

2023

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Health)

# Human Rights Commission Amendment Bill 2023

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# Human Rights Commission Amendment Bill 2023

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## A Bill for

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

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

1 **1 Name of Act**

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

3 **2 Commencement**

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

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

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

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

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

15 **3 Legislation amended**

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

17 **4 New Human Rights Commission Regulation—sch 1**

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

20 (2) The regulation—

21 (a) is taken to be notified under the [Legislation Act](#) on the day this  
22 Act is notified; and

23 (b) (other than sections 5 (b) and 6 (b)) commences on the  
24 commencement of schedule 1; and

25 (c) is not required to be presented to the Legislative Assembly under  
26 the [Legislation Act](#), section 64 (1); and

- 1 (d) may be amended or repealed as if it had been made under the  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

15 **5 When may someone complain about a health service?**  
16 **New section 39 (1) (b) (ia)**

17 *insert*

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

20 **6 Purpose of considering complaints**  
21 **Section 69**

22 *omit*

23 following 3 main purposes

24 *substitute*

25 following main purposes

1 **7 New section 69 (d)**

2 *insert*

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

7 **8 Power to ask for information, documents and other**  
8 **things**  
9 **Section 73 (4), note 1**

10 *substitute*

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

15 **9 Requiring attendance etc**  
16 **Section 74 (7), note 1**

17 *substitute*

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

22 **10 Privileges against self-incrimination and exposure to civil**  
23 **penalty**  
24 **New section 75 (2A)**

25 *insert*

26 (2A) However, this section does not apply to a person mentioned in  
27 subsection (1) or (2) if the information, document or other thing to be  
28 produced, or question asked, relates to a consideration of a complaint  
29 under division 5.3 (Health care worker code of conduct).

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1 **11 Part 5 heading**

2 *substitute*

3 **Part 5 Additional matters for health**  
4 **service complaints**

5 **12 New divisions 5.3 and 5.4**

6 *insert*

7 **Division 5.3 Health care worker code of conduct**

8 **94A Definitions—div 5.3**

9 In this division:

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

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

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

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

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

18 *final order*—see section 94H (1).

19 *health care worker*—see section 94B.

20 *interim order*—see section 94G (1).

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

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

- 1 (b) prohibit the health care worker from offering, advertising or  
2 otherwise promoting a health service (including a health service  
3 provided by another person);
- 4 (c) prohibit the health care worker from holding themselves out or  
5 otherwise promoting themselves as a provider of a health  
6 service;
- 7 (d) prohibit the health care worker from providing advice in relation  
8 to the provision of a health service (including a health service  
9 provided by another person);
- 10 (e) place a condition on the provision of a health service by the  
11 health care worker.

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

13 **public service entity** means either of the following:

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

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

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

20 **relevant professional body**, for a health care worker, means a  
21 professional body—

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



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1    **94B        Meaning of *health care worker*—div 5.3**

2           (1) In this division:

3                ***health care worker***—

4                (a) means an individual who provides a health service to another  
5                    individual; but

6                (b) does not include an individual to the extent that the individual  
7                    provides the health service—

8                    (i) as a health practitioner; or

9                    (ii) as a registered teacher carrying out teaching duties.

10          (2) In this section:

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

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

14    **94C        Code of conduct may be prescribed**

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

17    **94D        Code of conduct breach by public servants**

18            (1) This section applies to a complaint made to the commission about a  
19            public servant acting inconsistently with the code of conduct in  
20            relation to the provision of a health service to another individual as  
21            part of their employment as a public servant (a ***public servant***  
22            ***complaint***).

23            (2) The Executive may determine a process the commission and relevant  
24            public service entities must follow in dealing with public servant  
25            complaints.

26            (3) Before determining a process, the Executive must consult the  
27            commission.

- 1           (4) The Executive must be reasonably satisfied that a process determined  
2           under subsection (2) gives a health care worker who is the subject of  
3           a public servant complaint no less protection than that given to a  
4           health care worker who is the subject of a prohibition or condition  
5           order, or public statement, to which section 94F applies.
- 6           (5) A process may include provision for the following:
- 7           (a) the sharing of information mentioned in section 94E (1) about a  
8           public servant complaint with the relevant public service entity;
- 9           (b) who the relevant public service entity is for a particular  
10          complaint;
- 11          (c) the commission and the public sector standards commissioner to  
12          establish a relationship protocol to help ensure public servant  
13          complaints are dealt with promptly and efficiently;
- 14          (d) the commission not to make a final prohibition or condition  
15          order in relation to a public servant complaint while a  
16          misconduct procedure is being conducted, without the  
17          agreement of the public sector standards commissioner;
- 18          (e) the commission to be able to extend the period an interim order  
19          is in force while a misconduct procedure is conducted.
- 20          (6) A process is a disallowable instrument.
- 21          (7) In this section:
- 22                *misconduct procedure* means a misconduct procedure under the  
23                *Public Sector Management Act 1994* or an enterprise agreement  
24                approved under the *Fair Work Act 2009* (Cwlth).

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1 **94E Code of conduct breach by public servants—information**  
2 **sharing**

3 (1) The commission may disclose any information that has been  
4 disclosed to, or obtained by, the commission in the consideration of a  
5 public servant complaint to an information sharing entity if the  
6 commission considers that—

7 (a) the information is relevant to the exercise of the information  
8 sharing entity's functions; and

9 (b) the disclosure of the information to the information sharing  
10 entity is appropriate.

11 (2) An information sharing entity may disclose any information held by  
12 the entity to the commission if the entity considers that—

13 (a) the information is relevant to the commission's consideration of  
14 a public servant complaint; and

15 (b) the disclosure of the information to the commission is  
16 appropriate.

17 (3) In this section:

18 **head**, of a public service entity, means—

19 (a) for the public service—the head of service; and

20 (b) for an administrative unit—the director-general of the  
21 administrative unit; and

22 (c) for a statutory office-holder—the statutory office-holder.

23 **information sharing entity** means either of the following:

24 (a) the public sector standards commissioner;

25 (b) the head of a public service entity.

- 1 **94F Principles for making prohibition or condition order or**  
2 **public statement**
- 3 In making a prohibition or condition order or public statement, the  
4 commission—
- 5 (a) must act with as little formality as reasonably practicable; and  
6 (b) is bound by the rules of natural justice; and  
7 (c) is not bound by the rules of evidence; and  
8 (d) before making a decision affecting a person, must give the  
9 person an opportunity to make submissions to the commission  
10 about the decision.
- 11 *Note* The commission must deal with complaints promptly and efficiently (see  
12 s 45).
- 13 **94G Interim prohibition or condition order**
- 14 (1) The commission may make a prohibition or condition order in  
15 relation to a health care worker for a stated period of not more than  
16 8 weeks (an *interim order*) if the commission—
- 17 (a) is considering a complaint in relation to the health care worker;  
18 and  
19 (b) believes on reasonable grounds that—
- 20 (i) the health care worker acted inconsistently with the code  
21 of conduct; and  
22 (ii) there would be a serious risk to the health or safety of the  
23 public if the health care worker continued to provide a  
24 health service.
- 25 (2) The period of the interim order must not be longer than the period  
26 reasonably required for the commission to decide if a final prohibition  
27 or condition order is required.

- 1 (3) For a public servant complaint, the period of an interim order may be  
2 affected by the process determined under section 94D.
- 3 (4) As soon as practicable after making an interim order, the commission  
4 must give a copy of the order to the health care worker.
- 5 *Note* The commission must also give the health care worker a statement of  
6 reasons (see s 94J).
- 7 (5) The commission may give a copy of an interim order to—  
8 (a) any relevant professional body for the health care worker; and  
9 (b) another person if satisfied on reasonable grounds that it is in the  
10 interest of the health or safety of the public to do so.
- 11 **Examples—par (b)**  
12 • the health care worker’s employer  
13 • a related health service provider  
14 • a client

15 **94H Final prohibition or condition order**

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

- 1 (ii) the health care worker is convicted of an offence under any  
2 of the following in relation to a health service provided by  
3 the health care worker:
- 4 (A) the *Competition and Consumer Act 2010* (Cwlth);  
5 (B) the *Fair Trading (Australian Consumer Law)*  
6 *Act 1992*;  
7 (C) the *Health Act 1993*, section 127 (Provision of  
8 regulated health service by person not health  
9 practitioner);  
10 (D) the *Health Practitioner Regulation National Law*  
11 *(ACT)*, part 7, division 10;  
12 (E) the *Public Health Act 1997*.
- 13 (2) The period of the final order must not be longer than the period  
14 reasonably required to protect the health or safety of the public.
- 15 (3) However, if the health care worker is a health practitioner, the  
16 commission must not make a final order without—
- 17 (a) giving the relevant board for the health practitioner a reasonable  
18 opportunity to respond to the proposed order; and  
19 (b) considering the response (if any).
- 20 (4) As soon as practicable after making a final order, the commission  
21 must give a copy of the order to the health care worker.
- 22 *Note* The commission must also give the health care worker a statement of  
23 reasons (see s 94J).
- 24 (5) The commission may give a copy of a final order to—
- 25 (a) any relevant professional body for the health care worker; or  
26 (b) another person if satisfied on reasonable grounds that it is in the  
27 interest of the health or safety of the public to do so.

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1 **94I Public statement about health care worker or health**  
2 **service**

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

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

17 **94J Statement of reasons for prohibition or condition order or**  
18 **public statement**

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

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



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

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

3 **94K Correction of public statement**

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

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

11 **94L Variation of prohibition or condition order**

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

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

10 **94M Cancellation of prohibition or condition order**

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

- 1 **94N Health care worker must give notice of registration as**  
2 **health practitioner**
- 3 (1) This section applies if—
- 4 (a) a prohibition or condition order has been made in relation to a  
5 person who is a health care worker; and
- 6 (b) during the period of the order, the person becomes registered  
7 under the *Health Practitioner Regulation National Law (ACT)*  
8 to practise in a health profession.
- 9 (2) The person must give the commission written notice of the  
10 registration as soon as practicable after being registered.
- 11 (3) The commission may exchange information with the relevant board  
12 for the health profession in which the person has been registered  
13 about—
- 14 (a) the person’s compliance with the code of conduct; and  
15 (b) any action taken in relation to the person for acting  
16 inconsistently with the code of conduct.

17 **94O Non-compliance with prohibition or condition order**

- 18 A person commits an offence if—
- 19 (a) the person is a health care worker; and
- 20 (b) a prohibition or condition order has been made in relation to the  
21 person; and
- 22 (c) the person has been given a copy of the prohibition or condition  
23 order; and
- 24 (d) the person contravenes the order.
- 25 Maximum penalty: 100 penalty units, imprisonment for 12 months,  
26 or both.

1 **94P Non-compliance with corresponding prohibition or**  
2 **condition order**

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

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

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

- 12 (2) In this section:

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

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

19 **94Q Commission to keep register**

20 The commission must—

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

1 **94R Exchange of information**

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

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

9 **Division 5.4 Notification and review of decisions**

10 **94S Meaning of *reviewable decision*—div 5.4**

11 In this division:

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

15 **94T Reviewable decision notices**

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

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

22 *Note 2* The requirements for reviewable decision notices are prescribed under  
23 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"> <li>person mentioned in public statement</li> <li>person providing health service mentioned in public statement</li> </ul>
4	94L	not vary prohibition or condition order	person requesting variation
5	94M	not cancel prohibition or condition order	person requesting cancellation

1 **14 Dictionary, note 2**

2 *insert*

- 3 • head of service  
4 • person (see s 160)  
5 • public sector standards commissioner  
6 • public servant

7 **15 Dictionary, new definition of *code of conduct***

8 *insert*

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

11 **16 Dictionary, definition of *complaint*, new paragraph (c)**

12 *insert*

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

15 **17 Dictionary, new definitions**

16 *insert*

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

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

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

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

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



- 1            **public servant complaint**, for division 5.3 (Health care worker code  
2 of conduct)—see section 94D (1).
- 3            **public service entity**, for division 5.3 (Health care worker code of  
4 conduct)—see section 94A.
- 5            **public statement**, for division 5.3 (Health care worker code of  
6 conduct)—see section 94A.
- 7            **register**, for division 5.3 (Health care worker code of conduct)—see  
8 section 94A.
- 9            **relevant professional body**, for a health care worker, for division 5.3  
10 (Health care worker code of conduct)—see section 94A.
- 11           **reviewable decision**, for division 5.4 (Notification and review of  
12 decisions)—see section 94S.

1 **Schedule 1**                      **New Human Rights**  
2    **Commission Regulation**

3 (see s 4)



Australian Capital Territory

4 **Human Rights Commission**  
5 **Regulation 2023**

6 **Subordinate Law SL2023-**

7 made under the

8 **Human Rights Commission Act 2005**

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9 **Part 1**                              **Preliminary**

10 **1**                              **Name of regulation**

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

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1   **2**           **Dictionary**

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

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

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

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

13   **3**           **Notes**

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

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

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

### 3 **4** **Meaning of *client*—pt 2**

4 In this part:

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

### 7 **5** **Prescribed corresponding law**

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

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

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

### 18 **6** **Corresponding prohibition or condition orders**

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

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

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

10 **7 Application of code of conduct**

11 This code applies to a health care worker.

12 **8 Health care worker must provide safe and ethical health  
13 service**

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

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

14 **9 Health care worker must have client consent**

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

18 **10 Health care worker must not claim to cure cancer or**  
19 **terminal illness**

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

- 
- 1     **11           Health care worker must not misinform**
- 2           (1) This section applies to information a health care worker gives a
- 3           person in relation to a health service.
- 4           **Examples**
- 5           • information given when consulting a client
- 6           • information included in an advertisement
- 7           • information given to a professional body for a health service
- 8           (2) The health care worker must not—
- 9           (a) give false, misleading or deceptive information about, or
- 10           otherwise misrepresent, any of the following:
- 11                 (i) a health service the health care worker provides;
- 12                 (ii) the health care worker’s competence to provide a health
- 13                 service;
- 14                 (iii) the health care worker’s experience, training and
- 15                 qualification in relation to providing a health service;
- 16                 (iv) the health care worker’s professional affiliation;
- 17                 (v) the health care worker’s ability to provide treatment; or
- 18           (b) make a claim about the efficacy of a health service if the claim
- 19           cannot be substantiated.
- 20     **12           Health care worker must provide accurate advice**
- 21           (1) This section applies to advice a health care worker gives a client in
- 22           relation to a health service provided to the client.
- 23           (2) The health care worker must—
- 24           (a) allow the client to make an informed choice in relation to the
- 25           health service, and other health services; and
- 26           (b) not attempt to dissuade the client from seeking or continuing
- 27           medical treatment; and

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

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

8 **13 Health care worker must not exploit client—financial**  
9 **misconduct**

10 (1) A health care worker must not financially exploit a client.

11 (2) Without limiting subsection (1), a health care worker must—

12 (a) only provide a health service to a client that is designed to  
13 maintain or improve the client's health or wellbeing; and

14 (b) not accept or offer financial inducements or gifts in relation to a  
15 client referral arrangement with another health care worker; and

16 (c) not ask a client to give, lend or bequeath money or gifts that will  
17 benefit the health care worker directly or indirectly.

18 **14 Health care worker must not exploit client—sexual**  
19 **misconduct**

20 (1) A health care worker must not engage in behaviour of a sexual or  
21 other inappropriate close personal nature with a client.

22 (2) A health care worker must not engage in a sexual or other close  
23 personal, physical or emotional relationship with a client.

24 (3) A health care worker must ensure there is a reasonable period after  
25 the health care worker stops providing a health service to a client  
26 before starting a sexual or close personal relationship with the former  
27 client.



- 
- 1     **15           Health care worker must mitigate harm**
- 2           (1) If an adverse event occurs in connection with providing a health  
3           service to a client, a health care worker must take appropriate and  
4           timely measures to minimise harm to the client.
- 5           (2) Without limiting subsection (1), a health care worker must, as soon  
6           as practicable after the adverse event occurs—
- 7               (a) tell the client about the adverse event; and
- 8               (b) for a serious adverse event—obtain appropriate emergency  
9               assistance; and
- 10              (c) take steps to reduce the risk of a similar adverse event occurring;  
11              and
- 12              (d) report the adverse event to any relevant authority.
- 13           (3) A health care worker must ensure that appropriate first aid is available  
14           to deal with any adverse event.
- 15     **16           Health care worker must control infection**
- 16           (1) A health care worker must take reasonable precautions for the control  
17           of infection in the course of providing a health service.
- 18           (2) Without limiting subsection (1), a health care worker who carries out  
19           skin penetration or another invasive procedure must comply with the  
20           *Public Health Act 1997*, including the following:
- 21               (a) any declaration made under that [Act](#), section 18 (Public health  
22               risk activities and procedures—declaration);
- 23               (b) any code about infection control made under that [Act](#),  
24               section 133 (Codes of practice).

1     **17           Health care worker with transmissible condition**

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

10    **18           Health care worker under influence of intoxicating or**  
11    **unlawful substance**

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

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1     **19           Health care worker with impairment etc**

2           (1) This section applies if a health care worker has a physical or mental  
3           impairment, disability, condition or disorder (including an addiction).

4           (2) The health care worker must—

5                   (a) ask a relevant health practitioner to determine whether and how  
6                   the health care worker should modify, suspend or end the  
7                   provision of the health service to minimise the risk of harm to a  
8                   client; and

9                   (b) follow the advice of the health practitioner.

10     **20           Health care worker must comply with privacy laws**

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

13                   (a) the *Health Records (Privacy and Access) Act 1997*; and

14                   (b) the *Information Privacy Act 2014*; and

15                   (c) the *Privacy Act 1988* (Cwlth).

16     **21           Health care worker must keep records**

17           (1) This section applies if it is reasonably likely that information about  
18           the provision of a health service to a client by a health care worker  
19           will be relevant to the ongoing health or wellbeing of the client after  
20           the health service is provided.

21           (2) The health care worker must—

22                   (a) make accurate, legible and up-to-date records in relation to the  
23                   health service provided to the client; and

24                   (b) keep the record secure; and

25                   (c) prevent unauthorised access to the record; and

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

6 **22 Health care worker must have insurance**

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

9 **23 Health care worker must report concern about conduct of  
10 other health care worker**

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

14 **24 Health care worker must display code and other  
15 information**

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

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

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## 1 Dictionary

2 (see s 2)

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

- 5 • health practitioner
- 6 • may (see s 146)
- 7 • must (see s 146)
- 8 • person (see s 160).

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

- 12 • code of conduct
- 13 • commission
- 14 • complaint
- 15 • health care worker
- 16 • health service (see s 7)
- 17 • relevant professional body.

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

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## Endnotes

**1 Presentation speech**

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

**2 Notification**

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

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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