

Health Services (Conciliation and Review) Bill

No.

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SCHEDULE

By Authority F D Atkinson Government Printer Melbourne

LEGISLATIVE ASSEMBLY

Read 1° 3 December 1986

(Brought in by Mr Fordham and Mr Wilkes)

A BILL

to provide an independent and accessible review mechanism for users of health services and for other purposes.

Health Services (Conciliation and Review) Act 1986

Preamble.

WHEREAS it is desired to recognise certain guiding principles for providers and users in the Victorian health care system so as to promote—

- 5 (a) quality health care, given as promptly as circumstances permit; and
- (b) considerate health care; and
- (c) respect for the privacy and dignity of persons being given health care; and
- 10 (d) the provision of adequate information on services provided or treatment available, in terms which are understandable; and
- (e) participation in decision making affecting individual health care; and

- (f) an environment of informed choice in accepting or refusing treatment or participation in education or research programmes; and
 - (g) reasonable access to information in records relating to personal use of the health care system, except information which is expressly prohibited by law from being disclosed or information contained in personal notes by a person giving health care; and 5
 - (h) the confidentiality of personal health records: 10
- AND WHEREAS it should be the aim of service providers to satisfy these guiding principles: 10
- AND WHEREAS users of the Victorian health care system should have the option to have their complaints about the system dealt with by an independent and accessible mechanism: 15
- AND WHEREAS it is proposed by this Act to set up that mechanism, and through it— 15
- (a) to deal with user's complaints; and
 - (b) to suggest ways in which the guiding principles may be carried out; and
 - (c) to help service providers to improve the quality of health care: 20

The Parliament of Victoria therefore enacts as follows:

PART 1—PRELIMINARY

Purposes.

1. The purposes of this Act are— 25
 - (a) to provide an independent and accessible review mechanism for users of health services; and
 - (b) to provide a means for reviewing and improving the quality of health service provision; and
 - (c) to set out the functions and powers of the Health Services Commissioner. 30

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Definitions.

3. (1) In this Act— 35

“**Commissioner**” means the Health Services Commissioner under the *Public Service Act* 1974 and includes a person directed by the Minister to perform and exercise the duties, obligations, rights and powers of the Health Services

Commissioner under section 69 (1) of the *Public Service Act* 1974.

“**Conciliator**” means a person employed or authorised under section 20 to perform conciliation functions.

5 “**Guiding principles**” means the principles set out in paragraphs (a) to (h) of the first recital of the preamble.

“**Health service**” includes any of the following services:

(a) Medical, hospital and nursing services;

(b) Dental services;

10 (c) Psychiatric services;

(d) Pharmaceutical services;

(e) Ambulance services;

(f) Community health services;

15 (g) Health education services;

(h) Welfare services necessary to complement any services referred to in paragraphs (a) to (g);

(i) Services provided by chiropodists, chiropractors, osteopaths, dietitians, optometrists, physiotherapists and psychologists;

20 (j) Services provided by optical dispensers, masseurs, occupational therapists and speech therapists;

(k) Services provided by practitioners of naturopathy, acupuncture and in other alternative health care fields;

25 (l) A service prescribed as a health service for the purposes of this Act—

but does not include any service provided by any administrative unit, associated administrative unit or office listed in Schedules 2, 3 and 3A of the *Public Service Act* 1974 other than the Department of Health and the Chief General Manager of the Department of Health.

30 “**Industrial Tribunal**” means any of the following:

(a) The Australian Conciliation and Arbitration Commission;

(b) The Industrial Relations Commission of Victoria;

35 (c) The Public Service Board;

(d) A Conciliation and Arbitration Board under the *Industrial Relations Act* 1979;

(e) The Hospitals Remuneration Tribunal.

“**Provider**” includes—

40 (a) a person or body providing a health service; and

(b) the Chief General Manager of the Department of Health; and

(c) a registered provider; and

- (d) a person who manages a health care institution and who is registered, certificated or licensed by the Chief General Manager; and
- (e) a health care institution which is registered, certificated or licensed by the Chief General Manager; and 5
- (f) any public hospital, private hospital, nursing home, special accommodation house, community health centre, ambulance service, psychiatric hospital or clinic, mental health hospital or clinic; and
- (g) the chief executive officer of any body listed in paragraph (f); and 10
- (h) any local government body providing a health service; and
- (i) a person or organisation that is prescribed as a provider for the purposes of this Act or that is included in a class of persons or organisations prescribed as providers for the purposes of this Act. 15

“Registered provider” means a person licensed, registered or certificated by a registration board.

“Registration board” means a body that is— 20

- (a) a body listed in the Schedule; or
- (b) a body prescribed as a registration board for the purposes of this Act.

“User” means a person who uses or receives a health service.

(2) This Act does not apply to a health service provided before the commencement of this section. 25

(3) For the purposes of this Act, a person is not to be regarded as a user merely because he or she has arranged a health service for another user.

Objective. 30

4. The objective of this Act is to set up a health services review system that will—

- (a) enable users of Victorian health services to have their complaints about those services resolved by an independent and accessible mechanism; and 35
- (b) encourage health service providers to follow the guiding principles; and
- (c) lead to improvements in the quality of health care and in the extent to which the guiding principles of providers and users are followed. 40

PART 2—ADMINISTRATION**Application of *Public Service Act 1974*.**

5. Sections 23D (11) and 23D (12) and Part V. of the *Public Service Act 1974* do not apply to the Commissioner.

5 Loss of office.

6. The Commissioner ceases to hold office—

- (a) upon acceptance by the Governor in Council of the Commissioner's resignation in writing; or
- 10 (b) upon the passing of a resolution by both Houses of Parliament requesting the Commissioner's removal from office.

Suspension from office.

15 7. (1) At any time when Parliament is not sitting the Governor in Council may suspend the Commissioner from office on the ground of disability, bankruptcy, neglect of duty, misconduct or any other ground which in the opinion of the Governor in Council makes the Commissioner unfit to be the Commissioner.

(2) A Commissioner who is suspended must be restored to office unless—

- 20 (a) a statement setting out the grounds of suspension is placed before each House of Parliament during the first seven sitting days of that House following the suspension; and
- (b) each House of Parliament within 20 days of the statement being placed before it passes a resolution requesting the
25 Commissioner's removal from office.

Delegation.

30 8. The Commissioner may, by instrument, delegate all or any of the powers or functions of the Commissioner under this Act to a person employed for the purposes of this Act or a class of those persons except this power of delegation.

Functions of Commissioner.

- 9. (1) The following are the functions of the Commissioner:
 - (a) To investigate complaints relating to health services;
 - 35 (b) To review and to identify the causes of complaints, and to suggest ways of removing and minimizing those causes;
 - (c) To investigate any matter referred to the Commissioner by either House of Parliament or by any Committee of either House or both Houses;

- (d) To conciliate between users and providers where a complaint has been made;
- (e) To consider ways of improving health complaints systems;
- (f) To provide advice to the Health Services Review Council;
- (g) To take steps to bring to the notice of users and providers details of complaints procedures under this Act; 5
- (h) To develop programmes for the training of health complaints officers and others in the handling of complaints;
- (i) To record all complaints received by the Commissioner and to maintain a central register of all such complaints and all complaints shown on returns supplied by providers; 10
- (j) To publish at prescribed intervals information about complaints;
- (k) To determine what action has been taken by providers where complaints have been found to be justified; 15
- (l) Subject to approval from the Minister, to initiate inquiries into—
- (i) matters referred by the Health Services Review Council; and
- (ii) broader issues of health care arising out of complaints received; 20
- (m) To inquire into matters referred by the Minister;
- (n) To suggest ways in which providers may follow the guiding principles;
- (o) To develop, after consultations considered appropriate by the Commissioner with users, providers and persons who, in the Commissioner's opinion, have an appropriate interest, a code of practice to provide guidance on the way in which the Commissioner intends to carry out some or all of the Commissioner's functions. 25 30
- (2) The Commissioner may do all things necessary to perform the Commissioner's functions.
- (3) A Code of Practice developed by the Commissioner under sub-section (1) (o) has no effect unless it is incorporated in, or adopted by the regulations. 35
- (4) The Commissioner may perform the Commissioner's functions even though—
- (a) the Commissioner has not developed a Code of Practice in relation to those functions; or
- (b) a Code of Practice has been developed but has not been incorporated in, or adopted by the regulations. 40

Powers of the Commissioner.

10. In performing the Commissioner's functions, the Commissioner may do any of the following:

- 5 (a) Consult with such persons or bodies as the Commissioner considers appropriate;
- (b) Develop, and suggest ways of implementing, procedures for dealing with complaints relating to health services and for making existing procedures more effective in relation to both public and private health services;
- 10 (c) Provide advice to users on the making of complaints to registration boards;
- (d) Provide advice to users of other avenues available for dealing with complaints;
- 15 (e) Provide advice to providers on the making of responses to complaints to registration boards;
- (f) Encourage the development of quality assurance arrangements throughout the Victorian health care system;
- (g) Advise providers, users and the Minister generally on any matter relating to health complaints; and
- 20 (h) Assist a registration board if requested to do so by the board;
- (i) With the consent of the board or the approval of the Minister, appear or be represented at any proceedings before a registration board and cross-examine or call and examine witnesses and make submissions;
- 25 (j) Seek information from users about the working of the health complaints system.

Reports.

30 11. (1) The annual report of the Commissioner must contain any information required by the Minister and may contain any information considered by the Commissioner to be appropriate.

(2) The Commissioner may at any time place a report before each House of Parliament on any matter the Commissioner considers necessary arising from an individual complaint or in relation to the
35 Commissioner's operations.

(3) At any time—

(a) either House of Parliament; or

(b) any committee of either or both Houses—

40 may refer to the Commissioner for investigation any matter which the House or committee considers should be investigated by the Commissioner.

(4) If a matter is referred to the Commissioner by either House of Parliament or a committee, the Commissioner must investigate the matter immediately and must report the result of the investigation to the presiding officer of the House or committee within any time limit set out in the referral. 5

(5) Any report made by the Commissioner under this section may name any person involved with a complaint.

Health Services Review Council.

12. (1) There is established a Health Services Review Council.

(2) The Council consists of nine persons appointed by the Minister. 10

(3) The members of the Council must include—

(a) three persons who, in the Minister's opinion, have experience of and are able to express the interests of providers; and

(b) three persons who, in the Minister's opinion, have experience of and are able to express the interests of users; and 15

(c) three persons who, in the Minister's opinion, are not affiliated with any professional association for users or providers or any association which acts as a representative, advocate or adviser for providers or users. 20

(4) The Minister must invite submissions from the public before making any appointment to the Council.

(5) The Minister must appoint one of the members to be President of the Council. 25

(6) Each member of the Council holds office for three years from the date of the member's appointment, and is eligible for reappointment.

(7) The Minister may at any time remove any member of the Council from office for good cause.

Procedure of Health Services Review Council. 30

13. (1) A question cannot be decided at a meeting of the Council unless there are at least five members present.

(2) The President is to preside at meetings of the Council at which the President is present.

(3) If the President is not present at a meeting, the members present must elect one of their number to preside at the meeting. 35

(4) The Council must meet at such times and places as the Minister or the President fixes.

(5) Subject to this Act and the regulations, the Council may regulate its own procedure. 40

(6) The decision of the majority of the members present and voting at any meeting is the decision of the Council. If there is a tied vote, the person presiding at the meeting is to have an additional or casting vote.

5 (7) If three or more members of the Council disagree with a majority of the Council on any decision providing advice to the Minister, they may require—

(a) that their view be recorded with reasons; and

(b) that their view and reasons accompany any presentation of the decision to the Minister.

10 (8) A member of the Council who is not an officer of the public service is entitled to receive such fees, expenses and allowances as the Minister determines.

Functions of Health Services Review Council.

14. (1) The functions of the Council are—

15 (a) to advise the Minister on the health complaints system and the operations of the Commissioner; and

(b) to advise the Minister and the Commissioner on issues referred to it by the Commissioner; and

20 (c) with the Minister's approval, to refer matters relating to health service complaints to the Commissioner for inquiry.

(2) The Commissioner must, if asked by the Council, report to the Council on any matter relating to the operations of the Commissioner under this Act.

PART 3—COMPLAINTS

25 Who may complain.

15. (1) A user may complain to the Commissioner about any of the matters set out in section 16.

(2) A user may choose a representative to complain to the Commissioner on the user's behalf.

30 (3) The Commissioner may recognise as a user's representative a person who is not chosen by the user, and may allow that person to complain to the Commissioner on the user's behalf, if, in the Commissioner's opinion, the user is unable to complain to the Commissioner and unable to choose a person to complain on the user's
35 behalf and the person who wishes to represent the user has, in the Commissioner's opinion, a sufficient interest in the subject-matter of the complaint.

40 (4) A provider may complain to the Commissioner on behalf of a user about the manner in which a health service has been provided for the user by another provider if the provider can satisfy the Commissioner that, because of the user's state of health or general

situation, it would be difficult or impossible for the user to make a complaint.

(5) If a complaint relates to a health service to which this Act does not apply the Commissioner may refer the complaint to the appropriate State or Commonwealth organisation or to the Victorian or Commonwealth Ombudsman. 5

(6) A person who complains to the Commissioner may at any time withdraw the complaint by notifying the Commissioner, and the Commissioner must then stop dealing with the complaint.

What may be included in a complaint. 10

16. (1) A user or a user's representative may complain to the Commissioner if the complaint is that—

- (a) a provider has acted unreasonably by not providing a health service for the user; or
- (b) a provider has acted unreasonably in the manner of providing a health service for the user; or 15
- (c) a provider has acted unreasonably in providing a health service for the user; or
- (d) a provider has acted unreasonably by denying or restricting the user's access to records kept by the provider and relating to the user; or 20
- (e) a provider has acted unreasonably in disclosing the user's health records; or
- (f) a public or private health care institution has acted unreasonably by not properly investigating, or not taking proper action upon, a complaint made to the institution by a user about a provider's action which is of a kind mentioned in paragraphs (a) to (e). 25

(2) A complaint may be made under sub-section (1) if the complaint is that a provider has acted unreasonably in any of the ways set out in that sub-section by not following the guiding principles, but that sub-section is not limited to those kinds of complaints. 30

How to complain.

17. (1) A person may complain to the Commissioner orally or in writing. 35

(2) If the Commissioner receives an oral complaint the Commissioner must require the person who made it to confirm it in writing unless the person satisfies the Commissioner that there is good reason why the complaint should not be confirmed in writing.

(3) The Commissioner may ask a person who complains to the Commissioner to give more information about the complaint within a time fixed by the Commissioner. 40

(4) A person may complain to the Commissioner in person, by telephone or by sending a letter of complaint to the Commissioner.

5 (5) A person who complains to the Commissioner must give his or her name to the Commissioner and such other information relating to the person's identity as the Commissioner may require.

(6) The Commissioner may choose to keep information given to the Commissioner under sub-section (5) confidential if there are special circumstances and the Commissioner thinks it is in the complainant's interest to do so.

10 **Representation.**

18. (1) Neither a person who complains to the Commissioner nor a provider may be represented by another person during the conciliation process unless in the Commissioner's opinion the process will not work effectively without that representation.

15 (2) A person required to appear before, or to produce documents to the Commissioner during the investigation of a complaint may be represented by another person.

Preliminary assessment of complaints.

20 19. (1) The Commissioner must reject a complaint which in the Commissioner's opinion is frivolous, vexatious or trivial or does not warrant investigation.

25 (2) If an issue raised in a complaint has already been determined by a court or the Administrative Appeals Tribunal, or a registration board, the Commissioner must reject the complaint to the extent to which it relates to that issue unless in the Commissioner's opinion it relates to matters which were not raised before the Court, Tribunal or board.

30 (3) The Commissioner must reject a complaint about an incident which occurred more than 12 months before the complaint is made if in the Commissioner's opinion the person who made the complaint has not shown good reason for the delay.

(4) The Commissioner may reject a complaint if, when asked, the person who complained to the Commissioner does not—

- 35 (a) confirm the complaint in writing; or
(b) give more information about the complaint within the time fixed by the Commissioner; or
(c) give the Commissioner more information concerning the person's identity.

40 (5) The Commissioner must not refer a complaint for conciliation or investigate a complaint unless the Commissioner is satisfied that the user has taken all reasonable steps or, if the complaint was made on

the user's behalf, all reasonable steps have been taken on the user's behalf, to resolve the matter with the provider.

(6) If a complaint relates to a registered provider the Commissioner must refer the complaint to the appropriate registration board if after consultation with the provider's registration board the Commissioner considers that the board has power to resolve or deal with the matter and the matter is not suitable for conciliation under this Act. 5

(7) If a complaint raises issues which, in the Commissioner's opinion, require investigation by another person, organisation or agency, the Commissioner may refer the complaint to the appropriate person, organisation or agency. 10

(8) Within 28 days after receiving a complaint the Commissioner must decide whether, and to what extent—

(a) to accept it; or

(b) to reject it; or 15

(c) to refer it to a registration board or to a person, organisation or agency.

(9) To enable the Commissioner to make a decision under sub-section (8) the Commissioner may make such inquiries as the Commissioner considers appropriate, but in doing so the Commissioner cannot exercise any of the Commissioner's powers— 20

(a) to compel persons to answer questions or produce documents; or

(b) to enter premises.

(10) If the Commissioner decides to accept a complaint in whole or in part, and if, in the Commissioner's opinion, the complaint is suitable for conciliation, the Commissioner must without delay refer it for conciliation. 25

Conciliation.

20. (1) Conciliation functions under this Act may only be performed by a person— 30

(a) employed for the purposes of this Act to perform those functions; or

(b) employed for the purposes of this Act and authorised in writing by the Commissioner to perform those functions. 35

(2) A conciliator must not perform any function under this Act except a conciliation function or the function of assisting the Commissioner to perform the Commissioner's functions under section 9 (1) (e), (f), (g), (h), (i), (n) or (o).

(3) A person must not perform a conciliation function under this Act unless the person is a conciliator. 40

(4) On referring a complaint for conciliation the Commissioner must assign one of the conciliators who is to conduct the conciliation process.

5 (5) A conciliator's function is to encourage the settlement of the complaint by—

(a) arranging for provider and the person who made the complaint to hold informal discussions about the complaint; and

(b) helping in the conduct of those discussions; and

10 (c) if possible, assisting the provider and the person who made the complaint to reach agreement.

(6) The conciliator must make reports to the Commissioner upon the progress and results of the conciliation process and in those reports—

(a) must include details of any agreement reached; and

15 (b) if no agreement has been reached, may either—

(i) make no recommendation; or

(ii) recommend that the Commissioner should not investigate the matter—

but may not make any other recommendation.

20 (7) On the same day as a conciliator makes a report to the Commissioner under sub-section (6) the conciliator must give a copy of the report to the provider and the user concerned.

25 (8) If the Commissioner considers that a complaint which relates to a registered provider and has been referred for conciliation cannot be resolved through the conciliation process and that the provider's registration board has power to resolve or deal with the matter, the Commissioner must without delay refer the complaint to the registration board.

30 (9) If a conciliator recommends that a complaint should not proceed to investigation, the Commissioner must not—

(a) investigate the complaint; or

(b) refer it again for conciliation; or

(c) deal with it in any other way authorised by this Act—

unless asked to do so by the person who made the complaint.

35 (10) If a conciliator makes no recommendation about a complaint the Commissioner may—

(a) investigate the complaint; or

(b) refer it again for conciliation; or

(c) deal with it in any other way authorised by this Act.

40 (11) At any time after the Commissioner has received a complaint the person who made it and the provider may resolve the matter by agreement, whether through the conciliation process or not.

(12) If a person who made a complaint and the provider have resolved the matter by agreement and the Commissioner becomes aware that the complaint has been resolved the Commissioner must stop dealing with the complaint under this Act.

(13) If the person who made a complaint and the provider resolve the matter by agreement the person who made the complaint must without delay give notice of the fact to the Commissioner. 5

(14) Evidence of anything said or admitted during the conciliation process—

(a) is not admissible in proceedings before a court or tribunal; and 10

(b) cannot be used by the Commissioner as a ground for exercising a power of investigation or inquiry.

(15) A conciliator must not, except for the purposes of reporting to the Commissioner under this section, disclose information gained during the conciliation process— 15

(a) in any further conciliation process; or

(b) to any person employed for the purposes of this Act.

Penalty: 10 penalty units.

Investigation of complaints. 20

21. (1) The Commissioner may investigate—

(a) a complaint which the Commissioner has decided to accept if, in the Commissioner’s opinion, the complaint is not suitable for conciliation; or

(b) a complaint which under section 20 the Commissioner may investigate— 25

and decide whether or not the complaint is justified.

(2) In deciding whether the provider has acted unreasonably in the way set out in the complaint, the Commissioner must consider any failure by the provider to follow the guiding principles and the extent to which that failure is also a failure to meet what are, in the Commissioner’s opinion, generally accepted standards for health care delivery by providers of that kind. 30

(3) In conducting an investigation—

(a) the Commissioner’s procedure is in the Commissioner’s discretion; and 35

(b) the Commissioner must proceed with as little formality and technicality and with as much expedition as the requirements of this Act and proper investigation of the matter permit; and 40

- (c) the Commissioner is not bound by the rules of evidence but may inform himself or herself of any matter in such manner as he or she considers appropriate; and
- (d) the Commissioner is bound by the rules of natural justice.

5 (4) If in the Commissioner's opinion the person who made the complaint and the provider cannot resolve the complaint and after investigating the complaint the Commissioner decides that the complaint is justified, the Commissioner must decide what action should be taken to remedy the complaint.

10 (5) If the Commissioner decides that a complaint is justified the Commissioner must give the appropriate notice under section 22.

15 (6) The Commissioner must not decide whether a complaint is justified or what action is to be taken in a way which conflicts with the provisions of any Act, or subordinate instrument or any rule of law or practice.

Notices and procedures.

22. (1) Within 14 days after referring a complaint about a registered provider to a registration board, the Commissioner must give written notice of the referral to the provider.

20 (2) If the Commissioner has referred a complaint to a registration board, the Commissioner must give to the provider and the user a copy of each written communication which the Commissioner gives to the board concerning the complaint, on the same day on which the Commissioner gives the communication to the board.

25 (3) Within 14 days after deciding to accept a complaint the Commissioner must give written notice of that decision to the provider concerned.

30 (4) Within 14 days after the Commissioner refers a complaint for conciliation the conciliator must give written notice of that decision to the provider and the person who made the complaint, and must include in the notice details of the arrangements made for conciliation discussions between the provider and that person, and must state in the notice that a provider may make submissions to the conciliator.

35 (5) Within 14 days after starting to investigate a complaint the Commissioner must give written notice of the decision to investigate (including details of the complaint) to the provider to whom the complaint relates.

40 (6) Within 14 days after deciding whether or not a complaint is justified the Commissioner must give written notice of the decision (including the reasons for the decision and any action which the Commissioner considers ought to be taken to remedy the complaint) to the user and the provider.

(7) In the case of a registered provider the Commissioner may give a copy of a notice under sub-section (5) to the appropriate registration board if the Commissioner thinks it appropriate to do so and must, if the Commissioner decides to do this, notify the provider in writing.

(8) If asked by the Minister, the Commissioner must give a copy of a notice under sub-section (5) to the Minister. 5

(9) Within 45 days after a person receives notice under sub-section (6), or before the end of any extension of time granted by the Commissioner, the person must report in writing to the Commissioner about what action the person has taken upon the complaint. 10

Penalty: 10 penalty units.

(10) Within the 45 day period mentioned in sub-section (8), a person may ask the Commissioner to extend the time within which the person must report to the Commissioner.

(11) If asked under sub-section (10), the Commissioner may extend the time within which the person must report by no more than 15 days. 15

Commissioner's duty to stop proceedings.

23. (1) The Commissioner must stop dealing with an issue raised in a complaint if—

- (a) the Commissioner becomes aware that the provider or user has begun legal proceedings which relate to that issue; or 20
- (b) the Commissioner becomes aware that proceedings relating to that specific issue have begun before an industrial tribunal; or
- (c) the Commissioner considers that the issue should properly be dealt with by a court or the Administrative Appeals Tribunal or a registration board. 25

(2) Within 14 days after stopping dealing with a complaint under sub-section (1) the Commissioner must give written notice of the fact to the user and the provider. 30

(3) If the Commissioner has stopped dealing with an issue raised in a complaint and later becomes aware that the user or the provider has withdrawn legal proceedings relating to the complaint, the Commissioner may, with the consent of the user or the person who complained to the Commissioner, re-open proceedings under this Act. 35

(4) The Commissioner must stop dealing with a complaint about a registered provider which the Commissioner has referred to the appropriate registration board unless the board asks the Commissioner to continue dealing with the matter, or unless the Minister has referred the matter to the Commissioner for inquiry. 40

Registration boards to give information.

24. (1) If, in the exercise of its powers, a registration board investigates or deals with a complaint concerning the provision of a health service by a provider the board must report to the
5 Commissioner—

(a) at such times as the Commissioner specifies by written notice given to the board; and

(b) at such other times as the board considers necessary to keep the Commissioner informed—

10 about the progress and results of its proceedings.

(2) A registration board must include in a report under sub-section (1)—

(a) details of the nature of the complaint; and

15 (b) details of responses or submissions which the provider makes to the board; and

(c) details of the board's decision on the complaint; and

(d) such other information as the Commissioner by written notice given to the board requires the board to include.

PART 4—GENERAL

20 **Commissioner's powers to compel attendance and call for evidence and documents.**

25. Sections 14, 15 and 16 of the *Evidence Act* 1958 apply to—

(a) the Commissioner's investigation of a complaint; and

25 (b) the Commissioner's inquiries into matters referred to the Commissioner by the Minister—

as if the Commissioner were a board appointed by the Governor in Council.

Restrictions on Commissioner's powers.

30 26. (1) The Commissioner cannot exercise the powers under section 25 while a complaint is being dealt with by a conciliator.

(2) Nothing in section 25 or the provisions of the *Evidence Act* 1958 applied by that section prevents a person from—

35 (a) refusing to answer a question or produce a document because the answer would relate to or the document contains information in respect of which the person claims legal professional privilege; or

(b) refusing to answer a question or produce a document if the answer, or the information in the document, would tend to incriminate the person; or

- (c) refusing to answer a question which relates to medical records or to produce medical records unless—
 - (i) those medical records relate to the subject matter of the complaint; and
 - (ii) the person to whom the records relate has consented to the disclosure of information in the records. 5

Warrants.

27. (1) The Commissioner may apply to a magistrate for a warrant to be issued under this section in respect of premises.

- (2) An application for a warrant— 10
 - (a) must be in writing; and
 - (b) must set out the grounds for seeking the warrant; and
 - (c) must describe the premises which are to be entered; and
 - (d) must give a general description of the class of persons living at the premises (if any) whom it is proposed to examine. 15

(3) A magistrate may require the Commissioner to give more information about an application for a warrant.

(4) A magistrate to whom an application is made under this section must refuse it if the application does not comply with this section or if, when required to do so by the magistrate, the Commissioner does not give to the magistrate more information about the application. 20

(5) The information in an application or given to a magistrate under this section must be verified before the magistrate on oath or affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit. 25

(6) A magistrate to whom an application is made under this section may, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary to enable the Commissioner to investigate a complaint under this Act, issue a warrant authorising the Commissioner, or a person other than a conciliator employed for the purposes of this Act and named in the warrant— 30

- (a) to enter and inspect premises named in the warrant; and
- (b) if the application for a warrant describes a class of persons whom it is proposed to examine, to examine a person who is a member of that class, with the consent of that person or, if that person is unable to consent, with the consent of that person’s representative recognized under section 15 (3); and 35
- (c) to require a person on the premises to answer questions or produce documents in the person’s possession concerning the complaint; and 40

(d) to inspect and take copies of or extracts from documents produced in compliance with a requirement made under paragraph (c).

(7) There must be stated in a warrant—

- 5 (a) the purpose for which the warrant is issued; and
(b) the name of the person to whom the warrant is issued; and
(c) a general description of the classes of persons (if any) who may be examined; and
(d) a description of the premises which may be entered.

10 (8) A magistrate who issues a warrant must cause a record to be made of particulars of the grounds the magistrate has relied on to justify the issue of the warrant.

(9) If asked by the occupier or a person in charge of the premises, the person executing a warrant must produce it for inspection.

15 (10) Nothing in this section or in section 28, or a warrant issued under this section or a requirement made in executing a warrant prevents a person from—

- 20 (a) refusing to answer a question or produce a document because the answer would relate to or the documents contain information in respect of which the person claims legal professional privilege; or
(b) refusing to answer a question or produce a document, if the answer or the information in the document would tend to incriminate the person; or
25 (c) refusing to answer a question which relates to medical records, or to produce medical records, unless—
(i) those medical records relate to the subject-matter of the complaint; and
30 (ii) the person to whom the records relate has consented to the disclosure of the information in the records.

(11) A warrant ceases to have effect—

- (a) at the end of the period of a month after its issue; or
(b) if it is withdrawn by the magistrate who issued it; or
(c) when it is executed—
35 whichever occurs first.

(12) The person to whom a warrant is issued must give a report in writing to the magistrate who issued the warrant—

- (a) stating whether or not the warrant was executed; and
40 (b) if the warrant was executed, setting out the results of the execution of the warrant; and
(c) if the warrant was not executed, setting out reasons why the warrant was not executed.

(13) A report under sub-section (12) must be made within 10 days after the warrant is executed or expires, whichever occurs first.

(14) If the magistrate who issued the warrant has died, has ceased to be a magistrate or is absent—

(a) the report under sub-section (12) may be given to; or 5

(b) the warrant may be withdrawn by—

another magistrate.

(15) This section does not limit the provisions of any other Act relating to warrants.

Offences. 10

28. (1) A provider and a provider’s officers, employees and agents must give the Commissioner or a person executing a warrant all the assistance which the Commissioner or person needs and they are able to give to help the Commissioner or person to execute a warrant under this Act. 15

Penalty: 10 penalty units.

(2) A person who assaults or obstructs the Commissioner or a person executing a warrant in executing a warrant under this Act is guilty of an offence.

Penalty: 10 penalty units. 20

(3) A person who, without reasonable excuse after being told by the Commissioner or a person executing a warrant what are the person’s obligations in relation to the execution of a warrant—

(a) does not answer a question asked by, or produce a document required by the person executing the warrant or; 25

(b) in answer to a question gives information which the person knows to be false or misleading—

is guilty of an offence.

Penalty: 10 penalty units.

False statements. 30

29. A person who makes a statement in a complaint, report or return under this Act which the person knows to be false or misleading in a material respect is guilty of an offence.

Penalty: 10 penalty units.

Person not to be penalized because of complaining to Commissioner. 35

30. A person who—

(a) by threats or intimidation persuades or attempts to persuade another person not to complain to the Commissioner or not

to continue discussion with or proceedings before the Commissioner; or

- 5 (b) refuses to employ or dismisses another person or subjects another person to any detriment, because the other person intends to complain, or has complained, to the Commissioner, or intends to take part, is taking part, or has taken part, in discussions with or proceedings before the Commissioner—

is guilty of an offence.

- 10 Penalty: 10 penalty units.

Protection for Commissioner, officers and parties to proceedings.

- 15 31. (1) Section 21A of the *Evidence Act* 1958 applies to conciliation and investigation proceedings and inquiries under this Act and the reports of the Commissioner as if the Commissioner or the Commissioner's delegate or a conciliator were a board appointed by the Governor in Council.

- 20 (2) A proceeding or purported proceeding or a decision or purported decision of the Commissioner, the Commissioner's delegate or a conciliator cannot be quashed, declared invalid, reviewed, appealed against, challenged or otherwise called in question unless it is a proceeding or purported proceeding or decision or purported decision in exercise of the powers of investigation or inquiry conferred by this Act.

Confidentiality.

- 25 32. (1) In this section—

“**Confidential information**” means information gained because of a person's position.

“**Position**” means any of the following:

- 30 (a) Position as the Commissioner;
- (b) Position as the Commissioner's delegate or a conciliator or a person employed for the purposes of this Act;
- (c) Position as a participant in conciliation inquiry or investigation proceedings under this Act, whether as principal or agent;
- 35 (d) Position as a person or body to whom the Commissioner refers a complaint;
- (e) Position as a person who has received a copy of a notice under section 22; and
- 40 (f) Position as a member of the Health Service Review Council.

(2) A person who holds or has held a position must not, except to the extent necessary for the purposes of this Act or to carry out official duties, powers or functions under this Act, another Act or a subordinate

instrument, record, disclose, communicate or make use of confidential information.

Penalty: 10 penalty units.

(3) In sub-section (2) “**communicate**” includes giving evidence or producing a document to a court, if the evidence or document contains confidential information. 5

(4) Sub-section (2) does not stop a person from—

(a) giving evidence or producing a document to a court in the course of proceedings for an offence under this Act, even though the evidence or document contains confidential information; or 10

(b) disclosing or communicating confidential information in accordance with the written authority of the Minister or the person to whom the information relates.

(5) Sub-section (4) does not apply to confidential information gained because of a person’s position as a conciliator. 15

(6) A document which contains confidential information gained during conciliation proceedings under this Act is an exempt document within the meaning of section 38 of the *Freedom of Information Act* 1982. 20

(7) Sub-section (6) does not limit the operation of section 38 of the *Freedom of Information Act* 1982.

Prescribed provider must give certain information.

33. Within the prescribed time after the end of each financial year a prescribed provider or a provider that is a member of a prescribed class of providers must give to the Commissioner a return in the form prescribed for providers of that class concerning complaints received and action taken by the provider during the financial year. 25

Penalty: 10 penalty units.

Proceedings for offences. 30

34. The Commissioner may take proceedings for offences against this Act.

Regulations.

35. (1) The Governor in Council may make regulations for or with respect to— 35

(a) the procedure of the Health Services Review Council under this Act; and

(b) conciliation, investigation and other proceedings under this Act; and

- (c) the procedure of the Commissioner in carrying out the Commissioner's functions and powers; and
 - (d) complaints reports returns notices and information provided for in this Act; and
 - 5 (e) prescribing forms; and
 - (f) generally prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- 10 (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - (c) may confer or impose powers, discretions or duties on the Commissioner, an officer or employee in the public service or any other person; and
 - 15 (d) may apply, adopt or incorporate by reference a Code of Practice developed by the Commissioner under this Act either as in force at the date when the regulations are made or as amended from time to time.

20 **Sunset provision.**

36. This Act expires on the expiration of 3 years after the date of commencement of section 1.

S. 3 (1).

SCHEDULE

The Chiropodists Registration Board of Victoria
Chiropractors and Osteopaths Registration Board of Victoria
Dental Board of Victoria
Dental Technicians Licensing Committee
Advanced Dental Technicians Qualifications Board
Dietitians Board of Victoria
Medical Board of Victoria
Optometrists Registration Board
Pathology Services Accreditation Board
Pharmacy Board of Victoria
Physiotherapists Registration Board of Victoria
Radiographers and Radiation Technologists Registration Board of Victoria
Victorian Nursing Council
Victorian Psychological Council