



Australian Capital Territory

Human Rights Commission Amendment Act 2023

A2023-29

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Australian Capital Territory

Human Rights Commission Amendment Act 2023

A2023-29

An Act to amend the *Human Rights Commission Act 2005*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Human Rights Commission Amendment Act 2023*.

2 Commencement

- (1) This Act (other than section 4) commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

- (2) Section 4 commences on this Act's notification day.

3 Legislation amended

This Act amends the *Human Rights Commission Act 2005*.

4 New Human Rights Commission Regulation—sch 1

- (1) The provisions set out in schedule 1 are taken to be a regulation made under the *Human Rights Commission Act 2005*, section 105.

- (2) The regulation—

- (a) is taken to be notified under the [Legislation Act](#) on the day this Act is notified; and
- (b) (other than sections 5 (b) and 6 (b)) commences on the commencement of schedule 1; and
- (c) is not required to be presented to the Legislative Assembly under the [Legislation Act](#), section 64 (1); and

- (d) may be amended or repealed as if it had been made under the *Human Rights Commission Act 2005*, section 105.
- (3) The regulation, sections 5 (b) and 6 (b) commence on a day fixed by the Minister by written notice.
- Note 1* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).
- Note 2* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).
- (4) This Act is taken to be an amending law for the [Legislation Act](#), section 89 (Automatic repeal of certain laws and provisions) despite this section not being a provision mentioned in section 89 (12), definition of *amending law*.

5 When may someone complain about a health service? New section 39 (1) (b) (ia)

insert

- (ia) the health care worker code of conduct prescribed under section 94C;

6 Purpose of considering complaints Section 69

omit

following 3 main purposes

substitute

following main purposes

7 New section 69 (d)

insert

- (d) for a health service complaint about a health care worker acting inconsistently with the code of conduct—whether action should be taken against the worker under division 5.3 (Health care worker code of conduct).

**8 Power to ask for information, documents and other things
Section 73 (4), note 1**

substitute

Note 1 See s 75 for when a person required by a notice under this section to provide information or produce a document or other thing cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty.

**9 Requiring attendance etc
Section 74 (7), note 1**

substitute

Note 1 See s 75 for when a person required by a notice under s (1) to attend before an interviewer to answer questions cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty.

**10 Privileges against self-incrimination and exposure to civil penalty
New section 75 (2A)**

insert

- (2A) However, this section does not apply to a person mentioned in subsection (1) or (2) if the information, document or other thing to be produced, or question asked, relates to a consideration of a complaint under division 5.3 (Health care worker code of conduct).

11 Part 5 heading

substitute

Part 5 Additional matters for health service complaints**12 New divisions 5.3 and 5.4**

insert

Division 5.3 Health care worker code of conduct**94A Definitions—div 5.3**

In this division:

code of conduct means the health care worker code of conduct prescribed under section 94C.

complaint means a complaint made under section 39 (1) (b) (iia) that a health care worker acted inconsistently with the code of conduct.

corresponding law means a law, or part of a law, of a State that is—

- (a) about the conduct required of a health care worker; and
- (b) prescribed by regulation as a corresponding law for this division.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

final order—see section 94H (1).

health care worker—see section 94B.

interim order—see section 94G (1).

prohibition or condition order, for a health care worker, means an order made by the commission, in writing, to do any of the following:

- (a) prohibit the health care worker from providing a health service;

- (b) prohibit the health care worker from offering, advertising or otherwise promoting a health service (including a health service provided by another person);
- (c) prohibit the health care worker from holding themselves out or otherwise promoting themselves as a provider of a health service;
- (d) prohibit the health care worker from providing advice in relation to the provision of a health service (including a health service provided by another person);
- (e) place a condition on the provision of a health service by the health care worker.

public servant complaint—see section 94D (1).

public service entity means either of the following:

- (a) the public service;
- (b) a statutory office-holder.

public statement means a public statement made by the commission under section 94I.

register means the register of prohibition or condition orders under section 94Q.

relevant professional body, for a health care worker, means a professional body—

- (a) of which the health care worker is, or is eligible to be, a member;
or
- (b) that has members who provide the health service provided by the health care worker; or
- (c) that the commission is satisfied on reasonable grounds is relevant to the health care worker and the health service provided by the health care worker.

94B Meaning of *health care worker*—div 5.3

(1) In this division:

health care worker—

- (a) means an individual who provides a health service to another individual; but
- (b) does not include an individual to the extent that the individual provides the health service—
 - (i) as a health practitioner; or
 - (ii) as a registered teacher carrying out teaching duties.

(2) In this section:

registered teacher—see the [ACT Teacher Quality Institute Act 2010](#), dictionary.

teaching—see the [ACT Teacher Quality Institute Act 2010](#), section 8.

94C Code of conduct may be prescribed

A regulation may prescribe a code of conduct in relation to the provision of a health service by a health care worker.

94D Code of conduct breach by public servants

- (1) This section applies to a complaint made to the commission about a public servant acting inconsistently with the code of conduct in relation to the provision of a health service to another individual as part of their employment as a public servant (a ***public servant complaint***).
- (2) The Executive may determine a process the commission and relevant public service entities must follow in dealing with public servant complaints.
- (3) Before determining a process, the Executive must consult the commission.

- (4) The Executive must be reasonably satisfied that a process determined under subsection (2) gives a health care worker who is the subject of a public servant complaint no less protection than that given to a health care worker who is the subject of a prohibition or condition order, or public statement, to which section 94F applies.
- (5) A process may include provision for the following:
 - (a) the sharing of information mentioned in section 94E (1) about a public servant complaint with the relevant public service entity;
 - (b) who the relevant public service entity is for a particular complaint;
 - (c) the commission and the public sector standards commissioner to establish a relationship protocol to help ensure public servant complaints are dealt with promptly and efficiently;
 - (d) the commission not to make a final prohibition or condition order in relation to a public servant complaint while a misconduct procedure is being conducted, without the agreement of the public sector standards commissioner;
 - (e) the commission to be able to extend the period an interim order is in force while a misconduct procedure is conducted.
- (6) A process is a disallowable instrument.
- (7) In this section:

misconduct procedure means a misconduct procedure under the *Public Sector Management Act 1994* or an enterprise agreement approved under the *Fair Work Act 2009* (Cwlth).

94E Code of conduct breach by public servants—information sharing

- (1) The commission may disclose any information that has been disclosed to, or obtained by, the commission in the consideration of a public servant complaint to an information sharing entity if the commission considers that—
 - (a) the information is relevant to the exercise of the information sharing entity's functions; and
 - (b) the disclosure of the information to the information sharing entity is appropriate.
- (2) An information sharing entity may disclose any information held by the entity to the commission if the entity considers that—
 - (a) the information is relevant to the commission's consideration of a public servant complaint; and
 - (b) the disclosure of the information to the commission is appropriate.
- (3) In this section:
head, of a public service entity, means—
 - (a) for the public service—the head of service; and
 - (b) for an administrative unit—the director-general of the administrative unit; and
 - (c) for a statutory office-holder—the statutory office-holder.*information sharing entity* means either of the following:
 - (a) the public sector standards commissioner;
 - (b) the head of a public service entity.

94F Principles for making prohibition or condition order or public statement

In making a prohibition or condition order or public statement, the commission—

- (a) must act with as little formality as reasonably practicable; and
- (b) is bound by the rules of natural justice; and
- (c) is not bound by the rules of evidence; and
- (d) before making a decision affecting a person, must give the person an opportunity to make submissions to the commission about the decision.

Note The commission must deal with complaints promptly and efficiently (see s 45).

94G Interim prohibition or condition order

- (1) The commission may make a prohibition or condition order in relation to a health care worker for a stated period of not more than 8 weeks (an *interim order*) if the commission—
 - (a) is considering a complaint in relation to the health care worker; and
 - (b) believes on reasonable grounds that—
 - (i) the health care worker acted inconsistently with the code of conduct; and
 - (ii) there would be a serious risk to the health or safety of the public if the health care worker continued to provide a health service.
- (2) The period of the interim order must not be longer than the period reasonably required for the commission to decide if a final prohibition or condition order is required.

-
- (3) For a public servant complaint, the period of an interim order may be affected by the process determined under section 94D.
 - (4) As soon as practicable after making an interim order, the commission must give a copy of the order to the health care worker.

Note The commission must also give the health care worker a statement of reasons (see s 94J).

- (5) The commission may give a copy of an interim order to—
 - (a) any relevant professional body for the health care worker; and
 - (b) another person if satisfied on reasonable grounds that it is in the interest of the health or safety of the public to do so.

Examples—par (b)

- the health care worker’s employer
- a related health service provider
- a client

94H Final prohibition or condition order

- (1) The commission may make a prohibition or condition order in relation to a health care worker for a stated period, including a permanent order, (a *final order*) if—
 - (a) the commission is satisfied on reasonable grounds that there would be a serious risk to the health or safety of the public if the health care worker continued to provide a health service; and
 - (b) either of the following apply:
 - (i) the commission—
 - (A) has considered a complaint in relation to the health care worker; and
 - (B) is satisfied on reasonable grounds that the health care worker acted inconsistently with the code of conduct;

- (ii) the health care worker is convicted of an offence under any of the following in relation to a health service provided by the health care worker:
 - (A) the *Competition and Consumer Act 2010* (Cwlth);
 - (B) the *Fair Trading (Australian Consumer Law) Act 1992*;
 - (C) the *Health Act 1993*, section 127 (Provision of regulated health service by person not health practitioner);
 - (D) the *Health Practitioner Regulation National Law (ACT)*, part 7, division 10;
 - (E) the *Public Health Act 1997*.
- (2) The period of the final order must not be longer than the period reasonably required to protect the health or safety of the public.
- (3) However, if the health care worker is a health practitioner, the commission must not make a final order without—
 - (a) giving the relevant board for the health practitioner a reasonable opportunity to respond to the proposed order; and
 - (b) considering the response (if any).
- (4) As soon as practicable after making a final order, the commission must give a copy of the order to the health care worker.

Note The commission must also give the health care worker a statement of reasons (see s 94J).
- (5) The commission may give a copy of a final order to—
 - (a) any relevant professional body for the health care worker; or
 - (b) another person if satisfied on reasonable grounds that it is in the interest of the health or safety of the public to do so.

941 Public statement about health care worker or health service

- (1) The commission may make a public statement in relation to a health care worker if the commission believes on reasonable grounds that there is a serious risk to the health or safety of the public in relation to—
 - (a) a health service provided or offered by the health care worker; or
 - (b) the health care worker being convicted of an offence under any of the following in relation to a health service provided by the health care worker:
 - (i) the *Competition and Consumer Act 2010* (Cwlth);
 - (ii) the *Fair Trading (Australian Consumer Law) Act 1992*;
 - (iii) the *Health Act 1993*, section 127 (Provision of regulated health service by person not health practitioner);
 - (iv) the *Health Practitioner Regulation National Law (ACT)*, part 7, division 10;
 - (v) the *Public Health Act 1997*.
- (2) The commission may make a public statement in relation to a health service if the commission believes on reasonable grounds that there is a serious risk to the health or safety of the public arising from the health service.
- (3) A public statement may be made in any form.
- (4) A public statement made in relation to a health care worker may include any of the following:
 - (a) the identity of the health care worker;

- (b) information, including a warning, about—
 - (i) the health care worker; or
 - (ii) the health service provided by the health care worker;
 - (c) if the health care worker provides the health service in connection with a provider—
 - (i) the identity of the provider; and
 - (ii) information, including a warning, about the provider;
 - (d) information contained in a final order made in relation to the health care worker.
- (5) A public statement made in relation to a health service may contain information, including a warning, about the health service generally.
- (6) The commission—
- (a) may vary or withdraw a public statement; and
 - (b) if a statement is varied or withdrawn—must set out the reason for the variation or withdrawal in the same form as the statement was made.

94J Statement of reasons for prohibition or condition order or public statement

- (1) If the commission makes a prohibition or condition order or a public statement in relation to a health care worker, the commission must give a statement of reasons for making the order or statement to—
- (a) the health care worker; and
 - (b) for a final order or a public statement made in relation to a complaint made about the health care worker—the complainant.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (2) The commission may also do 1 or more of the following:
- (a) make the statement of reasons publicly available;
 - (b) give a copy of the statement to any relevant professional body for the health care worker;
 - (c) give a copy of the statement to another person if satisfied on reasonable grounds it is in the interest of the health or safety of the public to do so.
- (3) Before giving the statement of reasons to a person or making it publicly available, the commission may remove confidential information from the statement if the commission sets out in the statement—
- (a) that information was removed because it was confidential; and
 - (b) the nature of the information that was removed.
- (4) This section does not affect the power of a court to make an order for the discovery of a document or to require the giving of evidence or the production of documents to a court.
- (5) In this section:
- confidential information***, in relation to a statement of reasons, means information—
- (a) that is not publicly available when the statement is made; and
 - (b) that is about the personal or business affairs of a person other than the person who is given the statement; and
 - (c) where 1 or more of the following apply:
 - (i) the information was given to the commission in confidence;
 - (ii) publishing the information would reveal a trade secret;
 - (iii) the information was provided in compliance with a duty imposed under an Act;

- (iv) the commission would breach a law by providing the information.

94K Correction of public statement

- (1) This section applies if the commission becomes aware a public statement is incorrect in a material way.
- (2) The commission must make a statement setting out the correct information or withdraw the public statement.

Note If a statement is changed or withdrawn, the commission must set out the reason for the change or withdrawal in the same form as the statement was made (see s 94I (6)).

94L Variation of prohibition or condition order

- (1) A health care worker may, in writing, ask the commission to vary a prohibition or condition order made in relation to the health care worker if there has been a material change in a matter giving rise to the making of the order.
- (2) The commission must, on application or on its own initiative, vary an order if the commission is satisfied—
 - (a) a prohibition or condition in the order is no longer required to protect the health or safety of the public; or
 - (b) a prohibition or condition in the order is more restrictive than what is reasonably required to protect the health or safety of the public; or
 - (c) the period of the order is longer than the period reasonably required to protect the health or safety of the public.
- (3) However, if the health care worker is a health practitioner, the commission must not vary an order without—
 - (a) giving the relevant board for the health practitioner a reasonable opportunity to respond to the proposed order; and

- (b) considering the response (if any).
- (4) As soon as practicable after varying an order, the commission must give a copy of the varied order to the health care worker.
- (5) The commission may give a copy of a varied order to—
 - (a) any relevant professional body for the health care worker; or
 - (b) another person if satisfied on reasonable grounds that it is in the interest of the health or safety of the public to do so.
- (6) If an order is varied, the commission must include on the register the reason for the variation.

94M Cancellation of prohibition or condition order

- (1) A health care worker may, in writing, ask the commission to cancel a prohibition or condition order made in relation to the health care worker if there has been a material change in a matter giving rise to the making of the order.
- (2) The commission must, on application or on its own initiative, cancel an order if the commission is satisfied the order is no longer required to protect the health or safety of the public.
- (3) As soon as practicable after cancelling an order, the commission must tell the following, in writing, the order is cancelled:
 - (a) the health care worker;
 - (b) any relevant professional body for the health care worker;
 - (c) another person if satisfied on reasonable grounds that it is appropriate to do so.
- (4) If an order is cancelled, the commission must include on the register the reason for the cancellation.

94N Health care worker must give notice of registration as health practitioner

- (1) This section applies if—
 - (a) a prohibition or condition order has been made in relation to a person who is a health care worker; and
 - (b) during the period of the order, the person becomes registered under the *Health Practitioner Regulation National Law (ACT)* to practise in a health profession.
- (2) The person must give the commission written notice of the registration as soon as practicable after being registered.
- (3) The commission may exchange information with the relevant board for the health profession in which the person has been registered about—
 - (a) the person’s compliance with the code of conduct; and
 - (b) any action taken in relation to the person for acting inconsistently with the code of conduct.

94O Non-compliance with prohibition or condition order

A person commits an offence if—

- (a) the person is a health care worker; and
- (b) a prohibition or condition order has been made in relation to the person; and
- (c) the person has been given a copy of the prohibition or condition order; and
- (d) the person contravenes the order.

Maximum penalty: 100 penalty units, imprisonment for 12 months, or both.

94P Non-compliance with corresponding prohibition or condition order

- (1) A person commits an offence if—
- (a) the person is a health care worker; and
 - (b) a corresponding prohibition or condition order is in force in relation to the person in a State; and
 - (c) the person provides a health service in the ACT that would contravene the order if it were in force in the ACT.

Maximum penalty: 100 penalty units, imprisonment for 12 months, or both.

Note *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

- (2) In this section:

corresponding prohibition or condition order means an order made under a corresponding law that—

- (a) corresponds, or substantially corresponds, to a prohibition or condition order made under this division; and
- (b) is prescribed by regulation as a corresponding prohibition or condition order for this division.

94Q Commission to keep register

The commission must—

- (a) keep a register of prohibition or condition orders made; and
- (b) ensure that current prohibition or condition orders are accessible at all times free of charge on a website approved by the commission.

94R Exchange of information

The commission may exchange information with an entity responsible for administering or upholding a corresponding law about the following:

- (a) a health care worker's compliance with the code of conduct or a corresponding law;
- (b) action taken in relation to a health care worker for acting inconsistently with the code of conduct or a corresponding law.

Division 5.4 Notification and review of decisions

94S Meaning of *reviewable decision*—div 5.4

In this division:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

94T Reviewable decision notices

If the commission makes a reviewable decision, the commission must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The commission must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

94U Applications for review

An entity mentioned in schedule 1, column 4 in relation to a reviewable decision may apply to the ACAT for a review of the decision.

Note If a form is approved under the [ACT Civil and Administrative Tribunal Act 2008](#) for the application, the form must be used.

13 New schedule 1

insert

Schedule 1 Reviewable decisions

(see div 5.4)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	94G (1)	make interim order	person subject to interim order
2	94H (1)	make final order	person subject to final order
3	94I	make, vary or withdraw public statement	<ul style="list-style-type: none"> • person mentioned in public statement • person providing health service mentioned in public statement
4	94L	not vary prohibition or condition order	person requesting variation
5	94M	not cancel prohibition or condition order	person requesting cancellation

14 Dictionary, note 2

insert

- head of service
- person (see s 160)
- public sector standards commissioner
- public servant

15 Dictionary, new definition of *code of conduct*

insert

code of conduct, for division 5.3 (Health care worker code of conduct)—see section 94A.

16 Dictionary, definition of *complaint*, new paragraph (c)

insert

(c) for division 5.3 (Health care worker code of conduct)—see section 94A.

17 Dictionary, new definitions

insert

corresponding law, for division 5.3 (Health care worker code of conduct)—see section 94A.

final order, for division 5.3 (Health care worker code of conduct)—see section 94H (1).

health care worker, for division 5.3 (Health care worker code of conduct)—see section 94B.

interim order, for division 5.3 (Health care worker code of conduct)—see section 94G (1).

prohibition or condition order, for a health care worker, for division 5.3 (Health care worker code of conduct)—see section 94A.

public servant complaint, for division 5.3 (Health care worker code of conduct)—see section 94D (1).

public service entity, for division 5.3 (Health care worker code of conduct)—see section 94A.

public statement, for division 5.3 (Health care worker code of conduct)—see section 94A.

register, for division 5.3 (Health care worker code of conduct)—see section 94A.

relevant professional body, for a health care worker, for division 5.3 (Health care worker code of conduct)—see section 94A.

reviewable decision, for division 5.4 (Notification and review of decisions)—see section 94S.

Schedule 1 New Human Rights Commission Regulation

(see s 4)



Australian Capital Territory

Human Rights Commission Regulation 2023

Subordinate Law SL2023-

made under the

Human Rights Commission Act 2005

Part 1 Preliminary

1 Name of regulation

This regulation is the *Human Rights Commission Regulation 2023*.

2 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere in this regulation.

For example, the signpost definition ‘*client*, of a health care worker, for part 2 (Code of conduct for health care workers—Act, s 94C)—see section 4.’ means that the term ‘client’ is defined in that section for pt 2.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

3 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

Part 2 Code of conduct for health care workers—Act, s 94C

4 Meaning of *client*—pt 2

In this part:

client, of a health care worker, means an individual to whom a health service is provided or offered by the health care worker.

5 Prescribed corresponding law

For the Act, division 5.3 (Health care worker code of conduct), the following laws are prescribed:

- (a) the *Health and Community Services Complaints Act 2004* (SA);
- (b) the *Health and Disability Services (Complaints) Act 1995* (WA);
- (c) the *Health Care Complaints Act 1993* (NSW);
- (d) the *Health Complaints Act 2016* (Vic);
- (e) the *Health Ombudsman Act 2013* (Qld).

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

6 Corresponding prohibition or condition orders

For the Act, division 5.3 (Health care worker code of conduct), the following orders are prescribed:

- (a) an order under the *Health and Community Services Complaints Act 2004* (SA), section 56B (Interim action) or section 56C (Commissioner may take action);
- (b) an order under the *Health and Disability Services (Complaints) Act 1995* (WA), part 3D, division 1 (Interim prohibition orders) or division 2 (Prohibition orders);

-
- (c) an order under the *Health Care Complaints Act 1993* (NSW), section 41AA (Interim protection orders) or section 41A (Prohibition orders and public statements);
 - (d) an order under the *Health Complaints Act 2016* (Vic), part 8, division 1 (Interim prohibition orders) or division 2 (Prohibition orders);
 - (e) an order under the *Health Ombudsman Act 2013* (Qld), part 7, division 2 (Interim prohibition orders) or part 8A (Prohibition orders).

7 Application of code of conduct

This code applies to a health care worker.

8 Health care worker must provide safe and ethical health service

- (1) A health care worker must provide a health service in a safe and ethical way.
- (2) Without limiting subsection (1), a health care worker must—
 - (a) be competent to provide the health service; and
 - (b) have the experience, training and qualification required to provide the health service; and
 - (c) only prescribe or recommend a treatment or appliance to a client that the health care worker believes serves the needs of the client; and
 - (d) recognise the limit of the treatment the health care worker can provide; and
 - (e) if appropriate, refer a client to another competent health service; and

- (f) if appropriate, recommend a client seek another opinion or health service; and
- (g) if required and practicable, assist a client to find another appropriate health service; and
- (h) encourage a client to tell the client's treating doctor (if any) about the health service being provided by the health care worker; and
- (i) provide a health service in a manner that is sensitive to the cultural needs of a client; and
- (j) if the health care worker is, or should be, aware a client is taking or receiving another health service—understand the interaction between the health services and tell the client about any possible adverse interaction.

9 Health care worker must have client consent

Before a health care worker provides a health service to a client, the health care worker must be satisfied on reasonable grounds that the client consents to the health service.

10 Health care worker must not claim to cure cancer or terminal illness

- (1) A health care worker must not claim to be qualified, able or willing to cure cancer or another terminal illness.
- (2) A health care worker may claim to be able to treat or alleviate the symptoms of cancer or another terminal illness only if the claim can be substantiated.

11 Health care worker must not misinform

- (1) This section applies to information a health care worker gives a person in relation to a health service.

Examples

- information given when consulting a client
- information included in an advertisement
- information given to a professional body for a health service

- (2) The health care worker must not—

- (a) give false, misleading or deceptive information about, or otherwise misrepresent, any of the following:
- (i) a health service the health care worker provides;
 - (ii) the health care worker's competence to provide a health service;
 - (iii) the health care worker's experience, training and qualification in relation to providing a health service;
 - (iv) the health care worker's professional affiliation;
 - (v) the health care worker's ability to provide treatment; or
- (b) make a claim about the efficacy of a health service if the claim cannot be substantiated.

12 Health care worker must provide accurate advice

- (1) This section applies to advice a health care worker gives a client in relation to a health service provided to the client.

- (2) The health care worker must—

- (a) allow the client to make an informed choice in relation to the health service, and other health services; and
- (b) not attempt to dissuade the client from seeking or continuing medical treatment; and

(c) communicate and co-operate with colleagues, other health service providers and relevant entities in the best interests of a client.

- (3) However, subsection (2) does not prevent a health care worker from telling a client that the health care worker believes a health service provided by the health care worker will not benefit, or continue to benefit, the client.

13 Health care worker must not exploit client—financial misconduct

- (1) A health care worker must not financially exploit a client.
- (2) Without limiting subsection (1), a health care worker must—
- (a) only provide a health service to a client that is designed to maintain or improve the client’s health or wellbeing; and
 - (b) not accept or offer financial inducements or gifts in relation to a client referral arrangement with another health care worker; and
 - (c) not ask a client to give, lend or bequeath money or gifts that will benefit the health care worker directly or indirectly.

14 Health care worker must not exploit client—sexual misconduct

- (1) A health care worker must not engage in behaviour of a sexual or other inappropriate close personal nature with a client.
- (2) A health care worker must not engage in a sexual or other close personal, physical or emotional relationship with a client.
- (3) A health care worker must ensure there is a reasonable period after the health care worker stops providing a health service to a client before starting a sexual or close personal relationship with the former client.

15 Health care worker must mitigate harm

- (1) If an adverse event occurs in connection with providing a health service to a client, a health care worker must take appropriate and timely measures to minimise harm to the client.
- (2) Without limiting subsection (1), a health care worker must, as soon as practicable after the adverse event occurs—
 - (a) tell the client about the adverse event; and
 - (b) for a serious adverse event—obtain appropriate emergency assistance; and
 - (c) take steps to reduce the risk of a similar adverse event occurring; and
 - (d) report the adverse event to any relevant authority.
- (3) A health care worker must ensure that appropriate first aid is available to deal with any adverse event.

16 Health care worker must control infection

- (1) A health care worker must take reasonable precautions for the control of infection in the course of providing a health service.
- (2) Without limiting subsection (1), a health care worker who carries out skin penetration or another invasive procedure must comply with the *Public Health Act 1997*, including the following:
 - (a) any declaration made under that [Act](#), section 18 (Public health risk activities and procedures—declaration);
 - (b) any code about infection control made under that [Act](#), section 133 (Codes of practice).

17 Health care worker with transmissible condition

- (1) This section applies if a health care worker is diagnosed with a medical condition that has a risk of transmission to a client of the health care worker.
- (2) The health care worker must—
 - (a) seek advice from a health practitioner about how to avoid transmitting the condition to a client; and
 - (b) provide a health service in a way that does not transmit the condition.

18 Health care worker under influence of intoxicating or unlawful substance

- (1) A health care worker must not provide a health service while under the influence of an intoxicating or unlawful substance.
- (2) A health care worker may provide a health service while under the influence of a medicine if—
 - (a) the health care worker follows the advice of the prescribing health practitioner or dispensing pharmacist about the impact of the medicine on the health care worker's ability to provide a health service; and
 - (b) the health care worker's capacity to provide the service is not impaired.
- (3) In this section:
medicine—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 11.

19 Health care worker with impairment etc

- (1) This section applies if a health care worker has a physical or mental impairment, disability, condition or disorder (including an addiction).
- (2) The health care worker must—
 - (a) ask a relevant health practitioner to determine whether and how the health care worker should modify, suspend or end the provision of the health service to minimise the risk of harm to a client; and
 - (b) follow the advice of the health practitioner.

20 Health care worker must comply with privacy laws

A health care worker must comply with privacy laws that apply to a client's health information, including—

- (a) the *Health Records (Privacy and Access) Act 1997*; and
- (b) the *Information Privacy Act 2014*; and
- (c) the *Privacy Act 1988* (Cwlth).

21 Health care worker must keep records

- (1) This section applies if it is reasonably likely that information about the provision of a health service to a client by a health care worker will be relevant to the ongoing health or wellbeing of the client after the health service is provided.
- (2) The health care worker must—
 - (a) make accurate, legible and up-to-date records in relation to the health service provided to the client; and
 - (b) keep the record secure; and
 - (c) prevent unauthorised access to the record; and

- (d) if a client asks for information in a record about the client—give the client access to the information; and
- (e) if a client or the client’s legal representative asks for the transfer of a record about the client—transfer the record in a timely manner.

22 Health care worker must have insurance

A health care worker must have appropriate indemnity insurance arrangements in relation to the health care worker’s practice.

23 Health care worker must report concern about conduct of other health care worker

A health care worker must tell the commission if the health care worker believes on reasonable grounds that another health care worker has put a client at serious risk of harm.

24 Health care worker must display code and other information

A health care worker must make the following easily visible and accessible at all premises where the health care worker provides a health service:

- (a) the code of conduct;
- (b) information about how a client may make a complaint to the commission.

Dictionary

(see s 2)

Note 1 The [Legislation Act](#) contains definitions relevant to this regulation. For example:

- health practitioner
- may (see s 146)
- must (see s 146)
- person (see s 160).

Note 2 Terms used in this regulation have the same meaning that they have in the [Human Rights Commission Act 2005](#). For example, the following terms are defined in the [Human Rights Commission Act 2005](#), dict:

- code of conduct
- commission
- complaint
- health care worker
- health service (see s 7)
- relevant professional body.

client, of a health care worker, for part 2 (Code of conduct for health care workers—Act, s 94C)—see section 4.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 March 2023.

2 Notification

Notified under the [Legislation Act](#) on 7 July 2023.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Human Rights Commission Amendment Bill 2023, which was passed by the Legislative Assembly on 28 June 2023.

Acting Clerk of the Legislative Assembly

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