

South Australia

# Health and Community Services Complaints Regulations 2005

under the *Health and Community Services Complaints Act 2004*

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## Contents

- 1 Short title
- 3 Interpretation
- 4 Exclusion from definition of community service
- 5 Warrant
- 5A Code of conduct
- 5B Certain health practitioners to display code and other information
- 5C Prescribed offences against other laws
- 6 Service
- 7 Returns by prescribed providers

## Schedule 1—Warrant

## Schedule 2—Code of conduct for unregistered health practitioners

- 1 Preliminary
- 2 Health practitioners to provide services in safe and ethical manner
- 3 Health practitioners diagnosed with infectious medical condition
- 4 Health practitioners not to make claims to cure certain serious illnesses
- 5 Health practitioners to take precautions for infection control
- 6 Appropriate conduct in relation to treatment advice
- 7 Health practitioners not to practise under influence of alcohol or drugs
- 8 Health practitioners not to practise with certain physical or mental conditions
- 9 Health practitioners not to financially exploit health service users
- 10 Health practitioners required to have clinical basis for treatments
- 11 Health practitioners not to misinform health service users
- 12 Health practitioners not to engage in sexual or improper personal relationship with client
- 13 Health practitioners to comply with relevant privacy laws
- 14 Health practitioners to keep appropriate records
- 15 Health practitioners to keep reasonable insurance

## Legislative history

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### 1—Short title

These regulations may be cited as the *Health and Community Services Complaints Regulations 2005*.

### 3—Interpretation

In these regulations—

*Act* means the *Health and Community Services Complaints Act 2004*.

#### 4—Exclusion from definition of community service

- (1) For the purposes of the definition of *community service* in section 4 of the Act, services provided by a prescribed housing entity are excluded from the ambit of that definition if a person who uses or seeks to use the relevant service is able to obtain a review of a decision by the prescribed housing authority with respect to the provision of the service by bringing an action before—
  - (a) the South Australian Civil and Administrative Tribunal; or
  - (b) the Public Housing Appeal Unit within the Department for Families and Communities.
- (2) For the purposes of subregulation (1) *prescribed housing entity* means—
  - (a) South Australian Housing Trust;
  - (b) a community housing provider registered under the *Community Housing Providers National Law*.

#### 5—Warrant

The prescribed form for a warrant under section 49 of the Act is set out in Form 1 of Schedule 1.

#### 5A—Code of conduct

The code of conduct set out in Schedule 2 is prescribed for the purposes of section 56A of the Act.

#### 5B—Certain health practitioners to display code and other information

- (1) In this regulation—

*code of conduct* means the code of conduct set out in Schedule 2;

*health practitioner* means a health practitioner to which the code of conduct applies (see clause 1 of Schedule 2).
- (2) A health practitioner must display a copy of each of the following documents at all premises where the health practitioner provides health services:
  - (a) a "plain English" version of the code of conduct determined by the Commissioner for the purposes of this regulation;
  - (b) a document that is evidence of a relevant qualification held by the health practitioner;
  - (c) a document that gives information about the way in which a health service user may make a complaint to the Health and Community Services Complaints Commissioner, being a document—
    - (i) in a form determined by the Minister; and
    - (ii) that contains the following information:

## CONCERNED ABOUT THE CARE YOU HAVE RECEIVED?

*The code of conduct for unregistered health practitioners sets out what you can expect from your practitioner. If you have concerns about the health service that was provided to you or your next of kin, talk to the practitioner immediately. In most cases the health practitioner will try to resolve your concerns.*

*If you are not able to deal directly with the practitioner or if you are not satisfied with the practitioner's response, contact the HCSCC Enquiry Service:*

- *Monday to Friday 9am to 5pm on telephone number 8226 8666 or if you are in the country from a landline on 1800 232 007*
- *Write to: HCSCC, PO Box 199, Rundle Mall SA 5000*
- *Visit the website and fill out an online complaint form—[www.hcsc.sa.gov.au](http://www.hcsc.sa.gov.au)*
- *Send a fax to HCSCC on 8226 8620*

*HCSCC can help if you have special needs, such as requiring an interpreter.*

- (3) A copy of a document required to be displayed under this regulation must be displayed in a position and manner that makes it easily visible and accessible to a person entering the relevant premises.
- (4) This regulation does not apply to any of the following premises:
  - (a) premises of any hospital (within the meaning of the *Health Care Act 2008*);
  - (b) premises of any health service established or licensed under the *Health Care Act 2008*;
  - (c) premises of any day procedure centre;
  - (d) premises of the *SA Ambulance Service Incorporated*;
  - (e) premises of an approved provider (within the meaning of the *Aged Care Act 1997* of the Commonwealth).

### 5C—Prescribed offences against other laws

- (1) The following offences are prescribed for the purposes of section 56B(1)(b)(ii) of the Act:
  - (a) an offence against the *Australian Consumer Law (SA)*;
  - (b) an offence against Part 3 of the *Criminal Law Consolidation Act 1935*;
  - (c) an offence against the *South Australian Public Health Act 2011*.
- (2) The following offences are prescribed for the purposes of section 56C(1)(b)(ii) of the Act:
  - (a) an offence against the *Australian Consumer Law (SA)*;
  - (b) an offence against Part 3 of the *Criminal Law Consolidation Act 1935*;

- (c) an offence against the *South Australian Public Health Act 2011*.

## 6—Service

- (1) A notice or document required or authorised by or under the Act to be given to or served on a person may—
- (a) be given to the person personally; or
  - (b) be posted in an envelope addressed to the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address; or
  - (c) be left for the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
  - (d) be transmitted by facsimile transmission or electronic mail to a facsimile number or electronic mail address provided by the person.
- (2) Without limiting the effect of subregulation (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

## 7—Returns by prescribed providers

- (1) For the purposes of section 76(4) of the Act, a designated health or community service provider is a health or community service provider—
- (a) who provides a health service or a community service within 1 of the following classes:
    - (i) health services provided within the public system, the private system, or the non-government sector;
    - (ii) community services provided within the public system, the private system, or the non-government sector;
    - (iii) child protection services provided within the public system, the private system, or the non-government sector (with this class being specifically constituted so as not to fall within a general designation under a preceding subparagraph); and
  - (b) who falls within a determination of the Commissioner for the purposes of lodging returns under section 76(1) of the Act.
- (2) In connection with the operation of subregulation (1), the classes of complaints within the ambit of section 76(1) of the Act will be classes determined by the Commissioner for the purposes of lodging returns under that section of the Act.

## Schedule 1—Warrant

### Form 1

*Health and Community Services Complaints Act 2004*

#### Warrant

Magistrates Court of South Australia

An application for a warrant under section 49 of the *Health and Community Services Complaints Act 2004* has been made to me by the Health and Community Services Complaints Commissioner.

I, ..... a Magistrate of the Magistrates Court of South Australia, am satisfied that there are reasonable grounds for issuing the warrant.

The persons authorised to exercise the powers conferred by the warrant are as follows<sup>1</sup>:

.....

The address of the premises subject to the warrant is as follows: .....

.....

The warrant authorises the named person and any person assisting that person, with such force as is necessary—

- (a) to enter and remain in the premises; and
- (b) to search the premises and any person or thing in the premises; and
- (c) to break open and search anything in the premises in which any document or other thing relevant to the investigation may be contained; and
- (d) to take photographs; and
- (e) to seize and remove anything in the premises which the authorised person has reasonable grounds for believing is relevant to the investigation; and
- (f) to examine, seize and remove, make copies of, or take extracts from, any document in the premises which the authorised person has reasonable grounds for believing is relevant to the investigation; and
- (g) to require a health and community service provider or any other person employed in the premises to provide information by answering questions which the authorised person considers relevant to the investigation.

The period for which the warrant will be in force is 30 days from the date of issue (being the date shown below).

Dated: .....

Signed: .....

*Magistrate of the Magistrates Court of South Australia*

Notes—

- 1 Provide details (eg position title) of the person seeking authority to exercise the powers conferred by the warrant.

## Schedule 2—Code of conduct for unregistered health practitioners

### 1—Preliminary

In this Schedule—

*health practitioner* means a health service provider who provides a health service that falls outside the ambit of operation of a registration authority.

### 2—Health practitioners to provide services in safe and ethical manner

- (1) A health practitioner must provide a health service in a safe and ethical manner.
- (2) Without limiting subclause (1), a health practitioner must comply with the following:
  - (a) a health practitioner must maintain a reasonable level of competence in his or her field of practice;
  - (b) a health practitioner must not provide a health service of a type that is outside his or her experience or training;
  - (c) a health practitioner must not use his or her possession of particular qualifications to mislead or deceive a health service user as to his or her competence in his or her field of practice or ability to provide a particular treatment;
  - (d) a health practitioner must only prescribe a treatment or device that serves the needs of the health service user;
  - (e) a health practitioner must recognise the limitations of the treatment he or she can provide and, where appropriate, refer a health service user to another competent health service provider;
  - (f) a health practitioner must, where appropriate, recommend to a health service user that additional opinions or services be sought by the health service user;
  - (g) a health practitioner must, if required and practicable, assist a health service user to find other appropriate health care professionals;
  - (h) a health practitioner must encourage a health service user to inform his or her treating medical practitioner (if any) of the treatment that he or she is receiving from the health practitioner;
  - (i) a health practitioner must have a sound understanding of any adverse interaction between the therapies and treatments he or she provides or prescribes and any other medications or treatments, whether prescribed or not, that the health practitioner is aware a health service user is taking or receiving;
  - (j) a health practitioner must ensure that appropriate first aid is available to deal with a need for first aid that may arise during a consultation;
  - (k) a health practitioner must obtain appropriate emergency assistance (for example, from an ambulance service) in the event of any serious misadventure or outcome during a consultation.

### **3—Health practitioners diagnosed with infectious medical condition**

- (1) A health practitioner who has been diagnosed with a medical condition that can be passed on to a health service user must ensure that he or she provides a health service in a manner that does not put a health service user at risk.
- (2) Without limiting subclause (1), a health practitioner who has been diagnosed with a medical condition that can be passed on to a health service user should take and follow advice from an appropriate medical practitioner on the steps to be taken to modify his or her practices in providing a health service to avoid the possibility of transmitting that condition.

### **4—Health practitioners not to make claims to cure certain serious illnesses**

- (1) A health practitioner must not hold himself or herself out as qualified, able or willing to cure cancer or other terminal illnesses.
- (2) A health practitioner may make a claim as to his or her ability or willingness to treat or alleviate the symptoms of the illnesses referred to in subclause (1) if that claim can be substantiated.

### **5—Health practitioners to take precautions for infection control**

A health practitioner must take appropriate precautions for the control of infection in relation to the provision of a health service.

### **6—Appropriate conduct in relation to treatment advice**

- (1) A health practitioner must not attempt to dissuade a health service user from seeking or continuing with treatment by a registered medical practitioner.
- (2) A health practitioner must accept the right of a health service user to make an informed choice in relation to his or her health care.
- (3) A health practitioner should communicate and cooperate with colleagues and other health care practitioners and agencies in the best interests of a health service user.
- (4) A health practitioner who has serious concerns about the treatment provided to a health service user by another health practitioner must refer the matter to the Health and Community Services Complaints Commissioner.

### **7—Health practitioners not to practise under influence of alcohol or drugs**

- (1) A health practitioner must not provide a health service if intoxicated (whether by alcohol or by any other substance or combination of substances).
- (2) A health practitioner who is taking prescribed medication must obtain advice from the prescribing health practitioner on the impact of the medication on his or her ability to provide a health service and must refrain from treating a health service user in circumstances where his or her ability is or may be impaired.

## **8—Health practitioners not to practise with certain physical or mental conditions**

A health practitioner must not provide a health service while suffering from a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that detrimentally affects, or is likely to detrimentally affect, his or her ability to provide a health service or that places a health service user at risk of harm.

## **9—Health practitioners not to financially exploit health service users**

- (1) A health practitioner must not accept a financial inducement or gift for referring a health service user to another health practitioner or to a supplier of medications or therapeutic goods or devices.
- (2) A health practitioner must not offer a financial inducement or gift in return for a referral from another health practitioner.
- (3) A health practitioner must not provide a health service or treatment to a health service user unless they are designed to maintain or improve the health service user's health or wellbeing.

## **10—Health practitioners required to have clinical basis for treatments**

A health practitioner must not diagnose or treat an illness or condition without adequate clinical basis.

## **11—Health practitioners not to misinform health service users**

- (1) A health practitioner must not engage in any form of misinformation or misrepresentation in relation to—
  - (a) the products or services that he or she provides; or
  - (b) his or her qualifications, training or professional affiliations.
- (2) A health practitioner must provide truthful information as to his or her qualifications, training or professional affiliations if asked by a health service user.
- (3) A health practitioner must not make claims, either directly or in advertising or promotional material, about the efficacy of treatment or services provided if those claims cannot be substantiated.

## **12—Health practitioners not to engage in sexual or improper personal relationship with client**

- (1) A health practitioner must not engage in a sexual or other close personal relationship with a client.
- (2) Before engaging in a sexual or other close personal relationship with a former client, a health practitioner must ensure that a suitable period of time has elapsed since the conclusion of their therapeutic relationship.

## **13—Health practitioners to comply with relevant privacy laws**

A health practitioner must comply with the relevant legislation of the State or the Commonwealth relating to the personal information of a health service user.



**14—Health practitioners to keep appropriate records**

A health practitioner must maintain accurate, legible and contemporaneous clinical records in relation to each consultation with a health service user.

**15—Health practitioners to keep reasonable insurance**

A health practitioner should ensure that reasonable indemnity insurance arrangements are in place in relation to his or her practice.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Revocation of regulations

The *Health and Community Services Complaints Regulations 2005* were revoked by Sch 3 of the *Health and Community Services Complaints Regulations 2019* on 18.3.2019.

### Principal regulations and variations

Year	No	Reference	Commencement
2005	203	<i>Gazette 22.9.2005 p3388</i>	3.10.2005: r 2
2007	188	<i>Gazette 28.6.2007 p2899</i>	1.7.2007: r 2
2013	10	<i>Gazette 14.2.2013 p395</i>	14.3.2013: r 2
2014	37	<i>Gazette 6.2.2014 p600</i>	1.4.2014: r 2
2015	20	<i>Gazette 5.3.2015 p896</i>	29.3.2015: r 2

### Provisions varied

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2007</i>
r 4		
r 4(1)	varied by 188/2007 r 4(1)	1.7.2007
	varied by 37/2014 r 4(1)	1.4.2014
	varied by 20/2015 r 4(1)	29.3.2015
	(c) deleted by 20/2015 r 4(2)	29.3.2015
r 4(2)	varied by 188/2007 r 4(2)	1.7.2007
	(c) deleted by 188/2007 r 4(2)	1.7.2007
	varied by 37/2014 r 4(2)	1.4.2014
rr 5A—5C	inserted by 10/2013 r 4	14.3.2013
r 7	inserted by 10/2013 r 5	14.3.2013
Sch 2	inserted by 10/2013 r 6	14.3.2013

## Historical versions

1.7.2007  
14.3.2013  
1.4.2014