

Health Services (Conciliation and Review) (Further Amendment) Bill

EXPLANATORY MEMORANDUM

Outline

The aim of this Bill is to make some machinery improvements to the **Health Services (Conciliation and Review) Act 1987**.

Among other things, the Bill extends the scope of that Act to include some additional health services, gives the Health Services Commissioner a limited discretion in meeting statutory time frames, and clarifies the relationship between the Commissioner and health registration boards in determining which body is most appropriate to deal with a particular complaint.

Clause Notes

Clause 1 sets out the purpose of the Bill.

Clause 2 is the commencement provision.

Clause 3 identifies the **Health Services (Conciliation and Review) Act 1987** as being the “Principal Act”.

Clause 4 amends the definitions of “Health Service” and “Provider” in section 3 of the Principal Act.

The overall effect of these amendments is to bring within the scope of the Act a small number of health services which are currently excluded from investigation by the Health Services Commissioner.

These are services provided by audiologists, audiometrists and prosthetists, and by the Department of Community Services.

The opportunity is also being taken to include “hostels” in the definition of “provider” to bring the legislation more into line with the **Health Services Act 1988**.

The substitution of “supported residential service” for “special accommodation house” in the definition is cosmetic. It reflects the terminology used in the Health Services Act.

Clause 5 amends section 15 (4) of the Principal Act.

The amendment resolves an apparent inconsistency between section 15 and section 16 of the Act.

Section 15 sets out the various categories of persons who can complain to the Health Services Commissioner.

Among other things, it enables a provider to complain to the Commissioner about the *manner* in which a health service has been provided by another provider.

However, the section appears to limit the capacity of a provider complaining on a user’s behalf by preventing a provider complaining about the *content* of another provider’s treatment.

The proposed amendment is designed to overcome the problems caused by the inconsistency by making clear that a provider can complain on behalf of a user about any of the matters which can be the subject of a complaint as listed in section 16.

Clause 6 will give the Health Services Commissioner some flexibility in resolving a complaint.

Section 19 currently requires the Commissioner to decide within 28 days whether to accept or to reject a complaint, or to refer the complaint to another agency.

The 28 day time frame has worked successfully in most instances.

However, in a small number of cases, it can mitigate against the satisfactory resolution of a complaint.

The amendments to section 19 proposed by the clause maintain the 28 day principle but will give the Commissioner a capacity to extend the period in specified circumstances by up to a further 28 days.

The specified circumstances are that—

- (a) a complaint is unduly complex; or
- (b) a complaint can be satisfactorily resolved within the extended period.

Clause 7 makes an essentially, technical change to section 20 of the Principal Act.

Section 20 (4) requires the Commissioner to assign a conciliator to conduct the conciliation process if the Commissioner refers a complaint for conciliation.

The Commissioner has advised that some complaints are more likely to be resolved if two, or more, conciliators could be appointed to act as a team.

Proposed new sub-section (4A) to be inserted into section 20 by the clause will give the Commissioner the ability to assign additional conciliators in appropriate cases.

Clause 8 addresses some infrequent, but, nevertheless, potentially serious consequences which flow from a strict compliance with section 22 of the Principal Act.

That section, in part, requires the Commissioner to notify a provider within 14 days if the Commissioner decides to investigate a complaint.

In the vast majority of instances, this provision is a reasonable one.

By the same token, a small number of instances have occurred where notification to a provider would expose the complainant to intimidation, maltreatment and even endanger his or her life, or give the provider time to destroy incriminating or other evidence relevant to an investigation.

The proposed amendment to section 22 is designed to give the Commissioner a limited discretion to withhold the giving of the notice to a provider.

However, if the Commissioner exercises that discretion, he or she must give notice to the provider without delay when the circumstances which lead to the withholding no longer apply, but in any case, no later than six months after the complaint was made, or the investigation ended.

Clause 9 inserts two new sub-sections into section 23 of the Principal Act.

The effect of section 23 (1) (a) of the Act is to prohibit the Commissioner from dealing with an issue raised in a complaint once the Commissioner becomes aware that a provider or user has begun legal proceedings.

This effectively precludes any further attempts at conciliation after a letter of demand had been written, even though resolution of a complaint might well prove feasible.

The proposed amendment to section 23 is designed to enable the process of conciliation to be continued, even though legal proceedings may have been initiated.

However, the Commissioner must stop dealing with a complaint once a court has commenced to hear a proceeding relating to the complaint.

Clause 10 sets out to resolve uncertainties in section 24 of the Principal Act as to whether the Commissioner or a registration board is to have primary jurisdiction when a complaint received by a board is capable of being dealt with by either party.

The effect of the proposed amendment to that section is to require a registration board to give to the Commissioner a copy of any complaint it receives which comes within the ambit of section 16 of the Principal Act.

If the board and the Commissioner agree that the complaint is suitable for conciliation, the complaint is to be dealt with by the Commissioner.

In the absence of such agreement, the complaint is to be dealt with by the board.

Clause 11 amends section 32 of the Principal Act which protects what is termed in that provision as "confidential information".

Legal doubts have been expressed as to whether the annual returns to the Health Services Commissioner from providers under section 33 of the Act are fully protected by section 32.

If these doubts are valid, it would be possible for litigant to, say, gain access to a hospital complaint report form which described the results of the hospital's internal investigation into his or her complaint.

This would not only result in hospitals refusing to provide the Commissioner with frank information, but would also jeopardize the viability of the central register of complaints maintained under section 9 (1) of the Act.

The purpose of the proposed amendments to section 32 is to put beyond doubt that such returns to the Commissioner are protected by that provision.

