

WESTERN AUSTRALIA

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# HEALTH SERVICES (CONCILIATION AND REVIEW) ACT 1995

(No. 75 of 1995)

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## ARRANGEMENT

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WESTERN AUSTRALIA

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**HEALTH SERVICES  
(CONCILIATION AND REVIEW)  
ACT 1995**

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**No. 75 of 1995**

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**AN ACT to establish an agency as a readily accessible means of having complaints about the provision of health services reviewed, conciliated and dealt with in confidence, and for related purposes.**

*[Assented to 9 January 1996.]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Health Services (Conciliation and Review) Act 1995*.

### **Commencement**

2. (1) The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.  
  
(2) If any provision of this Act does not come into operation within the period of 18 months from the day on which this Act receives the Royal Assent, that provision comes into operation on the first day after the end of that period.

### **Interpretation**

3. (1) In this Act, unless the contrary intention appears —  
  
    “**conciliator**” means a person to whom the task of conciliation is assigned under section 36 and includes persons assigned to be joint conciliators;  
  
    “**Director**” means a person appointed as Director under section 7 (1);  
  
    “**excluded service**” means a health service that is provided without remuneration in a rescue or emergency situation;

**“health service”** means any service provided by way of —

- (a) diagnosis or treatment of physical or mental disorder or suspected disorder;
- (b) health care, including palliative health care;
- (c) a preventive health care programme, including a screening or immunization programme; and
- (d) medical or epidemiological research,

and includes any —

- (e) ambulance service;
- (f) welfare service that is complementary to a health service;
- (g) service coming within paragraph (a), (b) or (c) that is provided by a person who advertises or holds himself or herself out as a person who provides any health care or treatment; and
- (h) prescribed service,

but does not include an excluded service;

**“industrial tribunal”** means —

- (a) the Australian Industrial Relations Commission;  
or
- (b) The Western Australian Industrial Relations Commission under the *Industrial Relations Act 1979* and each constituent authority under that Act;

**“member of the staff”** means an officer or person referred to in section 14 or 15 and any person whose services are used under section 16;

**“Office”** means the Office of Health Review established by section 6 (1);

**“provide”,** in relation to a health service, includes the carrying out of medical or epidemiological research;

**“provider”** includes —

- (a) an individual or a group of individuals or a body that renders or provides any health service;
- (b) a person who manages or is the chief executive of —
  - (i) a body by which or an institution in which any health service is rendered or provided; or
  - (ii) a body or institution that provides a health service and that is prescribed or belongs to a class that is prescribed for the purposes of this paragraph;
- (c) the Commissioner of Health in respect of any health service provided or rendered by persons in carrying out the functions of the Health Department of Western Australia, but not including a health service provided or rendered in a public hospital under the *Hospitals and Health Services Act 1927*;
- (d) a body or a group of individuals that provides a health service and that is prescribed as a provider;

- (e) an individual or group of individuals or a body that provides a health service and that is included in a class that is prescribed as providers;

**“public provider”** means a provider that represents the Crown, and includes any person acting on behalf of a representative of the Crown;

**“registered provider”** means a person licensed, registered or certificated by a registration board;

**“registration board”** means a body that is listed in Schedule 1;

**“user”** means a person who —

- (a) uses or receives a health service; or
- (b) is the subject of medical or epidemiological research,

but a person is not within this definition merely because he or she has arranged a health service for a user.

(2) The Governor may, by order published in the *Gazette*, amend Schedule 1.

(3) The fact that the definition of “provider” in subsection (1) —

- (a) in subparagraph (b) refers to a person who manages or is the chief executive of a body or institution; and
- (b) in paragraph (c) refers to the Commissioner of Health,

is not to be read as limiting the exercise of any power that the person or Commissioner has to delegate the performance of his or her functions.

## Guiding principles for the provision of health services

**4.** (1) For the guidance of providers it is declared that health services should be provided so as to promote —

- (a) quality health care, given as promptly as circumstances permit;
- (b) respect for the privacy and dignity of persons receiving health care;
- (c) the provision of adequate information on services provided or treatment available and the effects and costs of treatment, in terms that are understandable;
- (d) participation in decision-making affecting individual health care;
- (e) informed choice in the acceptance or refusal of treatment or participation in education or research programmes;
- (f) reasonable access to information in records relating to personal use of the health care system, except information that is expressly prohibited by law from being disclosed or information contained in personal notes by a person giving health care; and
- (g) the protection of personal health records and personal information from disclosure except for proper purposes.

(2) In deciding for the purposes of section 48 (1) whether unreasonable conduct has occurred, and in making decisions under sections 26 and 34, the Director is to have regard to —

- (a) the guiding principles set out in subsection (1); and

(b) whether there has been a failure by a provider to comply with any professional standards commonly accepted by members of the provider's profession.

(3) If it appears to the Director that a standard referred to in subsection (2) (b) is in conflict or inconsistent with a provision of the guiding principles the Director is to have regard to the standard to the exclusion of that provision.

(4) This section does not create any duty that may found an action for breach of statutory duty.

**Crown bound**

**5.** This Act binds the Crown.

## **PART 2 — ADMINISTRATIVE ARRANGEMENTS**

### **Office established**

**6.** (1) There is established by this subsection an Office of Health Review.

(2) The Office consists of the Director and the members of the staff of the Office.

(3) The Office is an agent of the Crown.

### **Director**

**7.** (1) The Governor is to appoint a person to be the Director of the Office.

(2) The office of Director is not an office in the Public Service and is not to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

### **Tenure, salary etc.**

**8.** Schedule 2 has effect with respect to the tenure, salary and conditions of service of the Director and the other matters provided for in that Schedule.

### **Judicial notice of appointment and signature**

**9.** All courts and persons acting judicially are to take judicial notice —

- (a) of the fact that a person holds or held the office of Director; and
- (b) of the official signature of a person who holds or has held the office of Director.

**Functions and powers of Director**

- 10.** (1) The functions of the Director are —
- (a) to undertake the receipt, conciliation and investigation of complaints under Part 3 and to perform any other function vested in the Director by this Act or another written law;
  - (b) to review and identify the causes of complaints, and to suggest ways of removing and minimizing those causes and bringing them to the notice of the public;
  - (c) to take steps to bring to the notice of users and providers details of complaints procedures under this Act;
  - (d) to assist providers in developing and improving complaints procedures and the training of staff in handling complaints;
  - (e) with the approval of the Minister, to inquire into broader issues of health care arising out of complaints received;
  - (f) subject to subsection (4), to cause information about the work of the Office to be published from time to time; and
  - (g) to provide advice generally on any matter relating to complaints under this Act, and in particular —
    - (i) advice to users on the making of complaints to registration boards; and
    - (ii) advice to users as to other avenues available for dealing with complaints.

(2) The Director may do all things that are necessary or convenient to be done for the performance of the Director's functions.

(3) Without limiting subsection (2) the Director may with the approval of a registration board —

- (a) appear at any proceedings before that board and cross-examine or call and examine witnesses and make submissions; and
- (b) do any of those things through a representative.

(4) The function of the Director under subsection (1) (f) does not include the publication of information in a form that —

- (a) discloses the identity of a user involved in a complaint; or
- (b) might enable the identity of any such person to be ascertained,

but nothing in this subsection affects the operation of section 56.

### **Minister may give directions**

**11.** (1) The Minister may give directions in writing to the Director with respect to the performance of the functions of the Director, either generally or in relation to a particular matter, and the Director is to give effect to any such direction.

(2) Without limiting section 45 or 46, the Minister cannot under subsection (1) direct the Director with respect to the performance of the Director's functions in respect of —

- (a) a particular person;
- (b) a particular complaint; or
- (c) a matter relating to a particular complaint.

(3) The text of any direction given under subsection (1) is to be —

- (a) laid before each House of Parliament within 14 sitting days of that House after the direction is given; and
- (b) included in the annual report submitted by the accountable authority in respect of the Office under section 66 of the *Financial Administration and Audit Act 1985*.

**Minister to have access to information**

**12.** (1) The Minister is entitled —

- (a) to have information in the possession of the Director; and
- (b) where the information is in or on a document, to have, and make and retain copies of, that document.

(2) For the purposes of subsection (1) the Minister may —

- (a) request the Director to furnish information to the Minister;
- (b) request the Director to give the Minister access to information; and
- (c) for the purposes of paragraph (b) make use of the staff of the Office to obtain the information and furnish it to the Minister.

(3) The Director is to comply with a request under subsection (2) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.

(4) The Minister is not entitled to have information under this section in a form that —

- (a) discloses the identity of a person involved in a complaint; or

- (b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

- (5) In this section —

**“document”** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

**“information”** means information specified, or of a description specified, by the Minister that relates to the functions of the Director.

## Financial administration

**13.** (1) There is to be an account at the Treasury called the “Office of Health Review Account”.

- (2) The account referred to in subsection (1) —

- (a) is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; and

- (b) is to be the account —

- (i) to which all funds of the Office are to be credited; and

- (ii) to which all expenditure incurred by the Office is to be charged.

(3) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Office and its operations.

**Staff**

**14.** Public Service officers are to be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Director to perform his or her functions.

**Consultants**

**15.** (1) The Director may, with the approval of the Minister, engage persons under contracts for services to provide such professional, technical or other assistance as the Director considers necessary for the carrying out of this Act.

(2) An approval of the Minister under subsection (1) may be specific or may be given in general terms.

**Use of other government staff etc.**

**16.** (1) The Director may by arrangement make use, either full-time or part-time, of —

- (a) the services of staff employed in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the Public Service or of a State agency or instrumentality.

(2) An arrangement under subsection (1) is to be made between the Director and the relevant employing authority and on such terms as they agree.

**Oath of office**

**17.** (1) Before commencing to carry out his or her duties under this Act the Director and each member of the staff of the

Office are to take an oath or make an affirmation that he or she —

- (a) will faithfully and impartially perform those duties;  
and
- (b) will not, except in accordance with this Act, divulge any information received under this Act.

(2) The Director's oath or affirmation is to be taken by a Judge and that of a member of the staff is to be taken by the Director.

### **Delegation**

**18.** (1) The Director may by instrument in writing delegate to a member of the staff of the Office the performance of any of the functions of the Director under this Act, but not including the power to delegate under this section.

(2) A delegation may be general or as otherwise provided by the instrument of delegation.

(3) A delegate remains subject to the direction and control of the Director.

(4) Performance of a function by a delegate is to be treated as performance by the Director.

### **PART 3 — COMPLAINTS**

#### ***Division 1 — Right to complain conferred***

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

**19.** A complaint alleging one or more of the matters set out in section 25 may be made to the Director by —

- (a) a user;
- (b) a user's representative recognized under section 20; or
- (c) a provider to whom section 22 applies.

##### **Representatives**

**20.** (1) The Director may recognize as a user's representative a person whom the user has chosen to complain on the user's behalf.

(2) The Director may recognize as a user's representative a person who is not chosen by the user, and may allow that person to complain to the Director on the user's behalf, if, in the Director's opinion —

- (a) the user is unable to complain to the Director and unable to choose a person to complain on the user's behalf; and
- (b) the person who wishes to represent the user has, in the Director's opinion, a sufficient interest in the subject matter of the complaint.

(3) The Director is not to recognize a person as a representative unless the person satisfies the Director that he or she —

- (a) is acting without remuneration; and
- (b) except in the case of a relative of the user, has no financial interest in the outcome of the complaint.

**Representative not to be paid**

**21.** A person must not demand or receive any remuneration for acting as a representative of a user for the purposes of this Part.

Penalty: \$1 000 for a first offence;  
\$10 000 for any subsequent offence.

**Provider may complain for user**

**22.** A provider may complain to the Director on behalf of a user about a health service provided for the user by another provider if the provider satisfies the Director that, because of the user's state of health or general situation, it would be difficult or impossible for the user to make a complaint.

**Complaints to public providers, referral under administrative instructions**

**23.** (1) If —

- (a) a complaint has been made to a public provider alleging one or more matters set out in section 25;
- (b) there are administrative instructions in force under subsection (4) about the resolution of such complaints; and
- (c) the complaint has not been resolved in accordance with those administrative instructions,

the complaint is to be referred to the Director in accordance with those administrative instructions.

(2) A complaint by a person that is referred under subsection (1) is to be treated by the Director as if it were a complaint made by that person under section 19.

(3) The referral does not require the consent of the person who made the complaint.

(4) The Minister may issue administrative instructions for the purposes of this section by publishing the same in the *Government Gazette*, and may in the same way revoke or amend any instructions in force.

(5) The administrative instructions are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

### **Time limit**

**24.** The Director must reject a complaint about an incident which occurred more than 12 months before the complaint is made unless in the Director's opinion the person who made the complaint has shown good reason for the delay.

### **What may be included in a complaint**

**25.** (1) A complaint must allege that one or more of the following has occurred —

- (a) a public provider has acted unreasonably by not providing a health service for the user;
- (b) a provider has acted unreasonably in the manner of providing a health service for the user;
- (c) a provider has acted unreasonably in providing a health service for the user;
- (d) a provider has acted unreasonably by denying or restricting the user's access to records kept by the provider and relating to the user;

- (e) a provider has acted unreasonably in disclosing or using the user's health records or confidential information about the user;
  - (f) a manager has acted unreasonably in respect of a complaint made to an institution by a user about a provider's action which is of a kind mentioned in paragraphs (a) to (e) by —
    - (i) not properly investigating the complaint or causing it to be properly investigated; or
    - (ii) not taking, or causing to be taken, proper action on the complaint;
  - (g) a provider has —
    - (i) acted unreasonably by charging the user an excessive fee; or
    - (ii) otherwise acted unreasonably with respect to a fee.
- (2) In subsection (1) (f) —

“**manager**” means a person who comes within paragraph (b) of the definition of “provider” in section 3 (1) or the Commissioner of Health as mentioned in paragraph (c) of that definition.

### **Complaints that must be rejected**

**26.** (1) The Director must reject a complaint that in the Director's opinion —

- (a) is vexatious, trivial or without substance;
- (b) does not warrant any further action; or
- (c) does not comply with this Act.

(2) If an issue raised in a complaint has already been determined by a court or an industrial tribunal or a registration board, the Director must reject the complaint to the extent to which it relates to that issue unless in the Director's opinion it relates to matters that were not determined by the court, industrial tribunal or board.

(3) Nothing in this section affects the operation of section 28.

### ***Division 2 — Initial procedures***

#### **How to complain**

**27.** (1) A person may complain to the Director orally, including by telephone, or in writing.

(2) If the Director receives an oral complaint the Director must require the person who made it to confirm it in writing.

(3) A person who complains to the Director must give to the Director —

- (a) his or her name; and
- (b) such other information relating to the person's identity as the Director may require.

(4) The Director may choose to keep information given to the Director under subsection (3) confidential if there are special circumstances and the Director thinks it is in the complainant's interest to do so.

(5) The Director may require a person who complains to give more information about the complaint within a time fixed by the Director.

(6) If a person does not comply with a requirement of the Director under subsection (2), (3) or (5), the Director may reject the complaint.

#### **Referral of complaint where Act inapplicable**

**28.** If a complaint relates to an excluded service the Director may, with the written consent of the person who made the complaint, refer the complaint to an appropriate person or body (if any).

#### **Withdrawal of complaint**

**29.** A person who complains to the Director may at any time withdraw the complaint by notifying the Director, and the Director must then —

- (a) stop dealing with the complaint; and
- (b) if notice has been given under section 35 (1), notify the provider or other person of the withdrawal.

#### **User must try to resolve matter**

**30.** The Director must not refer a complaint for conciliation or investigate a complaint unless the Director is satisfied that —

- (a) the user has taken reasonable steps to resolve the matter with the provider; or
- (b) if the complaint was made on the user's behalf, all reasonable steps to resolve the matter have been taken on the user's behalf.

**Referral of complaint to registration board**

**31.** If a complaint, or an element of a complaint, relates to a registered provider and in the Director's opinion the complaint —

- (a) is not suitable for conciliation or investigation; or
- (b) should be dealt with by a registration board,

the Director may —

- (c) after consultation with that board; and
- (d) with the written consent of the person who made the complaint,

refer the complaint, or the element of the complaint, to that board for action under section 54 (1).

**Referral to other bodies**

**32.** (1) If a complaint raises issues that in the opinion of the Director require investigation by another person or body, other than a registration board, the Director may refer the complaint to that person or body.

(2) A referral under subsection (1) may only be made with the consent of the person who made the complaint.

**Notice of referral etc.**

**33.** If the Director has referred a complaint under section 31 or 32, the Director must —

- (a) within 28 days notify the user and provider of the referral; and

- (b) give to the user and the provider a copy of each written communication that the Director gives to the registration board, person or body concerning the complaint, on the day on which that communication is given.

**Preliminary assessment by Director**

**34.** (1) Within 28 days after receiving a complaint the Director must decide whether, and to what extent —

- (a) to accept it;
- (b) to reject it; or
- (c) to refer it under section 31 or 32,

but the Director may extend the 28 day period for a further period not exceeding 28 days if it is for the benefit of the person who made the complaint to do so.

(2) To enable the Director to make a decision under subsection (1) the Director may make such inquiries as the Director considers appropriate.

(3) If there is a delay in obtaining information requested by the Director, he or she may extend the period within which a decision must be made under subsection (1).

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

(5) The fact that a complaint has been referred to a registration board for the reason referred to in section 31 (b) does not prevent the Director, after consultation with the board, from accepting it and referring it for conciliation under subsection (4).

(6) If the Director decides to reject a complaint, the Director must notify the person who made the complaint of the rejection.

**Notice to provider and others**

**35.** (1) Subject to this section, within 14 days after deciding to accept a complaint the Director —

- (a) must give written notice of the decision to the provider;
- (b) if the complaint is against a registered provider, may give notice of the decision to the provider's registration board; and
- (c) may give notice of the decision to any other person concerned.

(2) If the Director considers that on account of particular circumstances the disclosure of the complainant's identity in a notice under paragraph (a) of subsection (1) —

- (a) may result in the health or safety of the user being put at risk; or
- (b) would prejudice the proper investigation of the complaint,

the Director in giving the notice under that paragraph is not to disclose the identity of the complainant.

(3) Where the Director has acted under subsection (2), the Director must give notice to the provider of the identity of the complainant if the Director later becomes satisfied that the circumstances described in that subsection no longer apply.

***Division 3 — Conciliation***

**Assignment of conciliator**

**36.** (1) On referring a complaint for conciliation the Director must assign the task of conciliating the complaint to a member of the staff whose duties consist of or include the conciliation of complaints.

(2) The Director may under subsection (1) assign 2 or more persons to be joint conciliators.

(3) If a conciliator becomes for any reason unavailable to carry out or complete his or her functions in any particular case, the Director must assign another conciliator to that case.

#### **Notice of referral for conciliation**

**37.** (1) Within 14 days after the Director refers a complaint for conciliation the conciliator must give written notice of that decision to the provider and the person who made the complaint.

(2) The Director must include in the notice —

- (a) details of the arrangements made for conciliation discussions between the provider and that person; and
- (b) a statement that the provider may make submissions to the conciliator.

#### **Role of conciliator**

**38.** A conciliator's function is to encourage the settlement of the complaint by —

- (a) arranging for the provider and the person who made the complaint to hold informal discussions about the complaint;
- (b) helping in the conduct of those discussions; and
- (c) if possible, assisting the provider and the person who made the complaint to reach agreement.

### **Representation**

**39.** (1) Neither a person who has complained to the Director nor a provider may be represented by another person during the conciliation process unless the Director otherwise determines on the ground that the process will not work effectively without that representation.

(2) A determination under subsection (1) does not prevent the personal attendance of any other person who may, in the opinion of the conciliator, help in the conciliation.

### **Reports by conciliator**

**40.** (1) The conciliator —

- (a) may make reports to the Director on the progress of the conciliation process; and
- (b) must make a final report on the result of that process.

(2) A report made under subsection (1) (b) —

- (a) must include details of any agreement reached; and
- (b) if no agreement has been reached, may —
  - (i) recommend that the Director should investigate the matter;
  - (ii) make no recommendation; or
  - (iii) recommend that the Director should not investigate the matter,

and may not make any recommendation except one referred to in this paragraph.

(3) The conciliator must give a copy of a report under subsection (1) (b) —

- (a) to the provider and the user concerned; and
- (b) if the provider is a registered provider, to the provider's registration board.

(4) A copy must be given —

- (a) under subsection (3) (a), on the same day as the conciliator makes the report to the Director; and
- (b) under subsection (3) (b), within 30 days after that day.

### **Parties may resolve matter**

**41.** (1) Nothing in this Act prevents the person who has made a complaint and the provider resolving the matter by agreement at any time, whether through the conciliation process or not.

(2) If such a resolution occurs the person who made the complaint must without delay give notice of the fact to the Director.

(3) When the Director or a conciliator becomes aware that a complaint has been resolved he or she must stop dealing with the complaint under this Act.

### **Protection of statements made**

**42.** (1) Evidence of anything said or admitted during the conciliation process —

- (a) is not admissible in proceedings before a court or tribunal; and
- (b) cannot be used by the Director as a ground for exercising a power of investigation.

(2) Despite section 20 (3) of the *Parliamentary Commissioner Act 1971*, the contents of a report by a conciliator under section 40 may be disclosed to the Parliamentary Commissioner for Administrative Investigations for the purposes of an investigation under that Act.

***Division 4 — Subsequent action***

**Action to be taken by Director**

**43.** (1) If a conciliator recommends that the Director should not investigate a complaint, the Director must not —

- (a) investigate the complaint;
- (b) refer it again for conciliation; or
- (c) deal with it in any other way authorized by this Act,

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

(2) If a conciliator makes no recommendation about a complaint or recommends that the Director should investigate the matter the Director may —

- (a) investigate the complaint;
- (b) refer it again for conciliation; or
- (c) deal with it in any other way authorized by this Act.

(3) If the Director considers that —

- (a) a complaint which relates to a registered provider and has been referred for conciliation cannot be resolved by conciliation; and

- (b) the provider's registration board has power to deal with the matter,

the Director may —

- (c) after consultation with that board; and
- (d) with the written consent of the person who made the complaint,

refer the complaint to that board for action under section 54 (1).

#### **When Director may investigate complaint**

**44.** (1) The Director may investigate —

- (a) a complaint which the Director has decided to accept if, in the Director's opinion, the complaint is not suitable for conciliation; or
- (b) a complaint which the Director decides in accordance with section 43 to investigate.

(2) Within 14 days after commencing an investigation the Director must give to the provider written notice of the investigation, including, where subsection (1) applies, details of the complaint.

(3) In the case of a registered provider the Director must give a copy of a notice under subsection (2) to the provider's registration board and must notify the provider in writing that the Director has given such notice.

#### **Further power to investigate**

**45.** Where the Minister is of the opinion that —

- (a) the health or welfare of any person is or may be at risk and circumstances exist in relation to that person that would justify a complaint being made under this Act; or

- (b) it is in the public interest on a matter of general importance relating to health that an investigation be carried out,

the Minister may direct the Director to conduct an investigation under this Part with such terms of reference as the Minister may specify.

**Investigation of complaints referred to a registration board**

**46.** (1) The Director must not investigate a complaint which the Director has referred to a registration board under section 31 or 43 (3) unless —

- (a) the board asks the Director to continue dealing with the matter;
- (b) the Minister approves of the Director continuing to do so; or
- (c) the Director considers he or she should do so for the purpose of exercising the right to be heard conferred by section 54 (1).

(2) The Minister is not to give an approval under subsection (1) (b) unless —

- (a) the Minister is satisfied that —
  - (i) the acts or omissions of the provider to which the complaint relates may constitute a threat to public safety; or
  - (ii) there is a need for an investigation that is wider than the jurisdiction of the board in question would allow;

or

- (b) the Minister considers that the board has not dealt with the matter as expeditiously as it should have.

**Conciliator must not investigate**

**47.** A person who has under section 36 been assigned the task of conciliating a complaint must not investigate that complaint.

**Purpose of investigation, and procedure**

**48.** (1) The purpose of an investigation under section 44 or 45 (a) is to enable the Director to decide whether any unreasonable conduct described in section 25 has occurred.

(2) In conducting an investigation under section 44 or 45 the Director —

- (a) must proceed with as little formality and technicality and as speedily as the requirements of this Act and proper investigation of the matter permit;
- (b) is not bound by the rules of evidence but may inform himself or herself of any matter in such manner as he or she considers appropriate; and
- (c) may, subject to this Act and the rules of natural justice, determine his or her own procedures.

**Information may be given to registration boards**

**49.** Where the Director has investigated a complaint against a registered provider, information received by the Director for the purpose of the investigation may, despite section 71, be given to the provider's registration board and used by it in the performance of its functions.

**Remedial action where complaint justified**

**50.** (1) If after investigation the Director decides that unreasonable conduct described in section 25 has occurred the Director must decide what action should be taken to remedy the matter.

(2) Within 14 days after making a decision under subsection (1), the Director must give written notice of the decision to the user and the provider, which must include —

- (a) the reasons for the decision; and
- (b) where the decision is that unreasonable conduct described in section 25 has occurred, any action that the Director considers ought to be taken to remedy the matter.

(3) Where the provider is a registered provider the Director must give a copy of a notice under subsection (2) to the provider's registration board.

(4) If asked by the Minister, the Director must give a copy of a notice under subsection (2) to the Minister.

**Provider must report on remedial action**

**51.** (1) Within 45 days after a provider receives notice under section 50 (2), or before the end of any extension of time granted by the Director, the provider must report in writing to the Director what action the provider has taken to remedy the matter.

Penalty: \$2 500.

(2) Within the 45 day period mentioned in subsection (1), a provider may ask the Director to extend the time within which the provider must report to the Director.

(3) If asked under subsection (2), the Director may extend the time within which the provider must report by no more than 15 days.

### ***Division 5 — General***

#### **Director's duty to stop proceedings**

**52.** (1) The Director must stop dealing with an issue that arises out of a complaint if the Director —

- (a) becomes aware that the provider or user has begun legal proceedings which relate to that issue;
- (b) becomes aware that proceedings relating to that specific issue have been initiated before an industrial tribunal; or
- (c) considers that the issue should properly be dealt with by a court or a registration board,

and must, within 14 days, give written notice of the fact that he or she has stopped to the user and the provider and, where the provider is a registered provider, to the provider's registration board.

(2) Subsection (1) (c) does not apply to the extent that the Director considers that he or she should investigate any matter for the purpose of exercising the right to be heard conferred by section 54 (1).

(3) If the Director has stopped dealing with an issue and later becomes aware that the user or the provider has withdrawn or abandoned legal proceedings which relate to that issue, the Director may, with the consent of the user or the person who complained to the Director, re-open proceedings under this Act.

(4) Despite the fact that legal proceedings relating to an issue in a complaint have been begun as mentioned in subsection (1) (a), the Director may refer that complaint for conciliation if —

- (a) the person who made the complaint; and
- (b) the provider,

consent, but the conciliation process is not to continue once the Director becomes aware that the actual hearing of the case has begun.

**Complaint to registration board may be dealt with under this Act**

**53.** (1) If a registration board, in the performance of its functions, receives a complaint that comes within section 25, not being a complaint referred to it under section 31 or 43 (3), the board must give a copy of the complaint to the Director.

(2) Where a copy of a complaint is given to the Director under subsection (1), the Director may determine that the complaint is to be treated as one that was made under this Act if —

- (a) the board and the Director agree that the complaint is suitable for conciliation under this Act; and
- (b) the person who made the complaint consents in writing.

(3) The fact that the Director makes a determination under subsection (2) does not prevent the board from performing its functions in respect of the complaint.

**Registration board to act on complaint referred by Director**

**54.** (1) If a complaint is referred to a registration board under section 31 or 43 (3), the board —

- (a) must investigate the matter to determine whether or not an inquiry should be held in accordance with the Act mentioned in Schedule 1 by which the board is established; and
- (b) if an inquiry is held and the evidence of witnesses is taken in a hearing, may give the Director the opportunity to exercise any of the powers described in section 10 (3) in those proceedings.

(2) When referring a complaint to a registration board under section 31 or 43 (3) the Director may give to the board any relevant information or evidence in the Director's possession.

**Registration board to report as required by Director**

**55.** Where the Director refers a complaint to a registration board under section 31 or 43 (3) the board must provide the Director with such reports as the Director reasonably requires from time to time as to the board's actions in respect of the complaint.

**Reports to, and at the request of, Parliament**

**56.** (1) The Director may at any time place a report before each House of Parliament on any matter that the Director considers necessary —

- (a) arising from an individual complaint or investigation;  
or

- (b) in relation to the performance of the Director's functions.

(2) Subsection (1) does not limit Division 14 of Part II of the *Financial Administration and Audit Act 1985*.

(3) At any time —

- (a) either House of Parliament; or
- (b) any committee of either or both Houses,

may refer to the Director for investigation any matter relating to the provision of health services or a particular health service that the House or committee considers should be investigated by the Director.

(4) If a matter is referred to the Director by either House of Parliament or a committee under subsection (3), the Director must —

- (a) investigate the matter immediately; and
- (b) report the result of the investigation to the presiding officer of the House or committee within any time limit set out in the referral.

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

#### **Action if a House not sitting**

**57.** (1) If either House of Parliament is not sitting the Director may place a report before that House for the purposes of section 56 (1) by giving the report to the Clerk of that House, and that report —

- (a) is taken to have been placed before that House;

- (b) is to be printed by authority of the Clerk of that House; and
- (c) is taken to be a document published by order or under the authority of that House.

(2) The placing of a report before a House that is taken to have occurred under subsection (1) (a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the report by the Clerk.

## Saving

**58.** The validity of anything done under this Act is not affected by a failure to observe a time limit provided for by section 33, 34 (1), 35 (1), 37, 40 (4) or 50 (2).

**PART 4 — DIRECTOR'S POWERS TO OBTAIN  
INFORMATION AND ENTRY TO PREMISES**

**Restriction on powers**

**59.** The Director may exercise the powers in section 60, or apply for a warrant under section 63, for the purpose of an investigation under section 44, 45 or 56 (3), but not otherwise.

**Power to summons, etc.**

**60.** (1) The Director may —

- (a) by notice in writing given to a person require the attendance of the person at a place and time specified in the notice;
- (b) by notice in writing given to a person require the person to produce at a place and time specified in the notice any book, document, or record that is in the possession or under the control of the person and that is relevant to an investigation.

(2) The Director may —

- (a) require a person who appears to take an oath or make an affirmation; and
- (b) administer an oath or affirmation to the person.

(3) The Director may inspect any book, document, or record produced and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents.

(4) A person required to appear or produce documents under subsection (1) must do so in person but may be represented by another person.

**False statements**

**61.** A person must not make a statement or give any information or answer for the purposes of an investigation under section 44, 45 or 56 (3) that the person knows to be false or misleading in a material respect.

Penalty: \$2 500.

**Failure to attend, take oath etc.**

**62.** (1) A person must not, without lawful excuse, refuse or fail —

- (a) to attend; or
- (b) to produce a book, document, or record,

as required by a notice under section 60.

Penalty: \$2 500.

(2) A person must not, without lawful excuse, refuse or fail to be sworn or make an affirmation when required to do so under section 60.

Penalty: \$2 500.

**Application for warrants to enter premises etc.**

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

(2) An application for a warrant must —

- (a) be in writing;
- (b) set out the grounds for seeking the warrant;

- (c) describe the premises that are to be entered; and
- (d) give a general description of the class of persons at the premises (if any) whom it is proposed to medically examine.

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

(4) A magistrate to whom an application is made under this section must refuse it if —

- (a) the application does not comply with the requirements of this Act; or
- (b) when required to do so by the magistrate, the Director does not give to the magistrate more information about the application.

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

#### **Issue of warrant**

**64.** (1) A magistrate to whom an application is made under section 63 may issue a warrant, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary for the purposes of an investigation under section 44, 45 or 56 (3).

(2) A warrant under subsection (1) authorizes the Director, or a member of the staff of the Office named in the warrant —

- (a) to enter and inspect premises named in the warrant;

- (b) if the application for a warrant describes a class of persons whom it is proposed to medically examine, to arrange for the carrying out of a medical examination of a person who is a member of that class —
    - (i) with the consent of that person; or
    - (ii) if that person is unable to consent, with the consent of the person's representative recognized under section 20;
  - (c) to take with him or her such persons as are necessary for exercising the powers conferred by this section;
  - (d) to require a person on the premises to answer questions or produce documents in the person's possession concerning the investigation; and
  - (e) to inspect and take copies of or extracts from documents produced in compliance with a requirement made under paragraph (d).
- (3) There must be stated in a warrant —
- (a) the purpose for which the warrant is issued;
  - (b) the name of the person to whom the warrant is issued;
  - (c) a general description of the classes of persons (if any) who may be medically examined; and
  - (d) a description of the premises that may be entered.
- (4) A magistrate who issues a warrant must cause a record to be made of particulars of the grounds that the magistrate has relied on to justify the issue of the warrant.

**Execution of warrant**

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

(2) A warrant ceases to have effect —

- (a) at the end of the period of one month after its issue;
- (b) if it is withdrawn by the magistrate who issued it; or
- (c) when it is executed,

whichever occurs first.

**Offences relating to warrants**

**66.** (1) A provider and a provider's officers, employees and agents must give to the Director or a person executing a warrant issued under section 64 all the assistance that the Director or person needs and they are able to give to help the Director or person to execute that warrant.

Penalty: \$2 500.

(2) A person must not obstruct or hinder the Director or a person executing a warrant.

Penalty: \$2 500.

(3) A person must not, without reasonable excuse, after being told by the Director or a person executing a warrant what are the person's obligations in relation to the execution of a warrant —

- (a) refuse to answer a question asked by, or produce a document required by, the person executing the warrant; or

- (b) in answer to a question give information that the person knows to be false or misleading in a material respect.

Penalty: \$2 500.

**Information etc. that may be withheld**

**67.** (1) Nothing in this Part or a warrant issued under this Part or a requirement made in executing a warrant prevents a person from —

- (a) refusing to answer a question or produce a book, document or record because the answer would relate to, or the book, document or record contains, information in respect of which the person claims legal professional privilege;
- (b) refusing to answer a question or produce a book, document or record if the answer, or the information in the book, document or record would tend to incriminate the person or render the person liable to a penalty; or
- (c) refusing to answer a question which relates to medical records or to produce medical records unless —
  - (i) those medical records relate to the subject matter of the complaint made under Part 3; and
  - (ii) the person to whom the records relate, or the person's representative, has consented to the disclosure of information in the records.

(2) In subsection (1) (c) (ii) —

**“the person's representative”** means —

- (a) a representative recognized under section 20;

- (b) a guardian of the person under the *Guardianship and Administration Act 1990*; or
- (c) in the case of a minor, a parent or guardian of the minor.

## **PART 5 — GENERAL**

### **Register**

**68.** (1) The Director is to establish and maintain a register of —

- (a) complaints made under Part 3; and
- (b) complaints shown on returns supplied by providers under section 75.

(2) A register under this section may be maintained —

- (a) by making entries in or on a bound or loose-leaf book;  
or
- (b) by recording or storing the particulars to be entered in the register by means of a mechanical, electronic or other device, but so that the particulars so recorded or stored —
  - (i) will remain in the form in which they were originally recorded or stored; and
  - (ii) will be capable of being reproduced in written form.

(3) The form and contents of the register are to be determined by the Director.

### **Protection of Director etc.**

**69.** (1) An action in tort does not lie against the Director or a member of the staff of the Office for anything that he or she has, in good faith, done in the performance or purported performance of a function under this Act.

(2) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(3) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.

(4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

### **Protection of other persons**

**70.** (1) A person to whom this section applies has the same privileges and immunities as he or she would have if the proceedings referred to in subsection (2) were proceedings in the Supreme Court.

(2) This section applies to a person —

- (a) giving or tendering information or evidence for the purpose of conciliation or investigation proceedings under Part 3; or
- (b) representing another person for the purpose of any proceedings referred to in paragraph (a) or proceedings under section 60.

### **Confidentiality**

**71.** (1) A person who is or has been in a situation to which this section applies must not, whether directly or indirectly, record, disclose, or make use of any information obtained because of that situation except —

- (a) in the course of duty;

- (b) as required or allowed by this Act or any other law;
- (c) for the purpose of proceedings for an offence against this Act;
- (d) with the written authority of the Minister or the person to whom the information relates; or
- (e) in other prescribed circumstances.

Penalty: \$2 500.

(2) Subject to subsection (1) (c), (d) or (e), the prohibition in subsection (1) extends to the giving of evidence or the production of a book, document or record to a court.

(3) This section does not apply to the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

(4) The exceptions in subsection (1) (c) and (d) do not apply to information obtained by a person acting as a conciliator.

(5) The situations to which this section applies are —

- (a) holding the office of Director or being a member of the staff of the Office;
- (b) being a participant in conciliation or investigation proceedings under this Act, whether as principal or agent;
- (c) being a person or body to whom the Director refers a complaint;
- (d) being a person who has received a notice under section 33 (a), 35 (1) or (3), 37, 44 (3), or 50 (2) or (3) or a copy of a communication under section 33 (b).

**False statements**

**72.** A person must not make a statement in a complaint, report or return under this Act that the person knows to be false or misleading in a material respect.

Penalty: \$2 500.

**Person not to be penalized because of complaining to Director**

**73.** A person must not —

- (a) by threats or intimidation persuade or attempt to persuade another person not to complain to the Director or not to continue discussion with or proceedings before the Director; or
- (b) refuse to employ, or dismiss, another person or subject another person to any detriment, because the other person intends to complain, or has complained, to the Director, or intends to take part, is taking part, or has taken part, in discussions with or proceedings before the Director.

Penalty: \$2 500.

**Avoidance of doubt**

**74.** For the purposes of section 14 (4) (a) of the *Parliamentary Commissioner Act 1971* the right to make a complaint under this Act is not to be regarded as a right of appeal, reference or review to or before a tribunal.

**Prescribed provider must give certain information**

75. (1) Within the prescribed time after 30 June in each year a prescribed provider or a provider that belongs to a prescribed class of providers must give to the Director a return concerning complaints received and action taken by the provider during the year that ended on that 30 June.

Penalty: \$1 000.

(2) The return is to be in the prescribed form or the form prescribed for the class of providers, as the case may require.

**Prosecutions**

76. (1) Proceedings for an offence against this Act may be taken in the name of the Director by the Director or any person authorized by the Director.

(2) In any proceedings no proof is required of the appointment of the Director but a statement in a complaint that a person is the Director or is authorized by the Director under subsection (1) is to be taken to be proved in the absence of evidence to the contrary.

**Regulations**

77. The Governor may make regulations —

- (a) in respect of complaints, conciliation, investigations, reports, returns, notices and procedures provided for by this Act;
- (b) prescribing forms to be used for the purposes of this Act; and

- (c) generally prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

### **Transitional provision**

**78.** (1) The application of this Act extends to health services provided within the 12 months before the commencement of this Act.

(2) A complaint to which subsection (1) applies that would otherwise be out of time under section 24 may be accepted by the Director if, in the opinion of the Director, it is made within a reasonable time after the commencement of this Act.

### **Review**

**79.** (1) The Minister is to carry out a review of the operations and the effectiveness of the Office as soon as is practicable after the expiry of 5 years from its establishment and in the course of that review the Minister is to consider and have regard to —

- (a) the desirability of the continuation of the functions of the Office; and
- (b) such other matters as appear to the Minister to be relevant to the operations and effectiveness of the Office.

(2) The Minister is to prepare a report based on the review carried out under subsection (1) and is to cause that report to be laid before each House of Parliament as soon as practicable.

**Consequential amendments**

**80.** (1) The *Constitution Acts Amendment Act 1899\** is amended in Schedule V, in Division 3 of Part 1, by inserting in the appropriate alphabetical position the following —

“  
The Director appointed under the *Health Services (Conciliation and Review) Act 1995*.  
”.

[\* *Reprinted as at 17 May 1995.*]

(2) The *Disability Services Act 1993\** is amended by inserting after section 33 the following section —

“  
**Health services complaints**  
  
**33A.** A complaint cannot be made under this Act about a matter if a complaint about that matter could be made under Part 3 of the *Health Services (Conciliation and Review) Act 1995*.  
”.

[\* *Act No. 36 of 1993.*  
*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 59.*]

(3) The *Financial Administration and Audit Act 1985\** is amended, in Schedule 1, by inserting in the appropriate alphabetical position the following —

“      Office of Health Review      ”.  
  
[\* *Schedule 1 reprinted as at 26 August 1994.*  
*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 75 and Acts Nos. 2 and 24 of 1995.*]

(4) The *Freedom of Information Act 1992* is amended in Schedule 1, in clause 14 —

- (a) in the heading, by deleting “**secrecy**” and substituting the following —

“ statutory ”; and

- (b) by inserting after subclause (2) the following subclause—

“

(3) Matter is exempt matter if its disclosure would reveal anything said or admitted for the purposes of a conciliation under—

- (a) Division 3 of Part 3; or

- (b) administrative instructions under section 23,

of the *Health Services (Conciliation and Review)*  
*Act 1995*.

”.

[ \* Act No. 76 of 1992.

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p.81 and Acts Nos. 14 and 50 of 1995.]*

(5) The *Government Employees Superannuation Act 1987\** is amended, in Schedule 1, by inserting in Part B in the appropriate alphabetical position the following —

“ Office of Health Review ”.

[ \* Reprinted as at 3 October 1994.

*For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp. 89-90 and Act No. 103 of 1994.]*

(6) The *Parliamentary Commissioner Act 1971*\* is amended, in the Schedule, by inserting in the appropriate alphabetical position the following —

“

Office of Health Review established by section 6 of the  
*Health Services (Conciliation and Review) Act 1995.*

”.

[\* *Reprinted as at 17 May 1995.*]

**SCHEDULE 1**

[Sections 3 and 54]

*Registration Boards*

1. Chiropractors Registration Board under the *Chiropractors Act 1964*.
2. Dental Board of Western Australia under the *Dental Act 1939*.
3. Medical Board under the *Medical Act 1894*.
4. Nurses Board of Western Australia under the *Nurses Act 1992*.
5. Occupational Therapists Registration Board of Western Australia under the *Occupational Therapists Registration Act 1980*.
6. Optometrists Registration Board under the *Optometrists Act 1940*.
7. Pharmaceutical Council of Western Australia under the *Pharmacy Act 1964*.
8. Physiotherapists' Registration Board under the *Physiotherapists Act 1950*.
9. Podiatrists Registration Board under the *Podiatrists Registration Act 1984*.
10. Psychologists Board of Western Australia under the *Psychologists Registration Act 1976*.

**SCHEDULE 2**

[Section 8]

*Tenure, salary, conditions of service, etc., of Director*

**Tenure of office**

1. (1) Subject to this Act, the Director holds office for a term, not exceeding 5 years, fixed by the instrument of appointment, and is eligible for re-appointment once or more than once.

(2) The Director may resign his or her office by writing signed and delivered to the Governor.

**Salary and entitlements**

2. Subject to the *Salaries and Allowances Act 1975*, the Director —

- (a) is to be paid salary and allowances at such rates per annum as the Minister determines on the recommendation of the Minister for Public Sector Management; and
- (b) has the same annual leave, sick leave and long service leave entitlements as a permanent officer of the Public Service.

**Superannuation**

3. (1) If a person was a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* immediately before being appointed as Director, the person may continue to be a contributor under that Act after being appointed.

(2) For the purposes of subclause (1) the Office —

- (a) is a department within the meaning of the *Superannuation and Family Benefits Act 1938*; and
- (b) is to pay to the Board under that Act payments of the kind described in paragraph (i) of the proviso to the definition of “department” in section 6 of that Act.

**Appointment of public service officer**

4. (1) If a person occupied an office in the Public Service immediately before being appointed to the office of Director —

- (a) the person retains existing and accruing entitlements in respect of leave of absence as if service as Director were a continuation of service in the office in the Public Service; and

- (b) the person is entitled to be appointed to an office in the Public Service, not lower in classification and salary than the office which the person occupied if —
  - (i) the person ceases to hold office as Director on the completion of a periodical appointment; and
  - (ii) at that time the person is eligible to occupy an office in the Public Service.

(2) Where a person is appointed to an office in the Public Service under subclause (1) (b) the person retains existing and accruing leave entitlements as if service in the Public Service were a continuation of service in the office of Director.

### **Removal from office**

5. (1) The Governor may remove the Director from office —

- (a) for —
  - (i) misbehaviour or incompetence; or
  - (ii) physical or mental incapacity, other than temporary illness, impairing the performance of the Director's functions;
- (b) if the Director becomes a bankrupt or 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 salary for their benefit.

(2) In subclause (1) (a) (i) —

**“misbehaviour”** includes conduct that renders the Director unfit to hold office as Director notwithstanding that the conduct does not relate to any function of the office.

### **Other conditions of service**

6. Subject to this Schedule, the Governor may, on the recommendation of the Minister for Public Sector Management, determine other terms and conditions of service (if any) that apply to the Director.