



Australian Capital Territory

# **Community and Health Services Complaints Act 1993**

**A1993-96**

**Republication No 4**

**Effective: 9 April 2004 – 12 April 2004**

Republication date: 9 April 2004

Last amendment made by A2004-15

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Community and Health Services Complaints Act 1993* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 April 2004. It also includes any amendment, repeal or expiry affecting the republished law to 9 April 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Community and Health Services Complaints Act 1993

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Australian Capital Territory

# Community and Health Services Complaints Act 1993

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An Act relating to the rights and responsibilities of users and providers of services for the aged and people with disabilities and of health services and to provide for the resolution of complaints arising out of the provision of those services

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## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Community and Health Services Complaints Act 1993*.

### 3 Objects

The objects of this Act are—

- (a) to provide an independent, fair and accessible mechanism for the resolution of complaints between users and providers of community services and health services; and
- (b) to improve the provision of community services and health services and enable users and providers to contribute to the review and improvement of the provision of community services and health services; and
- (c) to promote the rights of users of community services and health services; and
- (d) to encourage an awareness of the rights and responsibilities of users and providers of community services and health services;

and this Act shall be construed and administered accordingly.

### 4 Interpretation for Act

- (1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

**board** means—

- (a) the chiropractic board; or
- (b) the dental board; or

- (c) the dental technicians and dental prosthetists board; or
- (d) the medical board; or
- (e) the nurses board; or
- (f) the optometrists board; or
- (g) the pharmacy board; or
- (h) the physiotherapists board; or
- (i) the podiatrists board; or
- (j) the psychologists board; or
- (k) a prescribed body.

**code** means the Code of Health Rights and Responsibilities approved under section 53 as varied from time to time.

**commissioner** means the commissioner continued in existence under section 7A.

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

**complainant**, in relation to a complaint, means the person who makes the complaint.

**conciliator** means a person appointed under section 32.

**council** means the Community and Health Rights Advisory Council established by section 61.

**disability**, in respect of a person, means a disability that—

- (a) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments; and
- (b) is permanent or likely to be permanent; and
- (c) results in—

- (i) a substantially reduced capacity of the person for communication, learning or mobility; and
- (ii) the need for continuing support services; and
- (d) may or may not be of a chronic episodic nature.

**Health Records Act** means the *Health Records (Privacy and Access) Act 1997*.

**health service** means a service provided or to be provided in the ACT for, or purportedly for, the benefit of the health of a person and includes a service specified in schedule 1, part 1.1, but not a service specified in schedule 1, part 1.2.

**health status report** means a report prepared by a provider on the physical, mental or emotional health of a person for a purpose other than for the provision of a service specified in schedule 1, part 1.1, 1.3 or 1.5.

**provider** means a person who—

- (a) holds himself or herself out as being able to provide a health service, a service for aged people or a service for people with a disability; or
- (b) provides a health service, a service for aged people or a service for people with a disability;

and includes—

- (c) the employer of a provider referred to in paragraph (a) or (b); and
- (d) a volunteer providing such a service on behalf of a provider referred to in paragraph (a) or (b) or a prescribed agency.

**purchaser**, in relation to a service, means the person who contracts with a provider for the provision of those services.

**registered provider** means a provider registered by a board.

**relevant board**, in relation to a registered provider, means the board that has registered the provider.

**service for aged people** means a service provided in the ACT specifically for aged people or their carers and includes—

- (a) a service specified in schedule 1, part 1.3; and
- (b) a prescribed service;

but does not include a service specified in schedule 1, part 1.4.

**service for people with a disability** means a service provided in the ACT specifically for people with a disability or their carers and includes—

- (a) a service specified in schedule 1, part 1.5; and
- (b) a prescribed service;

but does not include a service specified in schedule 1, part 1.6.

**unit** means the Health Complaints Unit established by section 6.

**user** means a person who seeks, uses or receives a health service, a service for aged people or a service for people with a disability, or to whom such a service is provided.

- (2) If the commissioner makes a determination under section 25 (1), a reference in this Act to a complaint includes a reference to each subject matter, set of circumstances, allegation or part that is the subject of the determination.

## **5 Reasonableness of providers' actions**

- (1) In determining, for this Act, whether a provider has acted unreasonably in the provision of a health service (other than a service for aged people or a service for people with a disability), the commissioner shall have regard to—
  - (a) the code; and

- (b) until the approval of the code—the principles set out in section 55 (2); and
  - (c) after the approval of the code—such of the principles set out in that subsection as have not been dealt with by the code; and
  - (d) the generally accepted standard of health service delivery expected of a provider of that kind.
- (2) In determining, for this Act, whether a provider has acted unreasonably in the provision of a service for aged people or a service for people with a disability, the commissioner shall have regard to—
- (a) in the case of the provision of a service for people with a disability—
    - (i) the human rights principles set out in the *Disability Services Act 1991*, schedule 1; and
    - (ii) the requirements to be complied with in relation to the design and implementation of programs and services relating to people with disabilities set out in that Act, schedule 2; and
    - (iii) the National Standards for Mental Health Services endorsed by the Australian Health Ministers Advisory Council’s National Mental Health Working Group, as amended from time to time; and
    - (iv) the generally accepted standard of service delivery expected of a provider of that kind; and
    - (v) such other standards of service for people with a disability as are prescribed; and
  - (b) in the case of the provision of a service for an aged person—
    - (i) the Home and Community Care National Service Standards (known as the HACC Standards) as amended from time to time; and

- (ii) the generally accepted standard of service delivery expected of a provider of that kind; and
- (iii) such other standards of service for aged persons as are prescribed.

## **Part 2 Health complaints unit**

### **Division 2.1 Establishment and control**

#### **6 Establishment**

- (1) There is established by this section an office by the name of Health Complaints Unit.
- (2) The unit shall consist of the commissioner and the members of the staff of the unit, being—
  - (a) staff assisting the commissioner referred to in section 13 (1); and
  - (b) staff whose services are made available to the commissioner in accordance with section 13 (3).

#### **7 Control**

The commissioner shall control the unit.

### **Division 2.2 Appointment and functions of commissioner**

#### **7A Alteration of title**

The office named Commissioner for Health Complaints in existence under this Act immediately before the commencement of this section continues in existence under the name Community and Health Services Complaints Commissioner.

#### **8 Appointment**

- (1) The Executive may, in writing, appoint a person to be commissioner.



- (2) The commissioner holds office on the terms and conditions (if any) in respect to matters not provided for in this Act that are specified in the instrument of appointment.
- (3) An instrument of appointment under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **9 Functions**

In addition to the other functions given to the commissioner by this Act, the commissioner has the following functions:

- (a) to encourage and assist users and providers to resolve complaints;
- (b) to collect information about the operation of this Act and to publish the information from time to time;
- (c) to identify, inquire into and review issues relating to—
  - (i) the provision, in the ACT, of health services, services for aged people or services for people with a disability; and
  - (ii) the causes of complaints received by the commissioner; and report to, or advise, the Minister or other appropriate persons on them;
- (d) to inquire into and report to the Minister on any matter that the Minister has, under this Act, directed the commissioner to inquire into and report on;
- (e) to inquire into and report to the council on any matter that the council has referred to the commissioner;
- (f) to encourage and assist providers to develop and improve procedures for responding to users complaints;
- (g) to compile and publish statistical records relating to complaints and responses to complaints;

- (h) to provide the information and advice to the council, a board or a purchaser of a service that may lawfully be provided;
- (i) to disseminate information about—
  - (i) this Act; and
  - (ii) the code; and
  - (iii) the Health Records Act; and
  - (iv) the operation of the unit; and
  - (v) the procedures for making complaints;
- (j) to discharge other functions given to the commissioner by any other law;
- (k) to exercise the functions and powers given to the commissioner by the Health Records Act;
- (l) to do whatever is reasonably necessary to ensure that persons who wish to make a complaint under this Act, or a complaint or request to review under the Health Records Act, section 18, are able to do so.

## **10 Independence**

Except as provided by this Act, the commissioner is not subject to the direction of any other person in relation to the exercise of a function under this Act.

## **11 Minister's directions**

- (1) The Minister may direct the commissioner, in writing, to inquire into and report to the Minister on a specified matter relating to the provision of a community service or health service.
- (2) A direction under subsection (1) may specify—
  - (a) the time within which; and
  - (b) the manner in which;

the direction is to be complied with.

- (3) The Minister may direct the commissioner, in writing, to participate in a proceeding under the *Health Professions Boards (Procedures) Act 1981*.
- (4) The commissioner shall comply with a direction under this section.
- (5) If a direction under subsection (3) is given, the commissioner—
  - (a) is, because of this paragraph, a party to the proceeding referred to in the direction; and
  - (b) subject to this and any other Act, may present the evidence and make the submissions that, in the view of the commissioner, are likely to assist the board in reaching a just decision.

## **12 Powers**

The commissioner has power to do all things necessary or convenient to be done in connection with the exercise of his or her functions.

## **13 Staffing arrangements**

- (1) The staff assisting the commissioner shall be employed under the *Public Sector Management Act 1994*.
- (2) The *Public Sector Management Act 1994* applies in relation to the management of the staff assisting the commissioner.
- (3) The commissioner may make an arrangement with a chief executive who has control of an administrative unit or other appropriate person for the use of the services of the staff or facilities of an administrative unit or of a Territory authority.

## **14 Contract work**

- (1) The commissioner may, on behalf of the Territory, engage persons having suitable qualifications and experience as consultants to, or to perform services for, the commissioner.

- (2) The terms and conditions of engagement of persons engaged under subsection (1) are as the commissioner, in writing, determines.
- (3) Nothing in this section shall be read as giving to the commissioner a power to enter into a contract of employment.

## **15 Informality of procedures**

- (1) In the exercise of a function, the commissioner shall have regard to the rules of natural justice.
- (2) Subject to subsection (1), the commissioner—
  - (a) shall 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 thinks appropriate.

## **16 Acting commissioner**

- (1) The Executive may, in writing, appoint a person to act as commissioner—
  - (a) during a vacancy in the office of commissioner, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when the commissioner is, or is expected to be, absent from duty or from Australia or is, for any reason, unable to exercise the duties of the office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.
- (2) A conciliator is not eligible to be appointed under subsection (1).
- (3) Anything done by or in relation to a person purporting to act in the office of commissioner is not invalid merely because—

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

## **Division 2.3                      Terms of appointment of    commissioner**

### **17                      Tenure of office**

Subject to this Act, the commissioner holds office for the period, not exceeding 5 years, that is specified in the instrument of appointment, but is eligible for reappointment.

### **19                      Resignation**

The commissioner may resign from office by signed notice given to the Minister.

### **20                      Termination or suspension of appointment**

- (1) The Executive may terminate or suspend the appointment of the commissioner on the ground—
  - (a) of physical or mental incapacity; or
  - (b) of misbehaviour; or
  - (c) that the commissioner has failed to act impartially in the discharge of a function under this Act.
- (2) The Executive shall terminate the appointment of the commissioner if the commissioner—
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his

or her creditors or makes an assignment of his or her remuneration for their benefit; or

- (b) is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any 12 months.

## **Part 3**                      **Complaints**

### **Division 3.1**              **Making complaints**

#### **21**              **Who may complain**

A complaint to the commissioner about a community service or health service sought, used or received by, or administered to, a user may be made by the user or, if it is difficult or impossible for the user to make a complaint, or to make a complaint that complies with section 26 (1)—

- (a) if the user has attained the age of 18 years—by a person appointed by the user to make the complaint on the user’s behalf; or
- (b) if the user has not attained the age of 18 years—by a parent or guardian of the user; or
- (c) if a person, under any other law or an order of a court, has the care of the affairs of the user—by that person; or
- (d) by a person approved by the commissioner to make the complaint on the user’s behalf.

#### **22**              **Grounds for complaint**

- (1) A person referred to in section 21 may complain to the commissioner that—
  - (a) a provider acted unreasonably by not providing a community service or health service; or
  - (b) the provision of a community service or health service or part of a community service or health service was not necessary; or
  - (c) a provider acted unreasonably in the manner of providing a community service or health service; or

- (d) a provider acted unreasonably by denying or restricting a user's access to records relating to the user that were in the provider's possession; or
  - (e) a provider acted unreasonably in disclosing information in relation to the user; or
  - (f) if a person has made to a provider a complaint that could have been made to the commissioner under this Act—the provider failed without reasonable cause to investigate fairly the complaint or take other proper action in relation to it; or
  - (g) a provider has acted in disregard of—
    - (i) the code; or
    - (ii) the Home and Community Care National Service Standards as amended from time to time; or
    - (iii) the human rights principles set out in the *Disability Services Act 1991*, schedule 1; or
    - (iv) the requirements to be complied with in relation to the design and implementation of programs and services relating to people with disabilities set out in that Act, schedule 2; or
    - (v) the National Standards for Mental Health Services endorsed by the Australian Health Ministers Advisory Council's National Mental Health Working Group, as amended from time to time; or
    - (vi) the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates; or
    - (vii) a standard prescribed for section 5 (2) (a) (iv) or (b) (iii).
- (2) The reference in subsection (1) (c) to a provider's acting unreasonably in the manner of providing a community service or health service includes a reference to the provider's failure—



- (a) to exercise due care and skill; or
- (b) to treat a user in a considerate way that took into account the user's needs, wishes or background; or
- (c) to respect a user's privacy or dignity; or
- (d) to provide the user with—
  - (i) information on treatment or community services or health services available, in language and terms understandable to the user, sufficient to enable the user to make an informed decision; or
  - (ii) a reasonable opportunity to make an informed choice of the treatment or services available; or
  - (iii) reasonably necessary information on the availability of further advice on his or her condition or of relevant education programs; or
  - (iv) adequate information on treatment or services received; or
  - (v) any prognosis that it would have been reasonable for him or her to be provided with.

## **Division 3.2                      Assessment of complaints**

### **23                      Assessment**

- (1) The commissioner shall assess a complaint received under division 3.1, or under the Health Records Act, section 18 (1) or (3), and shall—
  - (a) if of the opinion that it relates to a matter that falls within the functions given by a law of the Territory, the Commonwealth, a State or another Territory on—
    - (i) the ombudsman; or
    - (ii) a relevant board; or

- (iii) any other person or body;  
refer it to the ombudsman, the relevant board or that other person or body (as the case requires); or
- (b) in any other case—
  - (i) refer it to a conciliator for conciliation under part 4; or
  - (ii) investigate it under part 5; or
  - (iii) in accordance with section 28, take no further action.
- (2) The reference in subsection (1) to a complaint received by the commissioner includes a reference to a complaint that has been referred, or referred back, to the commissioner by the ombudsman or by a board.
- (3) The commissioner shall not refer a complaint to a conciliator if—
  - (a) the complaint appears to the commissioner to indicate—
    - (i) the existence of a significant issue of public safety or public interest; or
    - (ii) a significant question as to the practice of a provider; or
  - (b) section 27 would prevent the commissioner from disclosing to the provider information that would enable the user to be identified.

## **24           Inquiries**

- (1) In order to give effect to section 23, the commissioner shall make the inquiries and endeavour to obtain the information that to the commissioner seem necessary.
- (2) Subsection (1) does not authorise the exercise of a power under part 5.

## **25 Splitting of complaints**

- (1) If a complaint—
- (a) deals with more than 1 subject matter; or
  - (b) deals with more than 1 set of circumstances; or
  - (c) makes allegations against more than 1 provider; or
  - (d) makes more than 1 allegation against a provider; or
  - (e) for any reason is susceptible to being dealt with in separate parts;
- the commissioner—
- (f) may if it is administratively convenient to do so; and
  - (g) shall if it is in the interest of the user that the commissioner do so;
- determine that any subject matter, set of circumstances, allegation or part (as the case requires) be treated as a separate complaint.
- (2) The commissioner shall not make a determination under subsection (1) unless he or she is satisfied that any attempt at conciliation is not likely to be prejudiced by the making of the determination.

## **26 Formal requirements for complaints**

- (1) Subject to this section, a complaint—
- (a) shall be in writing; and
  - (b) shall be signed by the complainant; and
  - (c) shall disclose the name and address of the complainant.
- (2) The commissioner may accept a complaint that does not comply with subsection (1).

- (3) If the commissioner accepts an oral complaint, he or she shall, unless satisfied that there are good reasons for not doing so, require that the complaint be put in writing and be signed by the complainant.
- (4) If the commissioner becomes aware that a complainant has changed his or her name or address without notifying the commissioner, the commissioner shall require the complainant to provide his or her name or address.
- (5) The commissioner may, at any time, require a complainant—
  - (a) to provide further information or documents; or
  - (b) to verify all or any part of the complaint by statutory declaration.
- (6) When making a requirement under this section the commissioner shall fix a reasonable period of time within which the requirement is to be satisfied and may extend that period, whether before or after its expiry.

**27                      Confidentiality of user's and complainant's particulars**

- (1) The commissioner shall not disclose to a provider information that would enable a 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 any person; or
  - (b) occasion the receipt by a person of a community service or health service of a lower standard than he or she would otherwise have received; or
  - (c) prejudice the assessment of a complaint or an investigation by the commissioner.
- (2) Where the commissioner has failed to provide information to a provider under subsection (1), he or she shall provide that

information on ceasing to hold the belief because of the holding of which the information had not been provided.

**28 No further action**

- (1) The commissioner shall take no further action on a complaint on becoming satisfied that—
- (a) the complainant is not a person referred to in section 21; or
  - (b) the complaint does not disclose a ground referred to in section 22; or
  - (c) the user became aware of the circumstances that gave rise to the complaint more than 24 months before the complaint was made; or
  - (d) the complainant has failed, without good reason, to take reasonable steps to resolve with the provider the grievance on which the complaint is based; or
  - (e) all the issues arising out of the subject matter of the complaint have been adjudicated on by a court, tribunal, board or other person or body established by a law of the Territory, the Commonwealth, a State or another Territory; or
  - (f) a court has commenced to hear a proceeding that relates to the subject matter of the complaint; or
  - (g) the complainant has been given reasonable explanations and information and there would be no further benefit in entertaining the complaint further; or
  - (h) the complaint lacks substance; or
  - (i) the complaint is frivolous, vexatious or was not made in good faith; or
  - (j) the complaint has been resolved.

- (2) For a complaint under the Health Records Act, section 18 (1) or (3), subsection (1) has effect as if paragraphs (a) and (b) were omitted and the following paragraphs were substituted:
- ‘(a) the complainant is not entitled, under the Health Records Act, to make the complaint;
- (b) the complaint does not disclose a ground of complaint referred to in the Health Records Act, section 18 (1) or (3);’.
- (3) Subsection (1) (c) does not apply where the commissioner is satisfied that the complainant has good grounds for not having made the complaint within 24 months of becoming aware of the circumstances that gave rise to it.
- (4) The commissioner may take no further action on a complaint if—
- (a) a requirement under section 26 is unsatisfied and the period of time for satisfying the requirement under that section has expired; and
- (b) the commissioner has notified the complainant in writing that the commissioner may decide to take no further action on the complaint unless the outstanding requirement is satisfied within 14 days of the date of service of the notice; and
- (c) the requirement remains unsatisfied at the expiry of the period of 14 days and is unsatisfied when the commissioner decides to take no further action.

## **29                      Withdrawal of complaint**

- (1) A complainant may, at any time, withdraw a complaint by notifying the commissioner in writing.
- (2) If a complaint is withdrawn the commissioner shall—
- (a) if the provider has been notified of the receipt of the complaint—notify the provider of the withdrawal within 14 days; and

- (b) subject to section 40, take no further action in relation to the complaint.

**30 Advice of disposal of complaint**

- (1) If the commissioner makes a decision under section 23 (1), he or she shall, within 14 days, provide details, and the reasons for, the decision in writing to—
  - (a) the complainant; and
  - (b) if the provider has been notified of the receipt of the complaint—the provider.
- (2) Subsection (1) (b) has effect subject to section 27.

**31 Action on referral of complaints**

If the commissioner has referred a complaint to another person or body under this division, he or she shall—

- (a) give to the person or body all documents and information in his or her possession that relate to the complaint; and
- (b) take no further action in relation to that complaint unless it is referred back to the commissioner.

## Part 4 Conciliation of complaints

### 32 Appointment of conciliators

The commissioner may appoint a person, in writing, to be a conciliator for this Act.

### 33 Function of conciliators

The function of a conciliator is to encourage the settlement of a community service or health service complaint by—

- (a) arranging discussions or negotiations between the complainant and the provider; and
- (b) assisting in the conduct of any discussions or negotiations; and
- (c) assisting the complainant and the provider to reach agreement; and
- (d) assisting in the resolution of the complaint in any other way.

### 34 Representation at conciliation

A complainant or provider shall not be represented by another person in the conciliation process unless the commissioner is satisfied that the representation is likely to assist substantially in resolving the complaint.

### 35 Reports by conciliators

- (1) A conciliator shall report on the progress of a conciliation whenever requested to do so by the commissioner.
- (2) When a conciliator is satisfied that—
  - (a) the complainant and the provider have reached agreement on all issues raised by a complaint; or



(b) it is not possible for agreement to be reached on all or some of the issues;

he or she shall report accordingly to the commissioner.

(3) In a report under subsection (2) a conciliator—

(a) shall provide details of any agreement reached; and

(b) shall provide details of progress towards agreement on any issue in respect of which agreement has not been reached; and

(c) may recommend the action that the commissioner should take on receipt of the report.

(4) The conciliator shall give a copy of a report under subsection (2) to the complainant and the provider as soon as possible after the report has been given to the commissioner.

### **36 Enforceable agreements**

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

(2) An agreement referred to in subsection (1) is not enforceable unless—

(a) the agreement is reduced to writing; and

(b) the written agreement is entered into at least 14 days after the first agreement has been reached.

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

(4) A conciliator shall not be a party to any agreement between a complainant and a provider that deals with a matter that has been dealt with in a process of conciliation.

**37 Unsuccessful conciliation**

- (1) On receiving a report under section 35 (1), the commissioner may terminate the process of conciliation if satisfied that it is not likely to be successful in bringing about agreement between the complainant and the provider.
- (2) On—
  - (a) taking action under subsection (1); or
  - (b) receiving a report under section 35 (2) (b);the commissioner shall dispose of the complaint in accordance with section 23 (1).

**38 Professional mentor**

- (1) The commissioner may appoint a person who, in the commissioner's view, has expertise in the field of dispute resolution, to be a professional mentor to a conciliator.
- (2) A conciliator may discuss any issue arising out of the performance of his or her functions with his or her professional mentor and seek the professional mentor's advice.
- (3) A person appointed under subsection (1) is not eligible, during the currency of the appointment, to be appointed conciliator or to assist the commissioner in the investigation of a complaint.

**39 Confidentiality and privilege**

- (1) A conciliator shall not, except—
  - (a) in a report required to be made under this division; or
  - (b) to his or her professional mentor;

disclose any information relating to a user or a provider acquired during the course of a process of conciliation.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A professional mentor shall not disclose any information acquired from a conciliator under subsection (1) (b).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) A person, other than a conciliator or a professional mentor, shall not divulge or communicate to any person any information relating to a user or provider acquired during the course of a process of conciliation.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) Evidence of anything said or admitted during a process of conciliation—

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

(b) may not be used by the commissioner as a ground for taking action under section 37 (2).

## Part 4A Requests to review under Health Records Act

### 39A Application of pt 4A

This part applies in relation to a request to review under the Health Records Act, section 18 (4).

### 39B Formal requirements

- (1) A request to review shall—
  - (a) be in writing; and
  - (b) be signed by the person making it; and
  - (c) set out that person's name and address.
- (2) The commissioner may accept a request to review that fails to comply with subsection (1).

### 39C Procedure on receipt of request to review

- (1) The commissioner shall consider a request to review, and for that purpose the commissioner may make any appropriate enquiries and seek any relevant information.
- (2) In considering a request to review, the commissioner shall—
  - (a) take into account the objects and provisions, so far as material, of the Health Records Act; and
  - (b) refrain from making a decision that is adverse or unfavourable to a person unless—
    - (i) the person has been given a fair opportunity to make representations to the commissioner in respect of the matter; and

- (ii) the commissioner has given due consideration to any representations so made.
- (3) If—
  - (a) the request to review involves a claim in respect of a health record on the ground stated in the Health Records Act, section 15 (a); and
  - (b) the commissioner forms the opinion that the commissioner should not proceed with considering the request to review because the person making the request has not made adequate use of the procedure specified in the Health Records Act, section 16;the commissioner may—
  - (c) give a written notice to the person setting out—
    - (i) the commissioner's opinion accordingly; and
    - (ii) any comments or suggestions that the commissioner considers may be of assistance to the person; and
    - (iii) a summary of the operation, in relation to the matter, of subsection (4); and
  - (d) give a copy of the notice, with any modifications that the commissioner considers appropriate, to any other person who, in the commissioner's opinion, has a proper interest in receiving it.
- (4) If the commissioner gives a notice under subsection (3) (c), the commissioner shall not proceed with considering the request to review until the commissioner is satisfied that—
  - (a) the person making the request to review has made adequate use of that procedure and that the matter is not resolved; or
  - (b) the use of that procedure by the person is impracticable or, for some other reason, would be unlikely to resolve the matter.

**39D Withdrawal of request to review**

- (1) The person who made a request to review may, at any time, withdraw the request by written notice to the commissioner.
- (2) If a request is withdrawn, the commissioner shall—
  - (a) if the relevant record keeper (within the meaning of the Health Records Act) has been informed of the request—within 14 days, inform the record keeper of the withdrawal; and
  - (b) subject to section 40, take no further action in relation to the request.

**39E Decision in relation to request to review**

- (1) At the conclusion of the commissioner's consideration of a request to review, the commissioner shall—
  - (a) make a decision in respect of the request; and
  - (b) give a copy of the decision to the person making the request and to any other person who appears to the commissioner to be affected by the decision.
- (2) The commissioner may give a copy of the decision to any other person to whom, or body to which, in the commissioner's opinion the decision ought to be given.

**39F Magistrates Court may review decision**

- (1) Application may be made to the Magistrates Court for review of a decision under section 39E (1) (a).
- (2) In reviewing a decision, the Magistrates Court shall proceed by way of a hearing de novo, but may have regard to the proceedings (including any evidence given) before the commissioner.

**39G Appeals**

- (1) An appeal to the Supreme Court may be brought as of right from an order of the Magistrates Court on an application under section 39F.

- (2) The *Magistrates Court (Civil Jurisdiction) Act 1982*, part 19A (other than sections 387 and 388) applies in relation to the appeal.

## **Part 5                    Investigations**

### **Division 5.1            Commencement**

#### **40                    Matters that may be investigated**

- (1) The commissioner may investigate, by exercising the powers conferred by this part—
  - (a) any matter specified in a direction under section 11 (1); or
  - (b) a request to review under the Health Records Act, section 18 (4); or
  - (c) a complaint that, under section 23 (1) (b) (ii), the commissioner has decided to investigate; or
  - (d) if a complaint received by the commissioner appears to the commissioner to indicate—
    - (i) the existence of a significant issue of public safety or public interest; or
    - (ii) a significant question as to the practice of a provider; that issue or question; or
  - (e) of his or her own initiative, any other matter relating to the provision of community services or health services in the ACT.
- (2) An investigation under subsection (1) (d) may be carried out whether or not—
  - (a) the relevant complaint has been accepted; or
  - (b) the process of assessment of the relevant complaint has been completed; or
  - (c) any process of conciliation of the relevant complaint has been completed; or



- (d) the relevant complaint has been withdrawn; or
- (e) the commissioner has decided to take no further action on the relevant complaint;

but shall not be exercised in so far as it may interfere with a process of conciliation.

**41 Investigation of complaints and issues arising out of complaints**

- (1) While investigating an unresolved complaint, or an issue or matter arising out of an unresolved complaint, the commissioner shall use his or her best endeavours to determine whether the complaint is justified.
- (2) The commissioner is not required to cease conducting an investigation under section 40 (1) (c) or (d) solely because, during the course of the investigation, the relevant complaint has been resolved.

**41A Requests to review—application of pt 5**

For an investigation of a request to review—

- (a) division 5.2 applies—
  - (i) with the omission of references to ‘complaint’ and the substitution of references to ‘request to review’; and
  - (ii) with the omission of references to ‘complainant’ and the substitution of references to ‘person making the request to review’; and
- (b) division 5.3 does not apply.

## **Division 5.2            Conduct**

### **42            Use of material already at hand**

- (1) Subject to this section, if the commissioner has obtained any document or information under this Act, he or she may make use of that document or information for this part.
- (2) Subsection (1) does not apply to a conciliator's report.

### **43            Conduct of investigation**

- (1) An investigation shall be conducted in the way the commissioner thinks fit.
- (2) A person to whom a complaint had been referred under section 23 (1) (b) (i) is not eligible, on the investigation of that complaint or of an issue or question arising out of it—
  - (a) to act as delegate of the commissioner; or
  - (b) to exercise any function in relation to the investigation.

### **44            Representation**

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

### **45            Power to obtain information and documents**

- (1) If the commissioner has reason to believe that a person is capable of providing information or producing a document or other record relevant to the subject matter of an investigation, the commissioner may, by written notice served on the person, require the person, at the place and within the period or on the day and at the time, that are specified in the notice—
  - (a) to provide to the commissioner, by writing signed by that person or, for a body corporate, by an officer of the body corporate, any such information; or

- (b) to produce to the commissioner such document or other record as is specified in the notice; or
  - (c) to provide to the commissioner any such information and to produce to the commissioner such document or other record as is specified in the notice.
- (2) If the commissioner has reason to believe that a person is able to give information relevant to an investigation, the commissioner may, by written notice served on the person, require the person to attend before a person specified in the notice, on the day and at the time and place specified in the notice, to answer questions relevant to the investigation.
- (3) If a document or other record is produced in accordance with a requirement under this section, the commissioner—
- (a) may take possession of, make copies of, or take extracts from, the document or record; and
  - (b) may retain possession of the document or record for the period not exceeding 2 months that is necessary for the purposes of the investigation to which it relates; and
  - (c) during that period shall permit a person who would be entitled to inspect or make copies of the document or record if it were not in the possession of the commissioner, to do so at all reasonable times.
- (4) This section has effect subject to the *Health Act 1993*, divisions 3.2 and 3A.2.

#### **46 Power to examine witnesses**

- (1) The commissioner, or a person who is to receive information under section 45 (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 that—

- (a) any information, document or record produced under this part;  
or
- (b) a statement that a person has no relevant information, documents or records, or no more relevant information, documents or records (as the case requires);

be verified by statutory declaration.

- (3) A person shall comply with a requirement under subsection (2).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

#### **47            Failure to provide information**

- (1) A person shall not refuse or fail, without reasonable excuse—

- (a) to be sworn or make an affirmation; or
- (b) to answer a question; or
- (c) to provide information; or
- (d) to produce a document or record;

when so required under this part.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) If a person fails to comply with a requirement made by the commissioner by notice under section 45 to provide information, to produce documents or other records or to attend to answer questions, the commissioner may make an application to the Supreme Court for an order directing that person to provide the information, to produce the documents or other records, or to attend to answer questions, before the person, at the place and within the period, or on the day and at the time, that are specified in the order.
- (3) A person is not liable to any penalty under the provisions of any other Act because of the person's having provided information,

produced a document or other record or answered a question when required to do so under this Act.

#### **48 Determination of fees and expenses of witnesses**

- (1) The Minister may, in writing, determine—
  - (a) the fees and expenses payable to witnesses appearing before the commissioner; or
  - (b) matters connected with those fees and expenses.
- (2) A determination is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

#### **49 Warrants**

- (1) If an information on oath is laid before a magistrate alleging that there are reasonable grounds for—
  - (a) believing that entry and inspection of premises are necessary to enable the commissioner to carry out an investigation under this part; or
  - (b) suspecting that there may be on any premises a thing of a particular kind relevant to a matter that the commissioner is investigating under this part;

and the information sets out those grounds, the magistrate may issue a search warrant authorising a person named in the warrant, with the assistance and by the force that is necessary and reasonable—

- (c) to enter and inspect the premises; and
  - (d) to search those premises for things of that kind; and
  - (e) to inspect, seize and make copies of, any thing of that kind.
- (2) A magistrate shall not issue a warrant under subsection (1) unless—
  - (a) the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the

magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) A warrant shall—
- (a) state the purpose for which it is issued; and
  - (b) specify the nature of the matter in relation to which the exercise of the powers under subsection (1) is authorised; and
  - (c) specify particular hours during which entry is authorised or state that entry is authorised at any time of day or night; and
  - (d) include a description of the kinds of things in relation to which the warrant is issued; and
  - (e) specify a day, not later than 7 days after the day of issue of the warrant, when the warrant ceases to have effect.

## **50                      Access to and return of seized records**

If a record or document is seized under section 49, the commissioner—

- (a) may retain possession of the document or record for the period not exceeding 2 months that is necessary for the purposes of the investigation to which it relates; and
- (b) during that period shall permit a person who would be entitled to inspect or make copies of the document or record if it were not in the possession of the commissioner, to do so at all reasonable times.

## **Division 5.3                      Completion**

### **51                      Reports**

- (1) The commissioner—

- (a) may at any time during the course of an investigation; and
  - (b) shall at its completion;  
prepare a true report of his or her findings and conclusions.
- (2) The commissioner shall submit a report of an investigation under section 40 (1) (a) to the Minister.
  - (3) The commissioner shall give a copy of a report of an investigation under section 40 (1) (c) to the complainant, the provider and the relevant board.
  - (4) The commissioner may give a copy of any report of an investigation to—
    - (a) the Minister; or
    - (b) a provider mentioned in the report; or
    - (c) any person or body having, under a law of the Territory, the Commonwealth, a State or another Territory, a function exercisable in relation to a matter raised in the report; or
    - (d) for a report of an investigation under section 40 (1) (d)—the complainant; or
    - (e) the purchaser of the service.

## **52 Notice of action to providers**

- (1) If, after investigating a complaint under section 40 (1) (c), the commissioner forms the view that the complaint is justified but appears to be incapable of being resolved, the commissioner may—
  - (a) give to the provider a notice under this section; and
  - (b) advise the complainant of the giving of the notice.
- (2) A notice under this section shall set out—
  - (a) the particulars of the complaint; and
  - (b) the reasons for making the decision under subsection (1); and

- (c) any action that the commissioner considers the provider ought to take in order to remedy each unresolved grievance disclosed by the complaint.
- (3) A provider to whom a notice under this section is given shall, before the end of the period of 45 days after the giving of the notice or such longer period as the commissioner allows under subsection (4), advise the commissioner, in writing, of what action he or she has taken in order to remedy the grievances referred to in the notice.
- Maximum penalty: 50 penalty units.
- (4) The commissioner may extend by not more than 15 days the period of 45 days referred to in subsection (3) on the receipt, before the end of that period, of a written request to do so from the provider.



## Part 6 Code of health rights and responsibilities

### 53 Approval

- (1) The Minister may, in writing, approve a code to be known as the Code of Health Rights and Responsibilities.

*Note* Power given under an Act to make a statutory instrument (including a code) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) The code is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

*Note 2* An amendment or repeal of the code is also a disallowable instrument (see *Legislation Act 2001*, s 46 (2)).

### 55 Contents

- (1) The code shall deal with the implementation of the principles referred to in subsection (2) and may deal with any other matter relevant to the provision or use of a health service.
- (2) For subsection (1), the principles to be dealt with by the code are—
  - (a) that a person is entitled to receive appropriate health services of a high standard; and
  - (b) that a person is entitled to be informed and educated about health matters that may be relevant to him or her and about available health services; and
  - (c) that a person who is capable of doing so is entitled to participate effectively in the making of a decision dealing with his or her health; and

- (d) that a person who is capable of doing so is entitled to participate actively in his or her health care; and
- (e) that a person is entitled to be provided with health services in a considerate way that takes into account his or her background, needs and wishes; and
- (f) that—
  - (i) a provider; or
  - (ii) a person who provides care for a user;  
should be given consideration and recognition for his or her contribution to health care; and
- (g) that the confidentiality of information about a person's health should be preserved; and
- (h) that a person should be entitled to reasonable access to information about his or her health; and
- (i) that a person is entitled to reasonable access to procedures for the redress of grievances about the provision of health services.

## Part 7 Relationship between commissioner and boards

### 56 Interpretation for pt 7

In this part, a reference to a proceeding is a reference to a proceeding under the *Health Professions Boards (Procedures) Act 1981* conducted as a consequence of—

- (a) the referral of a complaint to a board under this Act; or
- (b) the receipt by a board of a report under section 51.

### 57 Referral of complaints to commissioner

- (1) A board that receives a complaint that appears to be made by a person referred to in section 21 and to disclose a ground referred to in section 22 shall—
  - (a) notify the commissioner; and
  - (b) provide the commissioner with a copy of the complaint and of all documents in its possession that relate to the complaint; and
  - (c) if the commissioner so requests, refer the complaint to the commissioner.
- (2) Notwithstanding the provisions of any other Act, a board that has referred a complaint to the commissioner under subsection (1) shall not take any action in respect of any matter disclosed, alleged or dealt with by the complaint unless the commissioner refers the complaint back to the board under section 23 (1) (a) (ii) or a report concerning that complaint is given to the board under section 51.

### 58 Complaints referred after assessment

A board to which the commissioner has referred a complaint under this Act shall notify the commissioner, in writing, of—

- (a) whether or not it intends to conduct a proceeding; and
- (b) whether or not it has taken or proposes to take any other action and, if it proposes to do so, the details of such action.

**59 Action on investigation reports**

- (1) If a report under section 51 recommends that a board exercise a function, the board shall, as soon as it is practicable to do so, notify the commissioner, in writing, of whether or not it intends to exercise it.
- (2) If a board exercises a function referred to in subsection (1) it shall, as soon as it is practicable to do so, advise the commissioner, in writing, of—
  - (a) the result of the exercise; and
  - (b) any finding it has made; and
  - (c) any other action taken or proposed to be taken.

**60 Proceedings of boards**

- (1) The commissioner and each relevant provider is a party to a proceeding.
- (2) If a party to a proceeding so requests, the chairperson of a board shall exercise his or her powers under the *Health Professions Boards (Procedures) Act 1981*, section 28 (3) in respect of a person.

## Part 8                      Community and health rights advisory council

### 61                      Establishment of council

The Community and Health Rights Advisory Council is hereby established.

### 62                      Functions

The functions of the council are—

- (a) to advise the Minister and the commissioner in relation to the redress of grievances relating to community services and health 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 community service and health service complaints or expressing grievances in relation to community services and health 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 by the commissioner under this Act and that, in the view of the council, should be so referred.

### 63                      Membership

- (1) The council shall consist of the following members:
  - (a) a chairperson;

- (b) 1 person who, in the opinion of the Minister, is qualified, by reason of experience and expertise, to represent the interests of users of health services;
  - (c) 1 person who, in the opinion of the Minister, is qualified, by reason of experience and expertise, to represent the interests of users of services for aged people;
  - (d) 1 person who, in the opinion of the Minister, is qualified, by reason of experience and expertise, to represent the interests of users of services for people with a disability;
  - (e) 2 persons who, in the opinion of the Minister, are qualified, by reason of experience and expertise, to represent the interests of providers;
  - (f) the other persons (if any) not exceeding 2, who, in the opinion of the Minister, are qualified, because of experience and expertise, to contribute to the functions of the council.
- (2) The Minister shall appoint the members of the council by instrument.
- (3) An instrument of appointment under subsection (2) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

#### **64 Terms of appointment**

Subject to this part, a member of the council holds office for the period not exceeding 3 years that is specified in the instrument of appointment and is eligible for reappointment.

#### **66 Disclosure of interests**

- (1) A member of the council who has a personal interest or a direct or indirect pecuniary interest in a matter being considered or about to be considered by the council shall, as soon as practicable after the

relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the council.

- (2) A disclosure shall be recorded in the minutes of the meeting.
- (3) Unless the council otherwise determines, a member referred to in subsection (1) shall not—
  - (a) be present during any deliberation of the council with respect to that matter; or
  - (b) take part in any decision of the council with respect to that matter.
- (4) A member referred to in subsection (1) shall not—
  - (a) be present during any deliberation of the council for the purpose of considering whether to make a determination under subsection (3) in relation to that member; or
  - (b) take part in the making by the council of such a determination.
- (5) A person who contravenes subsection (3) or (4) commits an offence. Maximum penalty (subsection (5)): 20 penalty units.

## **67 Resignation**

A member of the council may resign his or her office by signed writing delivered to the Minister.

## **68 Termination of appointment**

- (1) The Minister may terminate the appointment of a member of the council for misbehaviour or physical or mental incapacity.
- (2) If a member of the council—
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for the benefit of those creditors; or

- (b) is absent, without the permission of the chairperson, from 3 consecutive meetings of the council; or
  - (c) fails, without reasonable excuse, to comply with an obligation imposed by section 66; or
  - (d) is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 12 months or longer;
- the Minister shall terminate the appointment of the member.

## **69 Convening meetings**

- (1) The council shall meet not less than 4 times a year.
- (2) A meeting of the council shall be held on the date and at the time and place that the council determines.
- (3) Subject to this section, the chairperson—
  - (a) may convene the meetings of the council that the chairperson considers necessary for the efficient exercise of its functions; and
  - (b) shall, on receipt of a written request signed by not less than 3 other members of the council, call a meeting of the council.
- (4) If the chairperson proposes to call a meeting of the council, the chairperson shall, not less than 5 days before the date of the proposed meeting, give to each member of the council a written notice specifying—
  - (a) the date, time and place of the meeting; and
  - (b) the matters to be considered at the meeting.
- (5) The Minister may call a meeting of the council by written notice given to each of the members.

## **70 Procedure at meetings**

- (1) The chairperson shall preside at all meetings of the council at which he or she is present.



- (2) If the chairperson is absent from a meeting of the council, the members present shall elect 1 of their number to preside at the meeting.
- (3) The member presiding at a meeting of the council may give directions regarding the procedure to be followed in connection with the meeting.
- (4) At a meeting of the council a majority of members constitute a quorum.
- (5) Questions arising at a meeting of the council shall be decided by a majority of the votes of members present and voting.
- (6) The member presiding at a meeting of the council has, in addition to a deliberative vote, a casting vote exercisable in the event of an equality of votes.
- (7) The council shall keep a written record of its proceedings.

## **71 Dissenting opinions to be reported**

- (1) If—
  - (a) the council decides to give advice to the Minister; and
  - (b) the decision on the terms of the advice is not a unanimous decision of all the members of the council;

a member who was present at the meeting at which the decision on the terms of the advice was taken and who objects to those terms may request that his or her objection and the reasons for the objection be—

  - (c) recorded in the minutes of the meeting; and
  - (d) reported in writing to the Minister when the advice is provided.
- (2) The council shall comply with a request under subsection (1).

## Part 9 Miscellaneous

### 71A Notices about unit

- (1) If a community service or health service is provided at premises, the provider shall ensure that a notice referred to in subsection (6) is displayed in each part of the premises that is attended by users in a position of such prominence that it is likely to be seen by those users.
- (2) Without limiting subsection (1), each ward, clinic, surgery, waiting room or reception area within premises where a community service or health service is provided shall, for that subsection, be taken to be a part of the premises that is attended by users.
- (3) A provider shall not, without reasonable excuse, fail to comply with subsection (1).  
Maximum penalty: 5 penalty units.
- (4) The commissioner may, on request, cause to be made available to a provider a notice or notices referred to in subsection (6) to facilitate compliance by that provider with subsection (1).
- (5) A failure by the commissioner to make a notice referred to in subsection (6) available to a provider does not constitute a reasonable excuse for the provider failing to comply with subsection (1).
- (6) A notice shall—
  - (a) be of durable material; and
  - (b) be not less than 297mm by 210mm; and
  - (c) bear a heading ‘COMMUNITY AND HEALTH SERVICES COMPLAINTS COMMISSIONER’ in characters of 24 point type; and

- (d) specify in legible characters the street address, the postal address and the telephone number of the unit; and
  - (e) indicate that if a person is dissatisfied about any matter in respect of which a complaint could be made to the commissioner, it would be appreciated if in the first instance the matter were to be discussed with the appropriate provider.
- (7) In this section:
- provider*, in relation to a provider who, as such, is an employee, means the provider's employer.

### **73 Persons not to be penalised**

- (1) A person shall not, without reasonable excuse, by threat or intimidation, persuade or attempt to persuade another person—
  - (a) to refrain from making, to the commissioner or any other person, a complaint on a ground referred to in section 22 or a complaint under the Health Records Act, section 18 (1) or (3); or
  - (b) to withdraw such a complaint; or
  - (c) to fail to cooperate with, or provide information to, a person who is exercising a function under this Act.
- (2) A person shall not—
  - (a) refuse to employ; or
  - (b) dismiss from employment; or
  - (c) in the course of employment, penalise or discriminate against; another person because the other person intends to make, or has made, a complaint under this Act or the Health Records Act, section 18 (1) or (3) or is cooperating with, or providing information to, a person who is exercising a function under this Act.
- (3) It is a defence to a prosecution for a breach of this section that—

- (a) the defendant had another ground for engaging in the conduct alleged; and
- (b) that ground is a reasonable one.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

#### **74 Protection from civil actions**

Proceedings do not lie against a person 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 under this Act or the Health Records Act, section 18 (1) or (3);
- (b) the making of a statement, or the giving of a document or information, for this Act, to the commissioner, a conciliator or a person authorised to receive the document or information;
- (c) the making, in accordance with the provisions of this Act, of a report or decision that, under this Act, a person is required or permitted to make;
- (d) the giving of a copy of a report or decision to a person to whom, under this Act, it may be given;
- (e) doing, or omitting to do, anything in the exercise of a function under this Act.

#### **75 Indemnity against costs**

A person who is or has been a commissioner, conciliator, member of the staff of the unit or engaged under section 14 is entitled to be indemnified by the Territory against any costs incurred in contesting any action, claim or demand brought or made in respect of any act done or omitted to be done in good faith in the exercise, or purported exercise, of any function under this Act.

**76 Delegation by commissioner**

The commissioner may, by signed writing, delegate to a member of his or her staff, other than a person appointed to be conciliator, any of his or her powers under this Act, other than the power to appoint a person to be a conciliator.

**U 77 Annual report**

- (1) The commissioner shall give to the Minister for presentation to the Legislative Assembly a report relating to the operation of this Act during each financial year.
- (2) The annual report shall set out the text of every direction given by the Minister under section 11 that had application during the financial year dealt with by the report.
- (3) If the Minister has directed the commissioner to report on a specified matter, or to provide specified information, in the annual report, the annual report shall deal with that matter or provide the information (as the case requires).

**78 Commissioner's periodic reports to boards**

- (1) The commissioner shall, within 1 month after the end of each statistical reporting period, give to each board a report that states, in relation to each relevant provider registered by the board—
  - (a) the number of complaints received during the period; and
  - (b) a summary of each complaint sufficient to identify the nature of the complaint; and
  - (c) the number of complaints disposed of during the period and the manner of their disposal; and
  - (d) the number of complaints outstanding at the end of the period.
- (2) The reference in subsection (1) (c) to the manner of disposal of a complaint is a reference to action taken under—

- (a) if a complaint has been referred to another person or body under section 23 (1) (a)—the appropriate subparagraph of that paragraph; or
  - (b) if the commissioner has decided to investigate a complaint under section 23 (1) (b) (ii)—that subparagraph; or
  - (c) in any other case—the appropriate paragraph of section 28 (1) or (4).
- (3) In this section:

*relevant provider* means a provider in relation to whom a complaint—

- (a) is received or disposed of during the statistical reporting period in relation to which the report is given; or
- (b) is outstanding at the end of that period.

*statistical reporting period* means—

- (a) in relation to a board with which the commissioner agrees on a period of time for this section—that period; or
- (b) in relation to any other board—the period of 3 months ending on 31 March, 30 June, 30 September or 31 December in each year.

## 79 Adverse comment in reports

- (1) The commissioner shall not include in a report under this Act (including an annual report) a comment adverse to a person or body identifiable from the report unless he or she has, prior to the making of the report, given to the person or body a copy of the proposed comment and a written notice advising that, within a specified period, being not more than 28 days and not less than 14 days after the date of the notice, the person or body may—
- (a) make a submission to the commissioner in relation to the proposed comment; or

- (b) give to the commissioner a written statement in relation to it.
- (2) The commissioner may extend, by not more than 28 days, the period of time specified in a notice under subsection (1).
- (3) If the person or body so requests, the commissioner shall include in the report the statement given under subsection (1) (b) or a fair summary of it.
- (4) The commissioner is not required to comply with this section if the commissioner believes, on reasonable grounds, that awareness of the proposed comment by any person would be likely to result in—
  - (a) the health or safety of any person being put at risk; or
  - (b) the provision to a person of a community service or health service of a lower standard than would otherwise have been provided; or
  - (c) action that would prejudice the fair assessment of a complaint or an investigation under this Act.

## **80        Secrecy**

- (1) This section has effect subject to section 39.
- (2) This section applies to every person who is or has been—
  - (a) the commissioner; or
  - (b) a member of the staff of the unit; or
  - (c) engaged under section 14; or
  - (d) a person to whom information is given under division 5.2; or
  - (e) a member of the council.
- (3) Subject to subsection (4), a person to whom this section applies shall not, either directly or indirectly—

- (a) make a record of, divulge or communicate to any person, any information concerning another person acquired by the firstmentioned person by reason of—
  - (i) holding an office or appointment; or
  - (ii) being employed or engaged; or
  - (iii) exercising a function; or
- (b) produce to any person, or give access to any person to, a document given for this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (4) Subsection (3) does not apply to a person—
  - (a) in the exercise of a function under this Act; or
  - (b) so far as the person is required or authorised by any other Act to divulge information or produce a document; or
  - (c) so far as the person is required to divulge information or produce a document to a court in the course of proceedings—
    - (i) between the parties to a complaint made to the commissioner, being proceedings that arise out of the circumstances that gave rise to the complaint; or
    - (ii) against the commissioner or a delegate of the commissioner, being proceedings arising out of the administration of this Act; or
  - (d) if the person to whom information or a document relates has expressly authorised the firstmentioned person to divulge the information or produce or give access to the document; or
  - (e) except for information provided during the course of a process of conciliation—if the Minister has certified that it is necessary in the public interest that specified information should be



divulged, or that a specified document should be produced, to a specified person.

(5) In this section:

*court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

## **81 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## **Schedule 1 Community and health services**

(see s 4)

### **Part 1.1 Services that are health services**

- 1 A service provided at a hospital, health institution or nursing home.
- 2 A medical, dental, pharmaceutical, paramedical, mental health, community health, environmental health or specialised health service or a service related to such a service.
- 3 An examination for the purpose of preparing a health status report.
- 4 A laboratory service provided in support of a health service.
- 5 A laundry, dry-cleaning, catering or other support service provided to a hospital, health institution or nursing home, if the service affects the care or treatment of a patient or a resident.
- 6 A social work, welfare, recreational or leisure service, if provided as part of a health service.
- 7 An ambulance service.
- 8 Any other service provided by a registered provider for, or purportedly for, the care or treatment of another person.
- 9 A service provided by—
  - (a) an audiologist, audiometrist or optical dispenser; or
  - (b) a child guidance therapist, dietitian, prosthetist, psychotherapist, radiographer or therapeutic counsellor; or
  - (c) a dental hygienist, dental therapist or dental prosthetist;

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or any other service of a professional or technical nature provided for, or purportedly for, the care or treatment of another person or in support of a health service.

- 10 A service provided by a practitioner of massage, naturopathy or acupuncture or in another natural or alternative health care or diagnostic field.
- 11 The provision of information relating to the promotion or provision of health care or to health education.

**Part 1.2**                      **Services that are not health  
services**

- 1 The process of writing, or the content of, a health status report.

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## **Part 1.3**                      **Services that are services for the aged**

- 1 A service that provides 1 or more of the following kinds of support specifically for aged people or their carers:

Home help; personal care; home maintenance or modification; food services; respite care; transport; assessment or referral of support needs; education, training and skill development; information services; coordination, case management and brokerage; recreation; advocacy.

- 2 Services provided in association with the use of premises for the care, treatment or accommodation of aged people.
- 3 Services under the Home and Community Care Program established under clause 5 of the agreement between the Commonwealth and the Territory set out in the *Home and Community Care Act 1985* (Cwlth), the schedule or an aged care program conducted by or on behalf of the Territory.

**Part 1.4**                      **Services that are not services for  
the aged**

- 1 A purchaser of services for aged people.

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## Part 1.5                      **Services that are services for people with disabilities**

- 1 A service that provides 1 or more of the following kinds of support specifically for people with disabilities or their carers:

Home help; personal care; home maintenance or modification; food services; respite care; transport; assessment or referral of support needs; education, training and skill development; information services; coordination, case management and brokerage; recreation; advocacy; community access; accommodation support; rehabilitation; employment services.

- 2 Services provided in association with the use of premises for the care, treatment or accommodation of people with disabilities.
- 3 Services purchased through the Home and Community Care Program established under clause 5 of the agreement between the Commonwealth and the Territory set out in o the *Home and Community Care Act 1985* (Cwlth), the schedule or a disability program conducted by or on behalf of the Territory.

**Part 1.6**                      **Services that are not services for  
people with disabilities**

- 1 A purchaser of services for people with disabilities.



## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

The *Community and Health Services Complaints Act 1993* was originally the *Health Complaints Act 1993*. It was renamed by the *Community and Health Services Complaints (Amendment) Act 1997* (see s 5).

#### **Community and Health Services Complaints Act 1993 No 96**

notified 24 December 1993 (Gaz 1993 No S267)

s 1, s 2 commenced 24 December 1993 (s 2 (1))

remainder commenced 24 June 1994 (s 2 (3))

as amended by

#### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 45**

notified 30 June 1994 (Gaz 1994 No S121)

s 1, s 2 commenced 30 June 1994 (s 2 (1))

sch 1 pt 45 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

#### **Health Legislation (Consequential Amendments) Act 1994 No 88 pt 4**

notified 15 December 1994 (Gaz 1994 No S280)

ss 1-3 commenced 15 December 1994 (s 2 (1))

pt 4 commenced 15 June 1995 (s 2 (3))

#### **Health Complaints (Amendment) Act 1994 No 89**

notified 15 December 1994 (Gaz 1994 No S280)

ss 1-3 commenced 15 December 1994 (s 2 (1))

remainder commenced 1 May 1995 (s 2 (2) and Gaz 1995 No S84)

#### **Remuneration Tribunal (Consequential and Transitional Provisions) Act 1995 No 56 sch**

notified 20 December 1995 (Gaz 1995 No S313)

commenced 21 December 1995 (s 2 and see Gaz 1995 No S315)

#### **Ombudsman (Amendment) Act 1996 No 17 s 14**

notified 1 May 1996 (Gaz 1996 No S71)

commenced 1 May 1996 (s 2)

#### **Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)

commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)

**Community and Health Services Complaints (Amendment) Act 1997 No 50**

notified 19 September 1997 (Gaz 1997 No S264)  
ss 1-3 commenced 19 September 1997 (s 2 (1))  
remainder commenced 3 October 1997 (s (2) and Gaz 1997 No S288)

**Health Records (Privacy and Access) Act 1997 No 125 sch**

notified 24 December 1997 (Gaz 1997 No S420)  
commenced 1 February 1998 (s 2)

**Health (Amendment) Act 1998 No 50 s 18**

notified 16 November 1998 (Gaz 1998 No S205)  
commenced 16 November 1998 (s 2)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 No S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 70**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 70 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
amdt 3.222 commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal (Consequential Amendments) Act 1997 No 41.

**Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.8**

notified LR 19 March 2004  
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))  
[sch 1 pt 1.8 awaiting commencement \(s 2 and see Annual Reports \(Government Agencies\) Act 2004 A2004-8 s 2\)](#)

*Note* default commencement under LA s 79: 19 September 2004

## Endnotes

4 Amendment history

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### **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.19**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.19 commenced 9 April 2004 (s 2 (1))

## 4 Amendment history

### **Title**

title am 1997 No 50 s 4

### **Short title**

s 1 am 1997 No 50 s 5

### **Commencement**

s 2 om 2001 No 44 amdt 1.777

### **Objects**

s 3 am 1997 No 50 s 6

### **Interpretation for Act**

s 4 def **board** am 1994 No 88 s 10; 1997 No 125 sch; pars renum R3 LA

def **commissioner** am 1997 No 50 s 7

def **community service** ins 1997 No 50 s 7

def **council** am 1997 No 50 s 7

def **disability** ins 1997 No 50 s 7

def **Health Records Act** ins 1997 No 125 sch

def **health status report** ins 1997 No 50 s 7

def **ombudsman** om 1996 No 17 s 14

def **provider** sub 1997 No 50 s 7

def **purchaser** ins 1997 No 50 s 7

def **service for aged people** ins 1997 No 50 s 7

def **service for people with a disability** ins 1997 No 50 s 7

def **user** sub 1997 No 50 s 7

### **Reasonableness of providers actions**

s 5 am 1997 No 50 s 8

### **Establishment and control**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R3 LA

### **Establishment**

s 6 am 1994 No 38 sch 1 pt 45

### **Appointment and functions of commissioner**

div 2.2 hdg (prev pt 2 div 2 hdg) renum R3 LA

### **Alteration of title**

s 7A ins 1997 No 50 s 9

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<b>Appointment</b>	
s 8	am 1997 No 50 s 10; 2001 No 44 amdt 1.778
<b>Functions</b>	
s 9	am 1997 No 50 s 11; 1997 No 125 sch; pars renum R3 LA
<b>Minister's directions</b>	
s 11	am 1997 No 50 s 12
<b>Staffing arrangements</b>	
s 13	am 1994 No 38 sch 1 pt 45; ss renum R3 LA
<b>Contract work</b>	
s 14	am 1994 No 38 sch 1 pt 45
<b>Terms and appointment of commissioner</b>	
div 2.3 hdg	(prev pt 2 div 3 hdg) renum R3 LA
<b>Salary and allowances</b>	
s 18	om 1995 No 56 sch
<b>Complaints</b>	
pt 3 hdg	am 1997 No 50 s 13
<b>Making complaints</b>	
div 3.1 hdg	(prev pt 3 div 1 hdg) renum R3 LA
<b>Who may complain</b>	
s 21	am 1997 No 50 s 14
<b>Grounds for complaint</b>	
s 22	am 1997 No 50 s 15
<b>Assessment of complaints</b>	
div 3.2 hdg	(prev pt 3 div 2 hdg) renum R3 LA
<b>Assessment</b>	
s 23	am 1997 No 125 sch
<b>Confidentiality of user's and complainant's particulars</b>	
s 27	am 1997 No 50 s 16
<b>No further action</b>	
s 28	am 1997 No 125 sch; ss renum R3 LA
<b>Function of conciliators</b>	
s 33	am 1997 No 50 s 17
<b>Confidentiality and privilege</b>	
s 39	am 1998 No 54 sch
<b>Requests to review under Health Records Act</b>	
pt 4A hdg	ins 1997 No 125 sch

## Endnotes

### 4 Amendment history

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#### **Application of pt 4A**

s 39A ins 1997 No 125 sch

#### **Formal requirements**

s 39B ins 1997 No 125 sch

#### **Procedure on receipt of request to review**

s 39C ins 1997 No 125 sch

#### **Withdrawal of request to review**

s 39D ins 1997 No 125 sch

#### **Decision in relation to request to review**

s 39E ins 1997 No 125 sch

#### **Magistrates Court may review decision**

s 39F ins 1997 No 125 sch

#### **Appeals**

s 39G ins 1997 No 125 sch

#### **Commencement**

div 5.1 hdg (prev pt 5 div 1 hdg) renum R3 LA

#### **Matters that may be investigated**

s 40 am 1997 No 50 s 18; 1997 No 125 sch; pars renum R3 LA

#### **Requests to review—application of pt 5**

s 41A ins 1997 No 125 sch

#### **Conduct**

div 5.2 hdg (prev pt 5 div 2 hdg) renum R3 LA

#### **Power to obtain information and documents**

s 45 am 1998 No 50 s 18

#### **Power to examine witnesses**

s 46 am 1998 No 54 sch

#### **Failure to provide information**

s 47 am 1998 No 54 sch

#### **Determination of fees and expenses of witnesses**

s 48 am 2001 No 44 amdt 1.779, amdt 1.780

#### **Completion**

div 5.3 hdg (prev pt 5 div 3 hdg) renum R3 LA

#### **Reports**

s 51 am 1997 No 50 s 19

#### **Notice of action to providers**

s 52 am 1998 No 54 sch

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<b>Approval</b>	
s 53	sub 2001 No 44 amdt 1.781
<b>Disallowance</b>	
s 54	om 2001 No 44 amdt 1.782
<b>Community and health rights advisory council</b>	
pt 8 hdg	am 1997 No 50 s 20
<b>Establishment of council</b>	
s 61	am 1997 No 50 s 21
<b>Functions</b>	
s 62	am 1997 No 50 s 22
<b>Membership</b>	
s 63	sub 1997 No 50 s 23 am 2001 No 44 amdt 1.783
<b>Remuneration and allowances</b>	
s 65	om 1997 No 41 sch 1
<b>Disclosure of interests</b>	
s 66	am 1998 No 54 sch
<b>Procedure at meetings</b>	
s 70	am 1997 No 50 s 24
<b>Notices about unit</b>	
s 71A	ins 1994 No 89 s 4 am 1997 No 50 s 25; 1998 No 54 sch
<b>Offences</b>	
s 72	am 1998 No 54 sch om A2004-15 amdt 2.46
<b>Persons not to be penalised</b>	
s 73	am 1997 No 125 sch; 1998 No 54 sch
<b>Protection from civil actions</b>	
s 74	am 1997 No 125 sch
<b><u>Commissioner's annual report</u></b>	
s 77	<u>sub A2004-9 amdt 1.11</u>
<b>Adverse comment in reports</b>	
s 79	am 1997 No 50 s 26
<b>Secrecy</b>	
s 80	am 1998 No 54 sch
<b>Regulation-making power</b>	
s 81	sub 2001 No 44 amdt 1.784

## Endnotes

### 5 Earlier republications

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#### **Community and health services**

sch 1 hdg (prev sch hdg) renum R3 LA  
sch 1 (prev sch) am 1997 No 50 s 27

#### **Services that are health services**

pt 1.1 hdg (prev sch 1 pt 1 hdg) renum R3 LA

#### **Services that are not health services**

pt 1.2 hdg (prev sch 1 pt 2 hdg) renum R3 LA

#### **Services that are services for the aged**

pt 1.3 hdg (prev sch 1 pt 3 hdg) renum R3 LA

#### **Services that are not services for the aged**

pt 1.4 hdg (prev sch 1 pt 4 hdg) renum R3 LA

#### **Services that are services for people with disabilities**

pt 1.5 hdg (prev sch 1 pt 5 hdg) renum R3 LA

#### **Services that are not services for people with disabilities**

pt 1.6 hdg (prev sch 1 pt 6 hdg) renum R3 LA

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Act 1997 No 125	28 February 1998
2	Act 1998 No 54	31 August 1999
3	Act 2001 No 44	4 April 2002
3 (RI)	A2001-44 ‡	26 February 2003

‡ includes retrospective amendments by A2002-49



## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

<b>Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.8</b>
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## Part 1.8 Community and Health Services Complaints Act 1993

### [1.11] Section 77

*substitute*

#### 77 Commissioner's annual report

- (1) A report prepared by the commissioner under the *Annual Reports (Government Agencies) Act 2004* for a financial year must not be required to be given to a chief executive for inclusion in a chief executive annual report.
- (2) The report must include a copy of any direction given (whether before or during the year) under section 11 (Minister's directions) that applies during the year.
- (3) If the Minister has directed the commissioner to report on a matter or to give information in the report, the report must deal with the matter or give the information.
- (4) In this section:

**chief executive annual report**—see the *Annual Reports (Government Agencies) Act 2004*, section 5.

*Note* **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

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