

House of Assembly

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South Australia

Health and Community Services Complaints (Miscellaneous) Amendment Bill 2011

A BILL FOR

An Act to amend the *Health and Community Services Complaints Act 2004*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Health and Community Services Complaints (Miscellaneous) Amendment Act 2011*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Health and Community Services Complaints Act 2004*

4—Amendment of section 4—Interpretation

Section 4—before the definition of *Charter* insert:

carer means a person who is a carer for the purposes of the *Carers Recognition Act 2005*;

5—Amendment of section 9—Functions

Section 9(1)(l)(ii)—delete subparagraph (ii) and substitute:

(ii) the Australian Human Rights Commission; and

6—Amendment of section 16—Annual report

Section 16—after subsection (1) insert:

(1a) Without limiting matters that may be included in a report of the Commissioner under subsection (1), each report—

(a) must include the following information relating to the relevant financial year:

- (i) the number, type and sources of complaints made;
- (ii) a summary of all assessments and determinations made under section 29 in relation to a complaint;
- (iii) a summary of all determinations under section 33 to take no further action in relation to a complaint;
- (iv) if a complaint was referred for conciliation—the outcome of the conciliation;
- (v) if a complaint was dealt with under Part 7—the outcome of any action taken by a registration authority;

- (vi) a summary of all investigations conducted by the Commissioner under Part 6, including the outcomes of those investigations;
 - (vii) a summary of the time taken for complaints to be dealt with under the Act;
 - (viii) a summary of all complaints not finally dealt with by the Commissioner; and
- (b) may include the following information relating to the relevant financial year:
- (i) such information relating to complaints (other than that required to be included under paragraph (a)) as the Commissioner thinks fit;
 - (ii) any report made to the Minister under section 54;
 - (iii) if a complaint was dealt with under Part 7—a summary of any advice, notification or information provided to the Commissioner in relation to the complaint by a registration authority.
- (1b) Matters included in a report under subsection (1)—
- (a) are to be reported, as far as practicable, according to professional groupings (as determined by the Commissioner); and
 - (b) must not identify a person who has made a complaint, a person in relation to whom a complaint has been made or a person who has been subject to an investigation under this Act, unless the identity of the person has already been lawfully made public.

7—Amendment of section 22—Content of Charter

Section 22—after paragraph (f) insert:

- (g) that a person should be entitled to be supported by a person of his or her choice when making a complaint about the provision of health or community services.

8—Amendment of section 29—Assessment

Section 29(3)—delete subsection (3) and substitute:

- (3) If a complaint is against or directly involves an approved provider under the *Aged Care Act 1997* of the Commonwealth—
 - (a) the Commissioner must consult with the relevant complaints resolution bodies under that Act about the management of the complaint; and
 - (b) the Commissioner may refer the complaint to another authority for investigation or resolution under that Act; and

- (c) the Commissioner may provide information and assistance to another authority concerned with the investigation or resolution of the complaint under that Act.

9—Amendment of section 55—Notice of action to providers

- (1) Section 55—delete subsections (4) and (5) and substitute:
 - (4) The Commissioner may require the health or community service provider to, in connection with the provision of a notice under subsection (1), outline to the Commissioner what action (if any) the service provider has taken, or intends to take, in response to the matters raised in the notice.
 - (5) The Commissioner must allow the service provider and, if relevant, a registration authority, at least 28 days to make representations in relation to the matter and, in the case of the service provider, to comply with a requirement under subsection (4).
- (2) Section 55(6)—delete "that subsection" and substitute:
subsection (5)

10—Insertion of Part 6 Division 5

Part 6—after Division 4 insert:

Division 5—Action against unregistered health practitioners

56A—Codes of conduct

- (1) The Governor may, by regulation, prescribe a code of conduct relating to the provision of health services that fall outside the ambit of operation of a registration authority.
- (2) The Governor may—
 - (a) prescribe different codes of conduct for different classes of health service; and
 - (b) make different provisions for different classes of health service within a prescribed code of conduct.
- (3) A person who breaches a prescribed code of conduct is not, on account of the breach alone, liable to any civil or criminal action.
- (4) However, if a person breaches a prescribed code of conduct, the Commissioner may enforce compliance with the code in the circumstances contemplated by section 56B and 56C.
- (5) Subsections (3) and (4) do not limit or derogate from any other provision of this Act or any other law.

56B—Interim action

- (1) The Commissioner may act under this section if—
 - (a) an investigation has been commenced under this Part, in relation to a person who has provided a health service (a *prescribed health service provider*); and
 - (b) the Commissioner has a reasonable belief that the prescribed health service provider has—
 - (i) breached a prescribed code of conduct under section 56A; or
 - (ii) committed a prescribed offence; and
 - (c) in the opinion of the Commissioner action under this section is necessary to protect the health or safety of members of the public.
- (2) The Commissioner may, in acting under this section in relation to a prescribed health service provider—
 - (a) make an order prohibiting the prescribed health service provider from providing health services, or specified health services, for a period of 12 weeks or shorter period as may be specified in the order;
 - (b) make an order imposing such conditions as the Commissioner considers appropriate on the provision of health services, or specified health services, by the prescribed health service provider for a period of 12 weeks or shorter period as may be specified in the order.
- (3) The Commissioner may at any time vary or revoke an order made under this section.
- (4) The Commissioner must, as soon as practicable after making an order under this section, notify the prescribed health service provider in writing of the order and specify the grounds on which the order is made.
- (5) A person who contravenes an order made under this section is guilty of an offence.
Maximum penalty: \$10 000 or imprisonment for 2 years or both.

56C—Commissioner may take action

- (1) The Commissioner may act under this section if—
 - (a) an investigation has been carried out under this Part in relation to a person who has provided a health service (a *prescribed health service provider*); and
 - (b) the Commissioner is satisfied that the prescribed health service provider has—
 - (i) breached a prescribed code of conduct under section 56A; or

- (ii) been found guilty of a prescribed offence; and
 - (c) in the opinion of the Commissioner the prescribed health service provider poses an unacceptable risk to the health or safety of members of the public.
- (2) The Commissioner may, in acting under this section in relation to a prescribed health service provider—
 - (a) make an order prohibiting the prescribed health service provider from providing health services, or specified health services, for a period specified in the order, or indefinitely;
 - (b) make an order imposing such conditions as the Commissioner considers appropriate on the provision of health services, or specified health services, by the prescribed health service provider for a specified period, or indefinitely;
 - (c) publish a public statement, in a manner determined by the Commissioner, identifying the prescribed health service provider and giving warnings or such other information as the Commissioner considers appropriate in relation to the health services, or specified health services, provided by the prescribed health service provider.
- (3) The Commissioner may at any time vary or revoke an order or public statement made under this section.
- (4) A person who contravenes an order made under this section is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years or both.

56D—Commissioner to provide details

- (1) If the Commissioner takes any action under section 56C the Commissioner must, as soon as practicable, provide the prescribed health service provider with a written statement (*the statement*) in relation to the action that includes the following:
 - (a) the Commissioner's findings on significant questions of fact;
 - (b) any evidence or other material on which the findings of fact were based;
 - (c) the reason, or reasons, for the action.
- (2) The Commissioner—
 - (a) if action taken under this Division relates to a complaint—must provide a copy of the statement to the complainant; and
 - (b) must provide a copy of the statement to any professional body or association that the Commissioner considers relevant to the prescribed health service provider or to the area of practice to which the action under this Division relates; and

- (c) may publish the statement, or parts of the statement, in a manner that the Commissioner considers appropriate.

56E—Appeal

- (1) A person in relation to who the Commissioner makes an order or publishes a statement under section 56B or 56C may appeal the decision to make the order or publish the statement to the Administrative and Disciplinary Division of the District Court (*the Court*).
- (2) An appeal under this section must be commenced within 1 month after notification under section 56B(4) or service of a statement under section 56D, or such extended period as may be allowed by the Court.
- (3) On an appeal under this section the Court may confirm, vary or revoke an order or publication the subject of the appeal.

56F—Related matters

- (1) The Governor may, by regulation, exclude a specified person, or persons of a specified class, from the application of this Division.
- (2) To avoid doubt, action may not be taken under this Division in relation to conduct that falls within the ambit of Part 7.

11—Amendment of section 67—Establishment of Council

Section 67(2)—after paragraph (e) insert:

and

- (f) 1 person who, in the opinion of the Minister, is qualified, by reason of his or her experience and expertise, to represent the interests of carers; and
- (g) 1 person who, in the opinion of the Minister, has appropriate experience and expertise in relation to the quality and safety standards of health services.

12—Amendment of section 69—Functions of Council

Section 69(1)—delete subsection (1) and substitute:

- (1) The functions of the Council are to advise the Minister and the Commissioner in relation to—
 - (a) the means of educating and informing users, providers and the public on the availability of means for making health or community service complaints or expressing grievances in relation to health or community services or their provision; and
 - (b) key strategic issues that arise in relation to the resolution of complaints made in relation to the provision of health or community services; and
 - (c) the operation of this Act; and

- (d) any other matter on which the Minister or Commissioner requests the advice of the Council.

13—Substitution of section 74

Section 74—delete the section and substitute:

74—Protection of identity of service user or complainant from service provider

Despite any other provision of this Act, the Commissioner may determine not to disclose to a health or community service provider information that would enable a health or community service user or a complainant to be identified if—

- (a) the Commissioner believes, on reasonable grounds, that the disclosure would, directly or indirectly—
 - (i) put at risk the health or safety of a person; or
 - (ii) result in a person receiving a health or community service of a lower standard than would otherwise have been provided; or
 - (iii) prejudice the fair assessment of a complaint or an investigation under this Act; or
- (b) in the Commissioner's opinion—
 - (i) the complaint—
 - (A) raises a significant issue of public safety, public interest or public importance; or
 - (B) raises a significant question as to the practice of a health or community service provider; and
 - (ii) non-disclosure is in the public interest.

14—Amendment of section 76—Returns by prescribed providers

- (1) Section 76(1)(a)—delete paragraph (a) and substitute:
 - (a) prescribed classes of complaints received by the health or community service provider during a period determined by the Commissioner relating to—
 - (i) matters of public safety, interest or importance; and
 - (ii) matters arising under the Charter; and
- (2) Section 76—after subsection 3 insert:
 - (3a) The Commissioner may publish any return received under this section, or a summary of information contained in such a return, in such manner as the Commissioner thinks fit.

15—Insertion of section 86A

After section 86 insert:

86A—Assistance to other agencies

Without limiting any other provision, the Commissioner may assist, and provide information to, a person concerned in the administration or enforcement of a law of the State, or a law of the Commonwealth or another State or a Territory of the Commonwealth, for purposes related to the administration or operation of that other law.