	rep No. 21, 2026, s 15
s 81	amd No. 13, 2011, s 20 rep No. 21, 2026, s 15
ss 82 – 83	rep No. 21, 2026, s 15
s 84	amd No. 13, 2011, s 20; No. 23, 2013, s 10 rep No. 21, 2026, s 15
s 85	amd No. 13, 2011, s 20
s 87	amd No. 13, 2011, s 20; No. 7, 2011, s 140
s 89	sub No. 18, 2010, s 43 amd No. 17, 2012, s 55
s 91	amd No. 13, 2011, s 20; No. 23, 2013, s 10
s 92	amd No. 40, 2010, s 118; No. 13, 2011, s 20; No. 23, 2013, s 10
ss 93 – 94	amd No. 13, 2011, s 20; No. 23, 2013, s 10
s 95	amd No. 13, 2011, s 13
s 97	amd No. 25, 2009, s 7; No. 13, 2011, s 14; No. 23, 2013, s 10; No. 21, 2026, s 16
s 99	amd No. 13, 2011, s 20; No. 23, 2013, s 10
s 100	amd No. 23, 2013, s 10
s 101	amd No. 13, 2011, s 20
s 102	amd No. 13, 2011, s 15
s 103	amd No. 17, 2001, s 21 rep No. 13, 2011, s 16
s 104	amd No. 13, 2011, s 20
s 106	amd No. 13, 2011, s 20
pt 11 hdg	ins No. 13, 2011, s 17
pt 11 div 1 hdg	ins No. 13, 2011, s 17
pt 11 div 2 hdg	ins No. 13, 2011, s 18
ss 108 – 110	ins No. 13, 2011, s 18
pt 11 div 3 hdg	ins No. 32, 2025, s 80
s 111	ins No. 32, 2025, s 80
sch 1	amd No. 13, 2011, s 19 rep No. 32, 2025, s 106