

TASMANIA

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**HEALTH COMPLAINTS AMENDMENT BILL  
2004**

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# **HEALTH COMPLAINTS AMENDMENT BILL 2004**

*(Brought in by the Minister for Justice and Industrial  
Relations, the Honourable Judith Louise Jackson)*

## **A BILL FOR**

### **An Act to amend the *Health Complaints Act 1995***

Be it enacted by His Excellency the Governor of Tasmania,  
by and with the advice and consent of the Legislative  
Council and House of Assembly, in Parliament assembled,  
as follows:

#### **Short title**

1. This Act may be cited as the *Health Complaints  
Amendment Act 2004*.

#### **Commencement**

2. This Act commences on the day on which this Act  
receives the Royal Assent.

#### **Principal Act**

3. In this Act, the *Health Complaints Act 1995*\* is  
referred to as the Principal Act.

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\*No. 95 of 1995

**Section 3 amended (Interpretation)**

4. Section 3 of the Principal Act is amended by inserting after the definition of “Charter” the following definition:

“**child**” means a person who has not attained the age of 18 years;

**Section 13 amended (Special report)**

5. Section 13 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (a) in subsection (1):

(ab) an investigation under Part 6;

(b) by inserting the following subsections after subsection (2):

(3) The Commissioner may cause a report to be published in any manner that he or she considers appropriate.

(4) A report made by the Commissioner under subsection (1) that is published under subsection (3) may name a person referred to in the report if –

(a) the Commissioner believes on reasonable grounds that naming the person is reasonably necessary to prevent or lessen a risk to –

(i) the life, health, safety or welfare of any other person;  
or

(ii) the health, safety or welfare of the public; or

- (b) the person is a health service provider who has unreasonably failed to take action that has been specified in a notice under section 56 to remedy an unresolved grievance.

### **Section 22 amended (Who may complain)**

**6.** Section 22 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) and substituting the following paragraph:
  - (b) in the case of a health service user who is a child –
    - (i) where the child has attained the age of 14 years, a person appointed by that child to make the complaint on that child's behalf; or
    - (ii) where the child has not attained the age of 14 years, a parent or guardian of that child; or
    - (iii) where the Commissioner is of the opinion that the child is capable of lodging a complaint himself or herself, the child;
- (b) by omitting paragraph (c);
- (c) by omitting paragraph (g) and substituting the following paragraph:
  - (g) a health service provider;

- (d) by omitting from paragraph (k) “the public interest requires that” and substituting “in the circumstances of the particular case”.

### **Section 23 amended (Making a complaint)**

7. Section 23 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 22 (1)” and substituting “section 22”;
- (b) by omitting from subsection (2) “section 22 (1)” and substituting “section 22”.

### **Section 24A inserted**

8. After section 24 of the Principal Act, the following section is inserted in Division 1:

#### **Notification of complaints to registration boards**

**24A.** As soon as practicable after receiving a complaint, the Commissioner is to notify any relevant registration board stating –

- (a) the name of the health service provider against whom the complaint is made; and
- (b) the substance of the complaint; and
- (c) the date or dates on which the events forming the basis of the complaint occurred; and
- (d) any other details that the Commissioner considers relevant.

**Section 25 amended (Assessment)**

**9.** Section 25 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

**(1)** The Commissioner must assess a complaint within 45 days after receiving it and he or she may, if of the opinion that it is appropriate to do so –

- (a) where the complaint relates to a matter that falls within the functions imposed by a law of Tasmania, another State, a Territory or the Commonwealth on the Ombudsman, a relevant registration board or any other person, refer the complaint to the Ombudsman, relevant registration board or other person, as the case requires; or
- (b) refer the complaint to a conciliator for conciliation under Part 5; or
- (c) investigate the complaint under Part 6; or
- (d) dismiss the complaint.

**(1A)** The Commissioner may refer a complaint to both a relevant registration board and a conciliator or defer the matter of conciliation until the relevant registration board has reported to him or her on the matter.

**(1B)** The Commissioner may extend the period for assessment referred to in subsection (1) for an additional period not exceeding 45 days if –

- (a) the Commissioner has, under section 25A, attempted to facilitate the

early resolution of the complaint and the attempt has been unsuccessful; or

- (b) the Commissioner considers it necessary for the purposes of assessment to extend the period.

**(1C)** The Commissioner must notify the complainant and the relevant health service provider of any extension of the period for assessment under subsection (1B).

**(1D)** Nothing in this section prevents the early resolution of a complaint under section 25A.

### **Section 25A inserted**

**10.** After section 25 of the Principal Act, the following section is inserted in Division 2:

#### **Early resolution of complaints**

**25A. (1)** As soon as practicable after receiving a complaint, the Commissioner may, if he or she is of the opinion that it is reasonable to do so and if the complainant consents, attempt to facilitate the early resolution of the complaint to the satisfaction of the parties without the need for the Commissioner to proceed to assessment under section 25.

**(2)** Without limiting the Commissioner's powers of resolution, the Commissioner may provide mediation.

### **Section 26 amended (Enquiries during assessment)**

**11.** Section 26 of the Principal Act is amended by inserting after subsection (2) the following subsections:



**(3)** If the Commissioner, having made enquiries in accordance with subsection (1), is unable to obtain relevant information from a person and has reason to believe that a person other than the complainant is capable of providing information or producing a document relevant to an assessment, the Commissioner may, by notice in writing provided to the latter person, require that person to do one or more of the following:

- (a) provide that information to the Commissioner in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
- (b) produce that document to the Commissioner;
- (c) attend before a person specified in the notice and provide information by answering questions relevant to the assessment.

**(4)** A notice referred to in subsection (3) is to specify the period within which, or the day on which and the time and place at which, the person is required to provide the information or document or attend to answer questions.

**(5)** Nothing in subsection (3) authorises the Commissioner to require the provision of exempt information or any part of a document containing exempt information.

**(6)** Where a document is produced in accordance with a requirement under this section, the Commissioner may take possession of, make copies of or take extracts from the document.

**Sections 29A and 29B inserted**

**12.** Before section 30 of the Principal Act, the following sections are inserted in Division 3:

**Powers of Commissioner**

**29A. (1)** The Commissioner may add further grounds, persons or particulars to a complaint received under section 23 if at any stage the Commissioner is of the opinion that any such matters should form part of the complaint.

**(2)** On adding further grounds, persons or particulars to a complaint, the Commissioner must notify the complainant, the health service provider and any relevant registration board.

**Power of Commissioner to give information to registration board**

**29B.** For the purpose of assisting a registration board to perform its functions under this or any other Act, the Commissioner may make available to the board any information that he or she receives in the administration of this Act.

**Section 32A inserted**

**13.** After section 32 of the Principal Act, the following section is inserted in Part 5:

**Duty to attend initial meeting**

**32A.** Where the Commissioner has referred a complaint for conciliation, the complainant and the health service provider must attend an initial meeting, but any subsequent participation in the conciliation by the parties is voluntary and either

party may withdraw from the conciliation process at any time.

**Section 35 amended (Results report from conciliator)**

**14.** Section 35 of the Principal Act is amended by inserting after subsection (3) the following subsection:

**(4)** A relevant registration board is not entitled to receive a copy of the report but the Commissioner may inform the registration board that the conciliation process has been concluded and that agreement has or has not been reached.

**Section 40 amended (Matters that may be investigated)**

**15.** Section 40 of the Principal Act is amended by inserting after subsection (2) the following subsection:

**(2A)** An investigation referred to in subsection (1)(b) may be carried out whether or not –

- (a) the relevant complaint has been withdrawn; or
- (b) the Commissioner has decided to dismiss the relevant complaint.

**Section 43 amended (Conduct of investigation)**

**16.** Section 43 of the Principal Act is amended by inserting after subsection (2) the following subsections:

**(3)** The Commissioner may, when conducting an investigation into a complaint, refer the

complaint or any part of, or issue arising out of, the complaint for conciliation under Part 5.

(4) An investigation may be conducted jointly by the Commissioner and a registration board.

### **Section 47A inserted**

17. After section 47 of the Principal Act, the following section is inserted in Division 2:

#### **Entry of premises**

**47A. (1)** For the purposes of carrying out an investigation under this Act, the Commissioner or, if so authorised by the Commissioner, any State Service officer or State Service employee may at any reasonable time enter any premises occupied or used by a health service or a health service provider and inspect the premises or anything for the time being on or within them.

(2) The powers conferred by this section to enter premises occupied or used by a health service or a health service provider are not to be exercised unless previous notice of the intention to do so has been given in writing to –

- (a) the owner or occupier of the premises in which the health service is provided; or
- (b) the health service provider.

### **Section 52 substituted**

18. Section 52 of the Principal Act is repealed and the following section is substituted:

**Witness privilege and production of documents**

**52. (1)** Neither the Crown or any other person is entitled to prevent or obstruct the provision of information or the production of any document or evidence from being given for the purpose of an investigation under this Act, notwithstanding any entitlement that might arise if the investigation were a legal proceeding held before a court.

**(2)** A person is not excused from providing any information, producing any document or answering a question, when required to do so under this Act, on the ground that to do so would disclose legal advice furnished to a health service provider or other person to whom this Act applies.

**(3)** Notwithstanding section 62B or anything in subsections (1) and (2) of this section, if the Attorney-General provides the Commissioner with a certificate that the disclosure of information concerning a specified matter (including the giving of information in answer to a question) or the disclosure of the contents of a specified document would be contrary to the public interest because the information or document would, if disclosed, prejudice the taking of proceedings for a crime or other offence, the Commissioner is not entitled to require a person to –

- (a) provide the information; or
- (b) answer questions concerning the matter or the document; or
- (c) produce the document to the Commissioner.

**Section 54 amended (Supreme Court applications)**

**19.** Section 54(1) of the Principal Act is amended by omitting “section 52 or 53” and substituting “section 53”.

**Section 55 amended (Reports)**

**20.** Section 55 of the Principal Act is amended as follows:

- (a) by omitting paragraphs (a) and (b) from subsection (2);
- (b) by inserting the following subsection after subsection (2):

**(2A)** If the Commissioner is satisfied that it is desirable to do so having regard to the nature of the allegations or the seriousness of the findings, the Commissioner must provide a copy of each report to –

- (a) the Minister; and
- (b) the Health Minister.

**Section 56A inserted**

**21.** Before section 57 of the Principal Act, the following section is inserted in Part 7:

**Commissioner to be informed when registration board receives grievance**

**56A.** As soon as practicable after receiving a grievance, a registration board is to inform the Commissioner of the particulars of that grievance.

**Section 58 amended (Investigation of complaints or grievances)**

**22.** Section 58 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (a) in subsection (2):

(ab) a statement of the reasons for its decision; and

(b) by inserting the following subsection after subsection (5):

**(6)** An investigation may be conducted jointly by the registration board and the Commissioner.

**Section 59 amended (Action on investigation reports)**

**23.** Section 59(2) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

(ba) a statement of reasons for that finding; and

**Section 61 amended (Information to registration board)**

**24.** Section 61 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (1):

**(1A)** The Commissioner may, at any time, request a relevant registration board to provide reasonable reports on the progress and

results of an investigation of a complaint or grievance.

- (b) by inserting in subsection (2) “or a registration board” after “Commissioner”;
- (c) by omitting from subsection (2) “subsection (1)” and substituting “this section”.

### **Section 62A inserted**

**25.** After section 62 of the Principal Act, the following section is inserted in Part 7:

#### **Power of registration board to give information to Commissioner**

**62A.** For the purpose of assisting the Commissioner to perform his or her functions under this Act, a registration board may make any information that it receives in the performance of its functions under this Act or any other Act available to the Commissioner.

### **Section 62B inserted**

**26.** Before section 63 of the Principal Act, the following section is inserted in Part 8:

#### **Freedom of disclosure and communication to Commissioner**

**62B.** Where a provision of an Act –

- (a) prohibits or restricts; or
- (b) authorises or requires the imposition of a prohibition or restriction on –



the disclosure or communication of information, that provision does not apply to, or in respect of, the disclosure or communication of information in a manner that will prevent or restrict the making of a complaint to, or the carrying out of an investigation by, the Commissioner or the performance of the Commissioner's other functions under this Act.

### **Schedule 1 amended (Health Services)**

**27.** Part 1 of Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting from item 3 "in association with the use of premises";
- (b) by omitting from item 5 "referred to in item 3" and substituting "for the care, treatment or accommodation of persons who are aged or have a physical disability or mental dysfunction";
- (c) by inserting the following item after item 11:

**11A.** A service provided at a hospital or health institution for the temporary storage of human remains as defined in the *Burial and Cremation Act 2002*.

### **Schedule 3 amended (Health Complaints Commissioner)**

**28.** Clause 3 of Schedule 3 to the Principal Act is amended by omitting subclause (1) and substituting the following subclause:

**(1)** A person is not eligible to be reappointed as Commissioner if the person has served 3 consecutive terms of office as Commissioner.