

South Australia

# Health and Community Services Complaints Act 2004

An Act to provide for the making and resolution of complaints against health or community service providers; to make provision in respect of the rights and responsibilities of health and community service users and providers; and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Health and Community Services Complaints Act 2004*.

### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Objects

The objects of this Act are—

- (a) to improve the quality and safety of health and community services in South Australia through the provision of a fair and independent means for the assessment, conciliation, investigation and resolution of complaints; and
- (b) to provide effective alternative dispute resolution mechanisms for users and providers of health or community services to resolve complaints; and
- (c) to promote the development and application of principles and practices of the highest standard in the handling of complaints concerning health or community services; and
- (d) to provide a scheme that can be used to monitor trends in complaints concerning health or community services; and
- (e) to identify, investigate and report on systemic issues concerning the delivery of health or community services.

### 4—Interpretation

- (1) In this Act, unless the contrary intention appears—

**Charter** means the Health and Community Services Rights Charter under Part 3;

**Commissioner** means the Health and Community Services Complaints Commissioner appointed under Part 2 (and includes a person acting in that office from time to time);

**community service** means—

- (a) a service for the relief of poverty, social disadvantage, social distress or hardship; or
- (b) a service for the provision of emergency relief or support; or
- (c) a service for the care or protection of any child who has been abused or neglected, or allegedly abused or neglected, and includes any service that relates to the notification of any case of child abuse or neglect (or alleged child abuse or neglect), or the investigation of a case where a child may be in need of care or protection, or any subsequent action taken by a service provider arising from any such investigation; or<sup>1</sup>

- (d) a service for the social advancement of disadvantaged groups; or
- (e) a service of a class included within the ambit of this definition by the regulations; or
- (f) an administration service directly related to a service referred to in a preceding paragraph,

but does not include—

- (g) a service that provides employment search or placement services, or that provides employment related training or retraining; or
- (h) a service of a class excluded from the ambit of this definition by the regulations;

**Examples—**

The following are examples of community services:

- a service that provides community support or care;
- a service for the provision of emergency accommodation or relief (including by the provision of emergency financial support), or for the provision of accommodation or support to the socially disadvantaged;
- a counselling, advice or community information or awareness service;
- a community advocacy, self-help or mutual aid service.

***community service provider*** means a person, government agency or body of persons (whether corporate or unincorporated) who or which—

- (a) provides a community service; or
- (b) holds himself, herself or itself out as being able to provide a community service;

***community service user*** means a person who uses or receives, or who is seeking to use or receive, a community service;

***complainant*** means a person who makes a complaint and includes a person on whose behalf a complaint is made;

***complaint*** means a complaint under this Act;

***conciliator*** means a conciliator appointed under this Act;

***confidential information*** includes—

- (a) information about the identity, occupation or whereabouts of a complainant, health or community service user or health or community service provider involved in a complaint, investigation or inquiry under this Act;
- (b) information disclosed by a complainant, health or community service user or health or community service provider for the purposes of any complaint, investigation or inquiry under this Act;
- (c) personal information about a complainant, health or community service user or health or community service provider under this Act;
- (d) information the release of which would cause personal distress to a person;

- (e) information provided on a confidential basis or otherwise affected by a requirement as to confidentiality;

**Council** means the Health and Community Services Advisory Council established under Part 8;

**Department** means the department of the Minister to whom the administration of this Act has been committed;

**government agency** means—

- (a) a department or administrative unit of the Public Service; or
- (b) any other agency or instrumentality of the Crown; or
- (c) a local government council;

**health professional** means—

- (a) a registered service provider; or
- (b) an audiologist, audiometrist, optical dispenser, dietitian, prosthetist, psychotherapist, radiographer, therapeutic counsellor, social worker or provider of forensic or pathology services; or
- (c) any other person who has an occupation that is based on providing health care or treatment to others; or
- (d) a person who is training to become a person engaged in an occupation referred to in a preceding paragraph and who, as part of that training, is engaged in the provision of health care or treatment to others,

but does not include a person whose occupation is excluded from the ambit of this definition by the regulations;

**health service** means—

- (a) a service designed to benefit or promote human health; or
- (b) a service provided in association with the use of premises for the care, treatment or accommodation of persons who are aged or who have a physical disability or mental dysfunction; or
- (c) a diagnostic or screening service; or
- (d) an ambulance service; or
- (e) a service to treat or prevent illness, injury, disease or disability; or
- (f) a service provided by a health professional; or
- (g) a service involving the provision of information relating to the promotion or provision of health care or health education; or
- (h) a service of a class included within the ambit of this definition by the regulations; or
- (i) a social, welfare, recreational or leisure service if provided as part of a service referred to in a preceding paragraph; or
- (j) an administration service directly related to a service referred to in a preceding paragraph,

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but does not include—

- (k) the process of writing, or the content of, a health status report;
- (l) a service of a class excluded from the ambit of this definition by the regulations;

**Examples—**

The following are examples of health services:

- a service provided at a hospital, health institution or aged care facility;
- a medical, dental, pharmaceutical, mental health, community health or environmental health service;
- a laboratory service;
- a laundry, dry cleaning, catering or other support service provided in a hospital, health institution or aged care facility.

**health service provider** means a person, government agency or body of persons (whether corporate or unincorporated) who or which—

- (a) provides a health service; or
- (b) holds himself, herself or itself out as being able to provide a health service;

**health service user** means a person who uses or receives, or who is seeking to use or receive, a health service;

**health status report** means a report prepared by a person, agency or body on the physical, mental or emotional health of a person where the purpose for preparing the report is not for the purpose of providing a health service within the meaning of paragraphs (a) to (j) (inclusive) of the definition of **health service**;

**local government council** means—

- (a) a council under the *Local Government Act 1999*; or
- (b) a body established by a council under the *Local Government Act 1999*; or
- (c) a body that is pursuant to an Act vested with the powers and functions of a council under the *Local Government Act 1999*;

**power of attorney** includes a medical power of attorney;

**professional mentor** means a professional mentor appointed under Part 2;

**register** means register, license, approve, admit, certify (including by way of practising certificate) or authorise in any other manner pursuant to an Act a person to provide a health or community service or to practise as a health or community service provider;

**registered service provider** means a health or community service provider registered by a registration authority;

**registration Act** means—

- (a) an Act referred to in the Schedule; or
- (b) an Act included within the ambit of this definition by the regulations;

**registration authority** means—

- (a) the body with the function, under a registration Act, of determining an application for registration under that Act and includes any other body vested with disciplinary powers under a registration Act; or
- (b) any other body brought within the ambit of this definition by the regulations;

**relevant registration authority** in relation to a person, means a registration authority that has registered that person;

**State Ombudsman** means the Ombudsman under the *Ombudsman Act 1972*;

**volunteer** means a person who receives no remuneration for acting in a particular capacity (being a capacity associated with the provision of a health or community service).

- (2) A registration authority will not be taken to be a health or community service provider for the purposes of this Act.

**Note—**

- 1 Paragraph (c) of the the definition of *community service* had not come into operation at the date of the publication of this version.

## Part 2—Health and Community Services Complaints Commissioner

### Division 1—Appointment and conditions of office

#### 5—Appointment

- (1) There is to be a *Health and Community Services Complaints Commissioner*.
- (2) The Commissioner is appointed by the Governor.

#### 6—Term of office and conditions of appointment

- (1) The Commissioner is appointed on conditions determined by the Governor and for a term, not exceeding 7 years, specified in the instrument of appointment.
- (2) An appointment may be renewed but a person must not hold office as Commissioner for more than 2 consecutive terms.
- (3) The Governor may remove the Commissioner from office on the presentation of an address from both Houses of Parliament seeking the Commissioner's removal.
- (4) The Governor may suspend the Commissioner from office on the ground of incompetence or misbehaviour and, in that event—
  - (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
  - (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Commissioner's removal has not been presented to the Governor, the Commissioner must be restored to office.



- (5) The office of Commissioner becomes vacant if the Commissioner—
- (a) dies; or
  - (b) resigns by written notice given to the Minister; or
  - (c) completes a term of office and is not reappointed; or
  - (d) is removed from office by the Governor under subsection (3); or
  - (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
  - (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
  - (h) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office.
- (6) Except as is provided by this section, the Commissioner may not be removed or suspended from office, nor will the office of the Commissioner become vacant.

## **7—Remuneration**

The Commissioner is entitled to remuneration, allowances and expenses determined by the Governor.

## **8—Temporary appointments**

The Minister may appoint a person (who may but need not be an employee in the Public Service) to act as the Commissioner—

- (a) during a vacancy in the office of Commissioner; or
- (b) when the Commissioner is absent from, or unable to discharge, official duties; or
- (c) if the Commissioner is suspended from office under this Act.

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

### **9—Functions**

- (1) The Commissioner has the following functions:
- (a) to prepare and regularly review the Charter of Health and Community Services Rights under Part 3; and
  - (b) to identify and review issues arising out of complaints and to make recommendations for improving health and community services and preserving and increasing the rights of people who use those services; and
  - (c) to review and identify the causes of complaints and to—
    - (i) recommend ways to remove, resolve or minimise those causes; and
    - (ii) detect and review trends in the delivery of health or community services; and

- (d) to provide information, education and advice in relation to—
    - (i) the Charter; and
    - (ii) health and community service rights and responsibilities; and
    - (iii) procedures for resolving complaints; and
    - (iv) other matters (if any) determined to be appropriate by the Commissioner; and
  - (e) to receive, assess and resolve complaints; and
  - (f) to encourage and assist health and community service users to resolve complaints directly with health and community service providers; and
  - (g) to assist health and community service providers to develop or improve procedures to resolve complaints; and
  - (h) to inquire into and report on any matter relating to health or community services on the Commissioner's own motion or at the request of the Minister; and
  - (i) to advise, and report to, the Minister on any matter relating to health or community services or the administration or operation of this Act; and
  - (j) to provide information, advice and reports to registration authorities and to work with registration authorities to develop or improve procedures relating to the assessment and investigation of complaints and grievances; and
  - (k) to maintain links with—
    - (i) health and community service providers; and
    - (ii) organisations that have an interest in the provision of health or community services; and
    - (iii) organisations that represent the interests of the users of health or community services; and
  - (l) to consult and cooperate with other agencies and authorities that are involved in protecting the interests and rights of members of the community in the area of the provision of health or community services, including—
    - (i) the State Ombudsman; and
    - (ii) the Human Rights and Equal Opportunity Commission of the Commonwealth; and
  - (m) to perform other functions conferred on the Commissioner by or under this or any other Act.
- (2) The Commissioner must, in providing information and advice, and in the assessment and consideration of any complaint, take into account, to such extent as may be appropriate, the position of persons within special needs groups.
- (3) For the purposes of subsection (2), *special needs groups* are particular classes of persons who, because of the nature of the classes to which they belong, may suffer disadvantage in the provision of services unless their needs are recognised.

- (4) The Commissioner must, in acting under this Act, give particular attention to the position of volunteers and to their value in providing health and community services within the community and should not unnecessarily involve them in any proceedings under this Act.

## **10—Powers**

The Commissioner has the powers necessary or expedient for, or incidental to, the performance of the Commissioner's functions.

## **11—Independence**

- (1) In performing and exercising his or her functions and powers under this Act, the Commissioner must act independently, impartially and in the public interest.
- (2) The Minister cannot control how the Commissioner is to exercise the Commissioner's statutory functions and powers<sup>1</sup>.

### **Note—**

- 1 This provision does not derogate from any express power of the Minister under this Act.

## **Division 3—Committees**

### **12—Committees**

- (1) The Commissioner—
  - (a) may, after consultation with the Minister, establish such committees as the Commissioner considers appropriate; and
  - (b) must, at the direction of the Minister in relation to a matter or matters of public safety, interest or importance, establish a committee or committees in accordance with that direction,to assist the Commissioner in the performance of the Commissioner's functions under this Act.
- (2) Subject to any direction of the Minister, the membership and functions of a committee will be determined by the Commissioner.
- (3) A member of a committee is entitled to any remuneration, allowances or expenses determined or approved by the Minister.
- (4) The procedures to be observed by a committee will be—
  - (a) as determined by the Minister or the Commissioner; or
  - (b) insofar as a determination is not made under paragraph (a)—as determined by the committee.

## **Division 4—Appointment of conciliators and professional mentors**

### **13—Appointment of conciliators and professional mentors**

- (1) The Commissioner may appoint suitable persons as conciliators or professional mentors for the purposes of this Act.
- (2) An appointment will be made for a term, not exceeding 3 years, determined by the Commissioner and on conditions determined or approved by the Minister.

- (3) The conditions under subsection (2) may include conditions as to the remuneration, allowances or expenses to be paid to the relevant person.
- (4) An appointment may be renewed from time to time.
- (5) Nothing in this section prevents the Commissioner, or a member of the Commissioner's staff, acting as a conciliator under this Act.

## **Division 5—Other matters**

### **14—Staff**

- (1) The Commissioner's staff consists of—
  - (a) Public Service employees assigned to work in the office of the Commissioner under this Act; and
  - (b) any person appointed under subsection (3).
- (2) The Minister may, by notice in the Gazette—
  - (a) exclude Public Service employees who are members of the Commissioner's staff from specified provisions of the *Public Sector Management Act 1995*; and
  - (b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)—determine that those provisions will apply,and such a notice will have effect according to its terms.
- (3) The Commissioner may, with the consent of the Minister, appoint staff for the purposes of this Act.
- (4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Governor and such a person will not be a Public Service employee.
- (5) The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

### **15—Budget**

The Commissioner's proposed budget for a particular financial year is to be submitted for examination by the Economic and Finance Committee of the Parliament by the end of the preceding calendar year.

### **16—Annual report**

- (1) The Commissioner must, on or before 30 September in every year, forward a report to the Minister on the work of the Commissioner under this Act during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## 17—Other reports

- (1) The Commissioner may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the Commissioner's functions under this Act.
- (2) Subject to subsection (3), the Minister must, within 2 weeks after receiving a report under this section, have copies of the report laid before both Houses of Parliament.
- (3) If the Minister cannot comply with subsection (2) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—
  - (a) immediately cause the report to be published; and
  - (b) lay the report before their respective Houses at the earliest opportunity.
- (4) A report will, when published under subsection (3)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.

## 18—Immunity

- (1) The Commissioner, a member of a committee appointed under this Part, a conciliator or a professional mentor incurs no civil liability for an honest act or omission in the performance or exercise, or purported performance or exercise, of a function or power under this Act.
- (2) The immunity under subsection (1) does not extend to culpable negligence.
- (3) A civil liability that would, but for this section, attach to a person attaches instead to the Crown.

## Part 3—Charter of Health and Community Services Rights

### 19—Development of Charter

- (1) The Commissioner must develop a draft *Charter of Health and Community Services Rights*.
- (2) The draft must be presented to the Minister within 12 months after the commencement of this Part or within such longer period as the Minister may allow.
- (3) The Commissioner must report to the Minister on the development of the draft at intervals of not more than 4 months until the draft is presented to the Minister under subsection (2).

### 20—Review of Charter

The Commissioner—

- (a) may at any time review the Charter; and
- (b) if the Minister so directs, must review the Charter.

### 21—Consultation

In developing or reviewing the Charter, the Commissioner must invite submissions from, and consult with, to such extent as may be reasonable, interested persons with a view to obtaining a wide range of views in relation to the matters under consideration.

## **22—Content of Charter**

In developing or reviewing the Charter, the Commissioner may have regard to any matter considered relevant to the provision or use of health or community services and must have regard to the following principles:

- (a) that a person should be entitled to participate effectively in decisions about his or her health, well-being and welfare;
- (b) that a person should be entitled to take an active role in his or her health care and in decisions about the provision of health or community services to the person;
- (c) that a person should be entitled to be provided with appropriate health or community services in a considerate way that takes into account his or her background and any requirements that are reasonably necessary to ensure that he or she receives such services;
- (d) that both professional and non-professional providers of health and community services should be given consideration and recognition for their contribution to health care and the well-being and welfare of individuals;
- (e) that a person should be entitled to obtain reasonable access to records concerning his or her health or other personal information relating to the person (taking into account what is appropriate and reasonable in the circumstances of a particular case), but that otherwise the confidentiality of such information should be maintained;
- (f) that a person should be entitled to have access to procedures for dealing with complaints about the provision of health or community services.

## **23—Approval of Charter**

- (1) The Minister may, on the receipt of a draft Charter or a variation of the Charter from the Commissioner—
  - (a) approve the Charter or the variation; or
  - (b) require an alteration to the Charter or the variation, after consultation with the Commissioner, and then approve the Charter or variation as altered.
- (2) The Minister must then cause a copy of the Charter or variation (as the case may be) to be laid before both Houses of Parliament.
- (3) The Charter or the variation will not come into operation—
  - (a) until 14 sitting days of each House of Parliament have elapsed after a copy of the Charter or the variation is laid before each House; and
  - (b) if, within those 14 sitting days, a motion for disallowance or amendment of the Charter or the variation is moved in either House, unless or until—
    - (i) in the case of a motion for disallowance—the motion is defeated or withdrawn, or lapses;
    - (ii) in the case of a motion for amendment—the amendment is made in accordance with subsection (4) or the motion is defeated or withdrawn, or lapses.

- (4) If a motion for amendment is moved under subsection (3)(b), the Minister may withdraw the Charter or the variation, make the relevant amendment, and then lay the amended Charter or variation before both Houses of Parliament.

## Part 4—Complaints

### Division 1—Making a complaint

#### 24—Who may complain

A complaint about a health or community service used, received by or sought by a person (a *health or community service user*) may be made to the Commissioner by—

- (a) the health or community service user; or
- (b) if the health or community service user has attained the age of 16 years—a person appointed by the user to make the complaint on the user's behalf; or
- (c) if the health or community service user has not attained the age of 16 years—a parent or guardian of the user; or
- (d) the donee of a power of attorney from the health or community service user or an enduring guardian of the health or community service user; or
- (e) a person who is acting on behalf of the health or community service user under another law or an order of a court; or
- (f) a Member of Parliament; or
- (g) if the Commissioner is satisfied that it is unreasonable to expect the health or community service user to make a complaint personally—a person approved by the Commissioner to act on behalf of the user; or
- (h) a health or community service provider if the complaint is made on the ground that the relevant service is or has been provided or is or was necessary because of the actions of another health or community service provider; or
- (i) if the health or community service user has died—a person who can demonstrate to the Commissioner that he or she had an enduring relationship with the deceased person, or a personal representative of the deceased person; or
- (j) the Minister; or
- (k) the Chief Executive of the Department; or
- (l) any other person, or any body, that, in the opinion of the Commissioner, should be able to make a particular complaint in the public interest.

#### 25—Grounds on which a complaint may be made

- (1) A complaint may be made (and may only be made under this Act) on one or more of the following grounds:
- (a) that a health or community service provider has acted unreasonably by not providing a health or community service, or by discontinuing (or proposing to discontinue) a health or community service provided to a particular person;

- (b) that the provision of a health or community service or of part of a health or community service was not necessary or was inappropriate;
- (c) that a health or community service provider has acted unreasonably in the manner of providing a health or community service;
- (d) that a health or community service provider has failed to exercise due skill;
- (e) that a health or community service provider has failed to treat a health or community service user in an appropriate professional manner;
- (f) that a health or community service provider has failed to respect a health or community service user's privacy or dignity;
- (g) that a health or community service provider has acted unreasonably by failing to provide a health or community service user—
  - (i) with sufficient information, in language and terms understandable to the user, on the treatment or service in order to enable the user to make an informed decision; or
  - (ii) with a reasonable opportunity to make an informed choice of the treatment or services available; or
  - (iii) with adequate information on the availability of further advice on the user's condition or of relevant education programs (if any); or
  - (iv) with adequate information on the treatment or services received; or
  - (v) with any prognosis that it would have been reasonable for the user to be provided with;
- (h) that a health or community service provider has acted unreasonably by—
  - (i) denying a health or community service user access to, or restricting the user's reasonable access to, records relating to the user that were in the provider's possession; or
  - (ii) not making available to a health or community service user information about the user's condition that the health service provider was able to make available;
- (i) that a health or community service provider has acted unreasonably in disclosing information in relation to a health or community service user to a third person;
- (j) that a health or community service provider has acted unreasonably by not taking proper action in relation to a complaint made to him or her by the user about a provider's action of a kind referred to in this section;
- (k) that a health or community service provider has acted in any other manner that is inconsistent with the Charter;
- (l) that a health or community service provider has acted in any other manner that did not conform with the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates.



- (2) Nothing in subsection (1) requires a health or community service provider—
  - (a) to act, or to provide advice or information with respect to a matter, outside the field of expertise associated with the provider's profession or occupational group; or
  - (b) to alter, or to hand over a copy of, medical records in the provider's possession.
- (3) For the purposes of subsection (1), information appropriately provided to a person lawfully acting on behalf of a health or community service user at the time the information is provided will be taken to have been appropriately provided to the health or community service user.
- (4) Subsection (1)(i) does not apply in relation to the disclosure of information to—
  - (a) a legal practitioner in connection with a related legal matter; or
  - (b) an insurer who has an appropriate interest in the information; or
  - (c) any other person of a prescribed class.
- (5) If a complaint relates to an act or omission of a volunteer while working for another person or body, the complaint will be taken to be a complaint against the other person or body (as the case may be) and the volunteer cannot be required to participate in any proceedings under this Act and in particular cannot be the subject of the exercise of any power under Part 6 Division 2.

## **26—Form of complaint**

- (1) A complaint is to be made in a manner approved or determined by the Commissioner.
- (2) A person must, in making a complaint, disclose to the Commissioner, to the best of the person's abilities, all grounds of complaint on which he or she intends to rely.

## **27—Time within which a complaint may be made**

- (1) Subject to subsection (2), a complaint must be made within 2 years from the day on which the complainant first had notice of the circumstances giving rise to the complaint.
- (2) The Commissioner may extend the period under subsection (1) in a particular case if satisfied that it is appropriate to do so after taking into account—
  - (a) whether a proper investigation of the complaint should still be possible; and
  - (b) whether the complaint should still be amenable to resolution under the provisions of this Act; and
  - (c) whether it would be in the public interest to entertain the complaint; and
  - (d) any other matter considered relevant by the Commissioner.
- (3) For the purposes of subsection (1), a complainant will be presumed to have notice of the circumstances giving rise to the complaint at the time he or she might reasonably be expected to have had such notice.

## 28—Further information may be required

- (1) The Commissioner may, at any time, require a complainant—
  - (a) to provide further information or documents;
  - (b) to verify all or any part of the complaint by statutory declaration.
- (2) When making a requirement under subsection (1), the Commissioner must specify a reasonable period within which the requirement is to be satisfied.
- (3) The Commissioner may extend the period specified under subsection (2) (whether before or after its expiry).

## Division 2—Assessment

### 29—Assessment

- (1) The Commissioner must assess a complaint and make a determination in accordance with this section within 45 days after receiving it (or within such longer period as may be necessary in view of any delays that have occurred while the Commissioner or another person takes steps required by or under this Act, or while the Commissioner is undertaking a preliminary inquiry under section 30).
- (2) Subject to this Act, the Commissioner may—
  - (a) refer the complaint to a conciliator under Part 5; or
  - (b) investigate the complaint under Part 6; or
  - (c) if the complaint is against or directly involves a registered service provider, deal with the complaint under Part 7; or
  - (d) if of the opinion that the complaint relates to a matter that falls within the functions conferred on another person or body and that it is appropriate in the circumstances to make a referral under this provision, refer the complaint to the other person or body; or
  - (e) determine to take no further action on the complaint.
- (3) If a complaint is against or directly involves an approved provider under the *Aged Care Act 1997* of the Commonwealth, the Commissioner must consult with the relevant complaints resolution bodies under that Act about the management of the complaint and, if appropriate, refer the complaint to another authority for resolution under that Act.
- (4) The Commissioner must not refer a complaint to a conciliator if the complaint appears to the Commissioner to indicate—
  - (a) the existence of a significant issue of public safety, interest or importance; or
  - (b) a significant question as to the practice of a health or community service provider.
- (5) A complaint should not proceed under this Act if it appears to the Commissioner that the complainant has failed, without good reason, to take reasonable steps to resolve the matter with the relevant health or community service provider before making the complaint.

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- (6) Within 14 days after making a determination under subsection (1), the Commissioner must provide written notice of the determination—
    - (a) to the complainant; and
    - (b) except where the Commissioner has determined to dismiss the complaint, to the health or community service provider.
  - (7) In subsection (1), *complaint* includes a complaint that has been referred, or referred back to the Commissioner, by the State Ombudsman, a registration authority or other person or body referred to in subsection (2).

### 30—Preliminary inquiries

- (1) The Commissioner may, in such manner as the Commissioner thinks fit, undertake a preliminary inquiry in connection with making a determination under section 29.
- (2) For the purposes of an inquiry, the Commissioner may require a health or community service provider to provide information, or any response or explanation, about any matter relevant to the inquiry.
- (3) The Commissioner must specify a reasonable period within which a health and community service provider is to comply with a requirement under subsection (2).
- (4) The Commissioner may extend the period specified under subsection (3) (whether before or after its expiry).
- (5) A health or community service provider must comply with a requirement under subsection (2).  
Maximum penalty: \$10 000.
- (6) However, a person is not obliged to comply with a requirement under subsection (2) if to do so might tend to incriminate the person or make the person liable to a criminal penalty.
- (7) During the conduct of a preliminary inquiry, the Commissioner may assist the parties towards resolution of the complaint through informal mediation.
- (8) Informal mediation should not occur if the complaint appears to the Commissioner to indicate—
  - (a) the existence of a significant issue of public safety, interest or importance; or
  - (b) a significant question as to the practice of a health or community service provider.
- (9) Informal mediation will occur in such manner, and subject to such conditions, as the Commissioner thinks fit.
- (10) Anything said or done during an informal mediation, other than something that reveals a significant issue of public safety, interest or importance, is not to be disclosed in any other proceedings (whether under this or any other Act or law) except by consent of the parties.
- (11) An informal mediation must be brought to an end—
  - (a) if the informal mediation reveals, in the opinion of the Commissioner—
    - (i) a significant issue of public safety, interest or importance; or

- (ii) a significant question as to the practice of a health or community service provider; or
  - (b) at the request of a party to the informal mediation.
- (12) The Commissioner may bring an informal mediation to an end at any time.
- (13) For the purposes of conducting any inquiry or informal mediation under this section, the Commissioner may obtain the assistance of a professional mentor.
- (14) The Commissioner may discuss any matter relevant to making a determination under section 29 or with respect to the operation of this section with a professional mentor.

### **31—Provision of documents etc on referral of complaint**

- (1) If the Commissioner has referred a complaint to another person or body (including a registration authority) under this Division, the Commissioner may give to the other person or body all documents and information in the possession of the Commissioner that relate to the complaint.
- (2) The Commissioner may—
  - (a) make and retain a record of information referred to in subsection (1); and
  - (b) make copies of, or take extracts from, a document referred to in subsection (1) and retain those copies or extracts.

### **32—Splitting or joining of complaints**

- (1) If it is administratively or otherwise appropriate to do so, the Commissioner may determine that 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 health or community service provider; or
  - (d) makes more than one allegation against a health or community service provider; or
  - (e) for any other reason is susceptible to being dealt with in separate parts,be treated as 2 or more complaints for the purposes of this Act.
- (2) If it is administratively or otherwise appropriate to do so, the Commissioner may determine that 2 or more complaints that—
  - (a) deal with the same subject matter; or
  - (b) deal with the same set of circumstances; or
  - (c) make allegations against the same health or community service provider; or
  - (d) for any other reasons are susceptible to amalgamation,be treated as 1 complaint for the purposes of this Act.
- (3) The Commissioner may give such directions or make such incidental determinations as the Commissioner thinks necessary or convenient in view of a determination under subsection (1) or (2).

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- (4) A determination or direction of the Commissioner will have effect according to its terms.
  - (5) The Commissioner must not make a determination under subsection (1) or (2) if it appears to the Commissioner that any attempt at resolution or conciliation is likely to be prejudiced by the making of the determination.

### **Division 3—No further action on complaint**

#### **33—No further action on complaint**

- (1) The Commissioner may at any stage of proceedings under this Act determine to take no further action on a complaint, or to suspend action on a complaint, if the Commissioner considers or is satisfied that—
  - (a) the complainant is not entitled to make the complaint under this Act; or
  - (b) the complaint does not disclose a ground of complaint under this Act; or
  - (c) the matter should be determined by way of legal proceedings; or
  - (d) proceedings that relate to the subject matter of the complaint have been commenced before a tribunal, authority or other person or body; or
  - (e) the complainant has been given reasonable explanations or information and there would be no benefit in further entertaining the complaint; or
  - (f) the complainant is seeking to act on a ground that should have been disclosed by the complainant at an earlier time in accordance with the requirements of section 26(2); or
  - (g) the complaint lacks substance, is unnecessary or unjustifiable, or is frivolous, vexatious or not made in good faith; or
  - (h) the complainant has failed, without good reason, to comply with a requirement under this Act within a reasonable time, or to take a reasonable step in connection with making the complaint or proceeding with the complaint under this Act; or
  - (i) the commencement or continuance of proceedings on the complaint would otherwise be an abuse of the processes under this Act; or
  - (j) the complaint has been resolved or abandoned; or
  - (k) there is some other reasonable cause that justifies the discontinuance or suspension of proceedings under this Act,(and such a determination will have effect according to its terms).
- (2) The Commissioner must take no further action on a complaint if the Commissioner is satisfied that all issues arising out of the subject matter of the complaint have been adjudicated by a court, tribunal, authority or other person or body acting under a law of the State, another State, a Territory or the Commonwealth.
- (3) The Commissioner must suspend action on a complaint if the Commissioner is satisfied—
  - (a) that proceedings that relate to the subject matter of the complaint have been commenced before the court; or

- (b) that an inquest that relates to the subject matter of the complaint has been commenced by a coroner.
- (4) The Commissioner must, in a case where subsection (1), (2) or (3) applies, give written notice relating to the matter—
  - (a) to the complainant; and
  - (b) except where notice of the complaint has not been given to the health or community service provider, to the health or community service provider.
- (5) The Commissioner may recommence action on a suspended complaint for any reasonable cause by giving written notice—
  - (a) to the complainant; and
  - (b) to the health or community service provider.

## **Division 4—Miscellaneous**

### **34—Withdrawal of complaint**

- (1) A complainant may withdraw a complaint at any time by written notice to the Commissioner.
- (2) If a complaint is withdrawn—
  - (a) any investigation under this Act in relation to the matter will cease unless the Commissioner has determined to conduct or continue an investigation under section 43(1)(c); and
  - (b) the Commissioner must—
    - (i) if the health or community service provider has been notified of the receipt of the complaint—notify that provider of the withdrawal within 14 days; and
    - (ii) if the Commissioner has determined to conduct or continue an investigation under section 43(1)(c)—advise the health or community service provider about the effect of the determination despite the withdrawal of the complaint.
- (3) If the Commissioner has referred a complaint to another person or body under this Act, the withdrawal of that complaint under subsection (1) does not affect the performance and exercise by the person or body of his, her or its functions and powers in respect of the matters raised by or in the complaint.

## **Part 5—Conciliation of complaints**

### **35—Function of conciliator**

- (1) The function of a conciliator is to encourage the settlement of a complaint by—
  - (a) arranging discussions or negotiations between the complainant and the health or community service provider;
  - (b) assisting in the conduct of those discussions or negotiations;

- (c) assisting the complainant and the health or community service provider to reach agreement;
  - (d) assisting in the resolution of the complaint in any other way.
- (2) A conciliator may, if the conciliator thinks it appropriate to do so, undertake a conciliation without bringing the parties together.

### **36—Public interest**

- (1) Before the conciliation of a complaint begins, the Commissioner must identify and inform the conciliator about any issue raised by the complaint that the Commissioner considers involves the public interest.
- (2) At the start of the conciliation, the conciliator must draw any issues involving the public interest of which he or she has been informed under subsection (1) to the attention of the complainant and the health or community service provider.
- (3) In the course of the conciliation, the conciliator must (at an appropriate time) draw to the attention of the parties any issues involving the public interest that the conciliator considers are raised by the complaint.
- (4) The conciliator must report to the Commissioner any issue involving the public interest that the conciliator considers is raised by the complaint (other than an issue identified under subsection (1)).
- (5) The Commissioner may, with respect to any issue that the Commissioner considers involves the public interest, consult with any other person or body despite the fact that a conciliation may be proceeding.

### **37—Assistance at conciliation**

- (1) A party to a conciliation may be assisted by another person.
- (2) However, a party cannot be assisted by a particular person if the conciliator has directed that that person not be allowed to act in the particular matter.
- (3) A party in a conciliation process may not be represented by another person except where the Commissioner is satisfied that such representation is likely to assist substantially in resolving the complaint.

### **38—Reports from conciliator**

- (1) Without limiting subsection (2), a conciliator must provide to the Commissioner a written report of the progress of a conciliation when requested to do so by the Commissioner.
- (2) A conciliator must provide to the Commissioner a written report of the results of a conciliation when the conciliator is satisfied—
  - (a) that the complainant and the health or community service provider have reached agreement on all issues raised by a complaint on which the conciliator considers agreement to be possible; or
  - (b) that an agreement between the complainant and health or community service provider is not possible, or is not possible to reach within a reasonable period of time.

### **39—Conciliation may be brought to an end**

- (1) A conciliator may end a conciliation for any reasonable cause at any reasonable time.
- (2) A conciliation must be brought to an end at the direction of the Commissioner.
- (3) A conciliation must be brought to an end if the conciliation reveals, in the opinion of the conciliator or the Commissioner—
  - (a) the existence of a significant issue of public safety, interest or importance; or
  - (b) a significant question as to the practice of a health or community service provider.
- (4) A conciliation must be brought to an end at the request of a party to the conciliation.
- (5) If a conciliation is brought to an end without resolution of all relevant matters, the Commissioner may—
  - (a) refer the complaint to another conciliator; or
  - (b) investigate the complaint under Part 6; or
  - (c) deal with the complaint under Part 7; or
  - (d) refer the complaint to another person or body; or
  - (e) decide to take no further action on the complaint.

### **40—Privilege and confidentiality**

- (1) Anything said or done during conciliation under this Part, other than something that reveals a significant issue of public safety, interest or importance, is not to be disclosed in any other proceedings (whether under this or any other Act or law) except by consent of all parties to the conciliation.
- (2) Except where a disclosure is authorised under this Part, a conciliator must not disclose information gained during conciliation—
  - (a) in any further conciliation; or
  - (b) to any person appointed, employed or engaged for the purposes of this Act.

Maximum penalty: \$5 000.

### **41—Professional mentor**

- (1) The Commissioner may appoint a professional mentor to be available to advise a conciliator in the performance of his or her functions.
- (2) A conciliator may discuss any matter arising in relation to the performance of his or her functions with a professional mentor.
- (3) A professional mentor must not disclose to a third person (other than the Commissioner) information that was gained by a conciliator during conciliation and communicated by the conciliator to the professional mentor.

Maximum penalty: \$5 000.

### **42—Enforceable agreements**

- (1) Any agreement reached between a complainant and a health or community service provider in the course of the conciliation process may be made in a binding form.



- (2) However, an agreement is not binding unless it is—
  - (a) in writing; and
  - (b) entered into within 14 days after the verbal agreement is reached in the course of the conciliation.
- (3) Subsection (1) does not affect the effectiveness of any agreement reached outside the conciliation process.
- (4) A conciliator must not be a party to any agreement between a complainant and a health or community service provider relating to a matter that has been dealt with in a process of conciliation.

## **Part 6—Investigations**

### **Division 1—Application of Part**

#### **43—Matters that may be investigated**

- (1) The Commissioner may investigate—
  - (a) any matter specified in a written direction given by the Minister; and
  - (b) a complaint that the Commissioner has determined to investigate under this Act; and
  - (c) an issue or question arising from a complaint if it appears to the Commissioner—
    - (i) to be a significant issue of public safety, interest or importance; or
    - (ii) to be a significant question as to the practice of a health or community service provider; and
  - (d) on his or her own motion, any other matter relating to the provision of health or community services in South Australia.
- (2) An investigation under subsection (1)(c) may be carried out whether or not—
  - (a) the process of assessment of the relevant complaint has been completed; or
  - (b) any process of conciliation of the relevant complaint has been completed; or
  - (c) the relevant complaint has been withdrawn; or
  - (d) the Commissioner has decided not to take action (or further action) on the relevant complaint.
- (3) Despite subsection (2), an investigation referred to in subsection (1)(c) should not be carried out to the extent that it interferes with a process of conciliation.
- (4) The Commissioner is not required to cease an investigation referred to in subsection (1)(b) or (c) only because the relevant complaint has been resolved.
- (5) Without limiting the operation of a preceding subsection, an investigation under subsection (1)(c) may be carried out on the basis of fresh evidence that comes to the attention of the Commissioner following the completion of a particular investigation.

#### **44—Limitation of powers**

The powers conferred by this Part may be exercised only for purposes of an investigation.

### **Division 2—Conduct of investigations**

#### **45—Conduct of investigation**

- (1) An investigation is to be conducted in such manner as the Commissioner considers appropriate.
- (2) The Commissioner may, in conducting an investigation under this Part, obtain expert advice, or any other advice or support, in order to assist the Commissioner in the investigation.
- (3) The Commissioner may, at any time, decide to attempt to deal with a complaint by conciliation.
- (4) The Commissioner may, in attempting conciliation under subsection (3), act personally or through a member of his or her staff.
- (5) The Commissioner may, if satisfied that the subject of a complaint has been properly resolved by conciliation under subsection (3), determine that the complaint should not be further investigated under this Part.
- (6) Anything said or done during conciliation under subsection (3), other than something that reveals a significant issue of public safety, interest or importance, is not to be disclosed in any other proceedings (whether under this or any other Act or law) except by consent of all parties to the conciliation.

#### **46—Representation**

- (1) Subject to subsection (2), a person required to appear or to produce documents under this Part may be assisted or represented by another person.
- (2) The Commissioner may determine whether any person involved in proceedings under this Part may have legal or other representation during the conduct of an investigation or proceedings relating to an investigation.
- (3) The Commissioner must, in making any determination under subsection (2), to such extent as is reasonably practicable, have regard to the need to ensure that representation is balanced between the parties and that any determination is fair to all persons who are involved in proceedings under this Part.

#### **47—Use and obtaining of information**

- (1) If the Commissioner has obtained a document or information under or in connection with the operation of this Act, the Commissioner may use that document or information for the purposes of this Part.
- (2) If the Commissioner has reason to believe that a person is capable of providing information or producing a document relevant to an investigation, the Commissioner may, by notice in writing provided to the person, require the person to do one or more of the following:
  - (a) to provide that information to the Commissioner in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;

- (b) to produce that document to the Commissioner;
  - (c) to attend before a person specified in the notice and answer questions or produce documents relevant to the investigation.
- (3) A notice under subsection (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.
- (4) A notice under subsection (2) must provide a period of time for compliance with a requirement under that subsection that has been determined by the Commissioner to be reasonable in the circumstances.
- (5) A person must comply with a requirement under subsection (2).  
Maximum penalty: \$5 000.
- (6) If a document is produced in accordance with a requirement under this section, the Commissioner or other appropriate person may take possession of, make copies of, or take extracts from, the document.

#### **48—Power to examine witnesses etc**

- (1) The Commissioner, or a person who is to receive information under section 47(2), may administer an oath or affirmation to a person required to attend before him or her under this Part and may examine the person on oath or affirmation.
- (2) The Commissioner may require a person to verify by statutory declaration—
- (a) any information or document produced under this Part; or
  - (b) a statement that the person has no relevant information or documents or no further relevant information or documents.
- (3) A person must comply with a requirement under subsection (2).  
Maximum penalty: \$5 000.

#### **49—Search powers and warrants**

- (1) On the application of the Commissioner, a magistrate may issue a warrant if the magistrate is satisfied that there are reasonable grounds—
- (a) for believing that entry and inspection of premises are necessary to enable the Commissioner to carry out an investigation under this Part; or
  - (b) for suspecting that there may be on premises a document or other thing relevant to a matter the Commissioner is investigating under this Part.
- (2) A warrant authorises a person named in the warrant, and any person assisting that person, with such force as is necessary—
- (a) to enter and remain in the premises specified in the warrant; and
  - (b) to search those premises and any person or thing in those premises; and
  - (c) to break open and search anything in those premises in which any document or other thing relevant to the investigation may be contained; and
  - (d) to take photographs; and
  - (e) to seize and remove anything in those premises which that person has reasonable grounds for believing is relevant to the investigation; and

- (f) to examine, seize and remove, make copies of, or take extracts from, any document in those premises which that person has reasonable grounds for believing is relevant to the investigation; and
  - (g) to require a health or community service provider or any other person employed in those premises to provide information by answering questions which that person considers relevant to the investigation.
- (3) A warrant must—
- (a) be in a prescribed form; and
  - (b) specify the premises in respect of which it is made.
- (4) A warrant has effect for a period of 30 days after the day on which it is issued.

### **50—Reimbursement of expenses**

A person required to attend before the Commissioner or another person under this Part is entitled to be paid the expenses and allowances that the Commissioner may allow.

### **51—Reference to another authority for investigation**

- (1) If the Commissioner considers that a matter raised by, or during the course of, an investigation should be investigated by the State Ombudsman, a registration authority or another person or body that has functions under any law of South Australia, another State, a Territory or the Commonwealth, the Commissioner may refer the matter to the State Ombudsman, registration authority or other person or body (as the case requires) for investigation.
- (2) The Commissioner must not refer a matter to a registration authority without first consulting that authority.
- (3) The Commissioner's powers to investigate a matter are not affected by the matter having been referred for investigation under subsection (1).

### **52—Possession of document or other seized item**

- (1) If the Commissioner or another person has taken possession of or seized a document or other thing under this Part, the Commissioner may retain possession of the document or other thing for such period as may be necessary for the purposes of an investigation.
- (2) If the Commissioner or another person has taken possession of a document, the Commissioner must—
  - (a) provide the person from whom it was taken with a copy of the document as soon as practicable after it was taken; and
  - (b) allow a person who would be entitled to inspect the document if it were not in the possession of the Commissioner to inspect, make a copy of, or take an extract from, it at any reasonable time.

## **Division 3—Privilege**

### **53—Privilege**

- (1) A person is not obliged to answer a question or to provide or produce, or provide a copy of, any information or document under this Part if to do so might tend to incriminate the person or make the person liable to a criminal penalty.
- (2) A person is not obliged to provide information that is privileged on the ground of legal professional privilege.

## **Division 4—Action on investigation**

### **54—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 such a report at the conclusion of an investigation.
- (2) The Commissioner may provide copies of a report to such persons as the Commissioner thinks fit.
- (3) A report may contain information, comments, opinions and recommendations for action.
- (4) No action lies against the Commissioner in respect of the contents of a report under this section.

### **55—Notice of action to providers**

- (1) If, after investigating a complaint, the Commissioner decides that the complaint is justified but appears to be incapable of being resolved, the Commissioner may—
  - (a) provide to the health or community service provider a notice of recommended action; and
  - (b) advise the complainant of the provision of the notice.
- (2) A notice must set out—
  - (a) the particulars of the complaint; and
  - (b) the reasons for making the decision referred to in subsection (1); and
  - (c) any action that the Commissioner considers the health or community service provider should take in order to remedy each unresolved grievance disclosed by the complaint.
- (3) If the service provider is a registered service provider, the Commissioner must provide a copy of the notice to the relevant registration authority.
- (4) The Commissioner must then allow the service provider and, if relevant, a registration authority, at least 28 days to make representations in relation to the matter.

- (5) A service provider may, in making representations under subsection (4), advise the Commissioner of what action (if any) the service provider has taken, or intends to take, in response to the matters raised in the notice.
- (6) After receipt of representations under subsection (4), or after the expiration of the period allowed under that subsection, the Commissioner may publish a report or reports in relation to the matter in such manner as the Commissioner thinks fit.
- (7) The Commissioner must, before publishing a report under subsection (6), provide a copy of the report to the relevant health or community service provider and then allow the service provider at least 14 days to make representations in relation to the content of the report.
- (8) A report under this section may include such material, comments, commentary, opinions or recommendations as the Commissioner considers appropriate.
- (9) The Commissioner may provide copies of a report to such persons as the Commissioner thinks fit.
- (10) The Commissioner must provide a copy of a report to any complainant and service provider that has been a party to the relevant proceedings.
- (11) No action lies against the Commissioner in respect of the contents of any document published by the Commissioner under this section.

## **56—Right of appeal**

- (1) A health or community service provider who is named in a report published by the Commissioner under this Division may appeal to the Administrative and Disciplinary Division of the District Court (*the Court*) against any aspect of the procedures of the Commissioner relating to the preparation of that report that is not procedurally fair.
- (2) An appeal must be made within 14 days after the service provider receives a copy of the relevant report from the Commissioner.
- (3) The Court may, on an appeal—
  - (a) determine that the report should stand; or
  - (b) remit the matter to the Commissioner for further consideration in accordance with any directions of the Court; or
  - (c) direct the Commissioner to take steps specified by the Court (which may include the publication of a new or revised report or other statements or materials).

## **Part 7—Relationship between Commissioner and registration authorities**

### **57—Complaints received by Commissioner that relate to registered service providers**

- (1) If the Commissioner receives a complaint that involves a registered service provider, the Commissioner should consult with the relevant registration authority about the management of the complaint unless—
  - (a) the matter is resolved through informal mediation under Part 4 Division 2; or

- (b) the Commissioner determines to take no further action on the complaint under Part 4 Division 3.
- (2) If the Commissioner and the registration authority agree, the complaint may be referred to the registration authority.
- (3) Subject to subsection (4), if the Commissioner and a registration authority fail to reach an agreement as to whether the Commissioner or the registration authority should deal with the complaint—
  - (a) the party (either the Commissioner or the registration authority) that considers that the complaint warrants investigation will be responsible for conducting such an investigation under the provisions of this Act or the relevant registration Act (as the case may be) and the other party must take no further action pending the outcome of that investigation; or
  - (b) if both parties consider that the complaint warrants investigation, the registration authority must comply with the written decision of the Commissioner on the matter.
- (4) If the registration authority is of the view that without further investigation there are sufficient grounds for the matter to be heard as a disciplinary proceeding in accordance with its registration Act, the Commissioner must refer the complaint to the registration authority and take no action (other than under section 64) unless or until the registration authority refers the matter (or any aspect of the matter) back to the Commissioner.
- (5) The Commissioner and a registration authority may agree on protocols that relate to—
  - (a) the consultation process referred to in subsection (1); and
  - (b) the referral of complaints under this section.

### **58—Referral of complaint to registration authority**

- (1) A registration authority to which a complaint is referred by the Commissioner under this Act must investigate the complaint or otherwise deal with the complaint under the provisions of its registration Act.
- (2) On investigating a complaint referred under subsection (1), a registration authority must provide the Commissioner with a report of—
  - (a) its findings; and
  - (b) any action it has taken or proposes to take.
- (3) Unless otherwise determined by the Commissioner, a report under subsection (2) must be accompanied by a copy of all documents in the possession of the registration authority that relate to the investigation.

### **59—Action on referred complaints**

A registration authority to which a complaint is referred may exercise the powers and perform the functions it has to deal with complaints under a registration Act.

## **60—Referral of complaint to Commissioner**

- (1) If a registration authority receives a complaint against a health or community service provider that appears to be made by a person who is entitled under section 24 to make a complaint and discloses a ground for complaint specified in section 25(1), the registration authority must—
  - (a) provide the Commissioner with relevant details of the complaint; and
  - (b) consult with the Commissioner with respect to whether or not the complaint is to be referred to the Commissioner.
- (2) A registration authority must, in consulting with the Commissioner under subsection (1), provide to the Commissioner copies of any documents in its possession that relate to the complaint and that are requested by the Commissioner.
- (3) If the Commissioner and registration authority agree, the complaint may be referred to the Commissioner.
- (4) Subject to subsection (5), if the Commissioner and a registration authority fail to reach an agreement as to whether the Commissioner or the registration authority should deal with the complaint—
  - (a) the party (either the Commissioner or the registration authority) that considers that the complaint warrants investigation will be responsible for conducting such an investigation under the provisions of this Act or the relevant registration Act (as the case may be) and the other party must take no further action pending the outcome of that investigation; or
  - (b) if both parties consider that the complaint warrants investigation, the registration authority must comply with the written decision of the Commissioner on the matter.
- (5) If the registration authority is of the view that without further investigation there are sufficient grounds for the matter to be heard as a disciplinary proceeding in accordance with its registration Act, the registration authority may proceed to deal with the complaint and the Commissioner must take no action on the complaint (other than under section 64) unless or until the registration authority refers the matter (or any aspect of the matter) to the Commissioner.
- (6) A complaint referred to the Commissioner under this section will be taken to be a complaint made to the Commissioner.
- (7) A registration authority is to take no further action on a complaint referred to the Commissioner under this section unless the Commissioner refers the complaint back to the registration authority.
- (8) The Commissioner and a registration authority may agree on protocols that relate to—
  - (a) the consultation process referred to in subsection (1); and
  - (b) the referral of complaints under this section.

## **61—Action on investigation reports**

- (1) As soon as practicable after receiving a report from the Commissioner which recommends that a registration authority perform a function, the registration authority must notify the Commissioner, in writing, of whether or not it intends to perform the function.



- (2) As soon as practicable after performing a function in accordance with a recommendation contained in a report from the Commissioner, a registration authority must advise the Commissioner, in writing, of—
  - (a) the result of the performance of the function; and
  - (b) any finding it has made; and
  - (c) any other action it has taken or proposes to take.
- (3) If the Commissioner is dissatisfied with the failure of a registration authority to perform a function that the Commissioner has recommended in a report or with the time being taken by the authority to perform that function or a function under this Act, the Commissioner or the registration authority (or both of them together) may provide a report on the matter to the Minister.

## **62—Information from registration authority**

- (1) A registration authority may provide to the Commissioner information, comment and recommendations in relation to a complaint and the health or community service provider against whom a complaint has been made.
- (2) The Commissioner may, at any time, request a registration authority for a report on the progress or result of an investigation of a complaint (whether under this Act or a registration Act).
- (3) The registration authority must comply with a request made under subsection (2) within a reasonable time.

## **63—Information to registration authority**

- (1) A relevant registration authority may, at any time, request the Commissioner for a report on the progress or result of an investigation of a complaint that involves a registered service provider.
- (2) The Commissioner must comply with a request made under subsection (1).

## **64—Assistance with proceedings**

- (1) The Commissioner may assist a registration authority in any matter if requested to do so by the registration authority.
- (2) The Commissioner is entitled to appear or be represented in proceedings before a registration authority and, in so doing—
  - (a) produce documents and other material;
  - (b) provide or call evidence (including by calling witnesses);
  - (c) examine or cross-examine witnesses;
  - (d) make representations and submissions.

## **65—Interim action on a complaint**

- (1) A registration authority may take any interim measure in respect of a registered service provider's right to practice under an Act pending the outcome of any consultation or investigation under this Act (and may subsequently vary or revoke such a measure).

- (2) Despite any other Act, an interim measure under subsection (1) may include—
  - (a) suspending the registered service provider's right to practice under a particular Act;
  - (b) imposing special conditions with respect to the registered service provider's right to practice under a particular Act.
- (3) A registration authority must, after being made aware of a relevant complaint under this Act, inform the Commissioner of any interim measure undertaken under subsection (1).

## **66—Further action by registration authority**

- (1) Nothing in this Act prevents a registration authority from taking action in respect of a registered service provider that is in addition to action taken or recommended by the Commissioner under this Act.
- (2) A decision of the Commissioner not to take action, or further action, on a complaint under this Act does not prevent a registration authority from taking action (or further action) in respect of a registered service provider on the basis of that complaint.

## **Part 8—Health and Community Services Advisory Council**

### **67—Establishment of Council**

- (1) The *Health and Community Services Advisory Council* is established.
- (2) The Council will consist of the following members appointed by the Minister:
  - (a) a presiding member; and
  - (b) 2 persons who, in the opinion of the Minister, are qualified, by reason of their experience and expertise, to represent the interests of users of health services; and
  - (c) 2 persons who, in the opinion of the Minister, are qualified, by reason of their experience and expertise, to represent the interests of users of community services; and
  - (d) 2 persons who, in the opinion of the Minister, are qualified, by reason of their experience and expertise, to represent the interests of health and community service providers; and
  - (e) 2 persons who are members of a registration authority (not being members of the same registration authority) who, in the opinion of the Minister, are qualified, by reason of their experience and expertise, to represent the interests of the public.
- (3) The Minister may appoint a suitable person to be the deputy of a member of the Council during any period of absence of the member (and a reference in this Act to a member of the Council will be taken to include a reference to a deputy while acting as a member of the Council).

## **68—Conditions of membership**

- (1) A member of the Council will be appointed on conditions determined by the Minister and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of office, is eligible for reappointment.
- (2) The Minister may remove a member of the Council from office—
  - (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out duties satisfactorily.
- (3) The office of a member of the Council becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is removed from office under subsection (2).
- (4) A member of the Council is entitled to allowances and expenses determined by the Minister.

## **69—Functions of Council**

- (1) The functions of the Council are—
  - (a) to advise the Minister and the Commissioner in relation to the redress of grievances relating to health or community services or their provision; and
  - (b) to advise the Minister on—
    - (i) the means of educating and informing users, providers and the public on the availability of means for making health or community service complaints or expressing grievances in relation to health or community services or their provision; and
    - (ii) the operation of this Act; and
    - (iii) any other matter on which the Minister requests the advice of the Council; and
  - (c) to refer to the Commissioner any matter that may properly be dealt with or considered by the Commissioner under this Act and that, in the view of the Council, should be so referred.
- (2) Subsection (1) does not authorise the Council—
  - (a) to investigate a complaint; or
  - (b) to review a decision of the Commissioner to investigate, not to investigate, or to discontinue investigation of a particular complaint; or
  - (c) to review a finding, recommendation or other decision of the Commissioner, or of any other person, in relation to a particular investigation or complaint.

## **70—Procedure at meetings**

- (1) The presiding member will preside at a meeting of the Council or, in the absence of that member, a member chosen by those present will preside.
- (2) A majority of the members of the Council constitute a quorum of the Council (and no business may be transacted at a meeting unless a quorum is present).
- (3) Each member present at a meeting of the Council has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting has a second, or casting, vote.
- (4) The Council must have accurate minutes kept of its proceedings.
- (5) Subject to this Act, the Council may determine its own procedures.

## **71—Disclosure of interest**

- (1) A member of the Council who has a direct or indirect personal or pecuniary interest in a matter under consideration by the Council—
  - (a) must, as soon as he or she becomes aware of his or her interest, disclose the nature and extent of the interest to the Council; and
  - (b) must not take part in any deliberations or decision of the Council on the matter and must be absent from the room when any deliberations are taking place or decision is being made.

Maximum penalty: \$5 000.

- (2) A disclosure under this section must be recorded in the minutes of the Council.

## **Part 9—Miscellaneous**

### **72—Delegation**

- (1) The Minister or the Commissioner may delegate a power or function vested in or conferred on the Minister or the Commissioner (as the case may be) under this Act—
  - (a) to a particular person or body; or
  - (b) to the person for the time being occupying a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will by the delegator.
- (4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Minister or the Commissioner, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

### **73—Adverse comments in reports**

- (1) The Commissioner must not include in a report under this Act a comment adverse to a person or body identifiable from the report except where the person or body has been given a reasonable opportunity—
  - (a) to make a submission to the Commissioner in relation to the proposed comment; and
  - (b) to provide to the Commissioner a written statement in relation to it.
- (2) If a person or body referred to in subsection (1) so requests, the Commissioner must include in the report the statement given under subsection (1)(b) or a fair summary of it.
- (3) The Commissioner is not required to provide to a person or body the opportunity referred to in subsection (1) if the Commissioner believes, on reasonable grounds, that awareness of the proposed comment by any person would directly or indirectly—
  - (a) put at risk the health or safety of a person; or
  - (b) result in a person receiving a health or community service of a lower standard than would otherwise have been provided; or
  - (c) prejudice the fair assessment of a complaint or an investigation under this Act.

### **74—Protection of identity of service user or complainant from service provider**

Despite any other provision of this Act, the Commissioner may determine not to disclose to a health or community service provider information that would enable a health or community service user or a complainant to be identified if the Commissioner believes, on reasonable grounds, that the disclosure would, directly or indirectly—

- (a) put at risk the health or safety of a person; or
- (b) result in a person receiving a health or community service of lower standard than would otherwise have been provided; or
- (c) prejudice the fair assessment of a complaint or an investigation under this Act.

### **75—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 the person does so—
  - (a) when necessary for the purposes of this Act; or
  - (b) when expressly authorised or required under this or another Act; or
  - (c) when expressly authorised, in writing, by the person to whom it relates; or
  - (d) when required to do so by a court or tribunal constituted by law; or
  - (e) when expressly authorised or required under the regulations.

Maximum penalty: \$5 000.

- (2) For the purposes of this section, the following persons are involved in the administration of this Act:
  - (a) the Commissioner;
  - (b) a conciliator;
  - (c) a professional mentor;
  - (d) another staff member;
  - (e) a member of the Council;
  - (f) a member of a committee established under this Act.
- (3) This section does not apply to the recording, disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of a person.

### **76—Returns by prescribed providers**

- (1) A designated health or community service provider must, from time to time as determined by the Commissioner, lodge with the Commissioner a return that sets out the prescribed particulars concerning—
  - (a) prescribed classes of complaints relating to matters of public safety, interest or importance received by the health or community service provider during a period determined by the Commissioner; and
  - (b) action taken during that period in response to, or as a result of the receipt of, those complaints, or similar complaints received during a preceding period.

Maximum penalty: \$5 000.

- (2) A return under subsection (1) must be in a form determined by the Commissioner after taking into account what can be done to assist with ease of collection of information and administrative efficiencies (and different forms of return can be developed for different classes of service providers).
- (3) The Commissioner must (to such extent as the Commissioner thinks fit) consult with relevant persons or bodies that represent the interests of health or community service providers or users about—
  - (a) the health and community service providers to whom this section should apply; and
  - (b) the form of any return under this section; and
  - (c) protocols and principles that should apply in relation to the operation of this section.

- (4) In this section—

***designated health or community service provider*** means a health or community service provider, or a health or community service provider of a class, designated by the regulations for the purposes of this section.

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**77—Returns by registration authorities**

- (1) A registration authority must, from time to time as determined by the Commissioner, lodge with the Commissioner a return that sets out the prescribed particulars concerning—
  - (a) specified classes of complaints received by the registration authority during a period determined by the Commissioner; and
  - (b) action taken during that period in response to, or as a result of the receipt of, those complaints, or similar complaints received during a preceding period.
- (2) A return under subsection (1) must be in a form determined by the Commissioner after taking into account what can be done to assist with ease of collection of information and administrative efficiencies.
- (3) The Commissioner must (to such extent as the Commissioner thinks fit) consult with registration authorities about—
  - (a) the form of any return under this section; and
  - (b) protocols and principles that should apply in relation to the operation of this section.
- (4) The Commissioner may publish any return received under this section, or a summary of information contained in such a return, in such manner as the Commissioner thinks fit.

**78—Offence relating to intimidation**

A person must not persuade or attempt to persuade by threat or intimidation another person—

- (a) to refrain from making a complaint under this Act; or
- (b) to withdraw a complaint under this Act; or
- (c) to fail to co-operate with the Commissioner or another person who is performing or exercising a function or power under this Act; or
- (d) to fail to provide information or a document to the Commissioner or any other person who is performing or exercising a function or power under this Act; or
- (e) to provide information or a document 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 document false or misleading in a material particular, to the Commissioner or another person performing or exercising a function or power under this Act.

Maximum penalty: \$10 000.

**79—Offence relating to reprisals**

- (1) A person must not treat another person unfavourably on the ground that a person—
  - (a) has made a complaint under this Act; or
  - (b) has co-operated with the Commissioner or any other person who performs or exercises a function or power under this Act; or

- (c) has provided information or documents to the Commissioner or any other person who performs or exercises a function or power under this Act, or on the ground that he or she knows that a person intends to do any of these things, or suspects that a person has done, or intends to do, any of these things.
- Maximum penalty: \$10 000.
- (2) It is sufficient for a contravention of subsection (1) if the ground specified in subsection (1) is a significant factor in inducing the person to take the particular action against the other person.
- (3) Unfavourable treatment on the ground that a person—
- (a) has made a false allegation; or
  - (b) has not acted in good faith,
- does not constitute a contravention of subsection (1).

### **80—Offences relating to obstruction etc**

A person must not, without reasonable excuse, obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, the Commissioner or any other person in the performance or exercise of a function or power under this Act.

Maximum penalty: \$10 000.

### **81—Offences relating to the provision of information**

A person must not—

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

Maximum penalty: \$10 000.

### **82—Protection of certain information**

Nothing in this Act requires the production or provision of information held under section 64D of the *South Australian Health Commission Act 1976*.

### **83—Protection from civil actions**

- (1) A person is not liable in respect of loss, damage or injury of any kind suffered by another person as a result of any of the following done in good faith:
- (a) the making of a complaint;
  - (b) the making of a statement, the provision of any information whether by answering a question or otherwise or the provision of any document for the purposes of this Act to the Commissioner, a conciliator or another person authorised to receive the statement, information or document;
  - (c) the making of a report under this Act;



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- (d) the provision of a copy of a report to a person to whom it may be provided under this Act;
  - (e) the doing, or omission, of anything in the performance or exercise of a function or power under this Act.
- (2) A person who does anything in accordance with this Act, or as required by or under this Act, cannot, by so doing, be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

#### **84—Informality of procedures**

- (1) In performing functions and exercising powers under this Act, the Commissioner must have regard to the rules of natural justice.
- (2) Subject to subsection (1), the Commissioner—
- (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 permit; and
  - (b) is not bound by rules of evidence but may inform himself or herself of any matter in any manner that he or she considers appropriate.

#### **85—Determining reasonableness of health or community service provider's actions**

- (1) In determining whether a health or community service provider has acted reasonably, the Commissioner must have regard to—
- (a) the Charter; and
  - (b) the principles specified in section 22; and
  - (c) the generally accepted standard of health or community service delivery expected of a provider of that kind,
- and may have regard to any other matter or information the Commissioner considers relevant.
- (2) The Commissioner must, in making a decision on a complaint under this Act, take into account the level of resources reasonably available to the health or community service provider.

#### **86—Interaction with *Ombudsman Act 1972***

Despite any other provision of this Act or the *Ombudsman Act 1972*—

- (a) a matter that may be (or has been) the subject of a complaint under this Act, being an administrative act of an agency to which that Act applies, may be referred to the State Ombudsman under section 14 of that Act on the basis that the relevant House of Parliament or committee considers that the matter involves a significant issue of public safety, interest or importance; and

- (b) a matter that may be (or has been) the subject of a complaint under this Act, being an administrative act of an agency to which that Act applies, may be referred to the State Ombudsman under section 15(3) of that Act and the State Ombudsman may proceed to deal with the matter if the State Ombudsman considers that the matter may involve a significant issue of public safety, interest or importance; and
- (c) the State Ombudsman may conduct an investigation of an act of the Commissioner under that Act even if the matter involves a health or community service provider that is not an agency to which that Act applies (and may, in conducting the investigation, look at the substance of the original complaint, and consider or review any other matter that may be relevant to the investigation, even if the subject matter of the original complaint did not involve an administrative act within the meaning of that Act but may not make a determination or recommendation concerning the substance of the original complaint to the extent that that matter did not involve an administrative act of an agency to which that Act applies except to set aside (if the State Ombudsman thinks fit) a determination or recommendation of the Commissioner at the first instance).

## 87—Regulations

- (1) The Governor may make regulations as contemplated by this Act, or as necessary or expedient for the purposes of this Act.
- (2) The regulations may—
  - (a) provide for the form and service of documents under this Act; and
  - (b) prescribe a fee (which may be a differential fee) payable by registered service providers in connection with the payment of a fee under a registration Act, and provide for the collection of the fee by a registration authority and payment to a prescribed authority of the amount so collected in accordance with a scheme specified by the regulations or determined by the Minister; and
  - (c) prescribe a scheme under which a registration authority will, in a particular financial year, pay to the Minister an amount, determined under the scheme, towards costs associated with the administration of this Act; and
  - (d) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
  - (e) be of general or limited application; and
  - (f) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (g) provide that a specified provision of this Act does not apply, or applies with prescribed variations, in any circumstance or situation (or circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
  - (h) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Commissioner or another prescribed authority; and

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- (i) impose penalties, not exceeding \$5 000, for a contravention of, or failure to comply with, a regulation.
  - (3) If a registration authority is liable to pay an amount under a scheme prescribed under subsection (2)(c) with respect to a particular financial year, then the service providers registered by the relevant registration authority will not be liable for any fee prescribed under subsection (2)(b) that is payable with respect to the same financial year.
  - (4) Nothing in subsection (2) or (3) limits or affects any other power or authority to set or collect any other fee under any other Act.

### **88—Review of Act**

- (1) The Minister must, as soon as practicable after the third anniversary of the commencement of this Act, appoint a person to prepare a report on—
  - (a) the operation of this Act over its first 3 years and the extent to which the objects of this Act have been attained; and
  - (b) other matters determined by the Minister to be relevant to a review of this Act.
- (2) The person must report to the Minister within 6 months after his or her appointment.
- (3) The Minister must, within 12 sitting days after receiving the report under this section, have copies of the report laid before both Houses of Parliament.

### **89—Transitional provisions**

- (1) A complaint may be made and dealt with under this Act even though the circumstances that give rise to the complaint occurred before the commencement of this Act if the complainant became aware of those circumstances not earlier than 2 years before the commencement of this Act.
- (2) The State Ombudsman may, if the State Ombudsman thinks fit and with the agreement of the Commissioner, transfer to the Commissioner the conduct of an investigation of a complaint made to the State Ombudsman before the commencement of this Act.
- (3) The Commissioner may adopt any findings or determinations of the State Ombudsman that may be relevant to an investigation transferred under subsection (2).
- (4) The consent of the complainant is not required before an investigation may be transferred to the Commissioner under subsection (2).
- (5) The regulations may make other provisions of a saving or transitional nature.

## **Schedule 1—Registration Acts**

*Chiropodists Act 1950*

*Chiropractors Act 1991*

*Dental Practice Act 2001*

*Medical Practitioners Act 1983*

*Nurses Act 1999*

*Occupational Therapists Act 1974*

*Optometrists Act 1920*

*Pharmacists Act 1991*

*Physiotherapists Act 1991*

*Psychological Practices Act 1973.*

## Legislative history

### Notes

- In this version provisions that are uncommenced appear in italics.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act

| Year | No | Title  | Assent   | Commencement  |
|------|----|--|----------|---|
| 2004 | 22 | <i>Health and Community Services Complaints Act 2004</i> | 8.7.2004 | 31.3.2005 ( <i>Gazette 31.3.2005 p742</i> ) except ss 4 & 16 and Pts 3—9—3.10.2005 ( <i>Gazette 22.9.2005 p3385</i> ) and except s 4(1) definition of <b>community service</b> para (c)—uncommenced |