

5.2.4

HEALTH CARE COMPLAINTS COMMISSION

REFERRING COMPLAINTS TO THE OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS (ODPP)

FOR INSERTION IN INVESTIGATION MANUAL

Introduced October 2002

Introduction

All Commission officers with cases involving criminal conduct including sexual misconduct need to consider referral of the matter the subject of the complaint to the ODPP. Referral can occur at assessment pursuant to s.20 and s.26 of the Health Care Complaints Act, or at the end of an investigation pursuant to s.39(1)(f) or during an investigation.

Reference should be made to the Memorandum of Understanding that exists between the HCCC and the ODPP concerning referral of matters and the guidelines and procedures to be followed.

There also needs to be consideration of referral to appropriate agencies conduct which involves breaches of offences under other Acts eg Medical Practice Act and Poisons and Therapeutic Goods Act, 1966.

It will be necessary to discuss with complainants referral of matters to seek their views.

Assessment

All complaints are initially assessed by the Assessment Committee to determine the appropriate course of action. At this stage of the complaint process there is usually only the complainant's allegations to assess.

All complaints at this stage must be assessed as to whether it is appropriate to refer the matter to the ODPP. This does not inhibit the Commission from investigating the complaint at the same time.

If a complaint has been referred by the ODPP s.97 of the Health Care Complaints Act states that it can still be dealt with by the HCCC even though other legal proceedings relating to the matter have commenced.

Investigation

During the investigation process information should be reviewed regularly to determine whether it is appropriate to refer the matter to the ODPP.

The HCCC must consider in all cases if criminal conduct or breaches of other Acts has occurred.

Outcome of Disciplinary Matters

Disciplinary bodies such as Tribunals and Committees have no direct legislative power to refer matters to the ODPP. However they can refer matters to the ODPP where criminal conduct has been committed by anyone involved in the disciplinary proceedings.

New or fresh evidence may come out in proceedings demonstrating criminal conduct which should be referred to the ODPP.

Determining factors for referring the matter to the ODPP

The Commission should refer matters to the ODPP where there is clear criminal conduct but subject to the Memorandum of Understanding and the guidelines outlined in it.

All referrals need to be approved by the Commissioner.

Determining factors for not referring the matter to the ODPP

Reference must again be made to the Memorandum of Understanding and guidelines.

The HCCC may decide that the matter involves no criminal conduct. For example a sexual relationship between two consenting adults. This type of conduct may still be unacceptable to the profession and disciplinary action may follow but it should not be referred.

The HCCC may decide there is insufficient evidence so the matter should not be referred.

The Complainant/victim/patient may express the view that the HCCC should not refer the complaint involving them and they do not want to get involved in criminal proceedings. In the absence of the complainant's evidence the matter could not be proved and should not be referred.