

South Australia

# **Health and Community Services Complaints Regulations 2019**

under the *Health and Community Services Complaints Act 2004*

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## **Schedule 3—Revocation of *Health and Community Services Complaints Regulations 2005***

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## 1—Short title

These regulations may be cited as the *Health and Community Services Complaints Regulations 2019*.

## 2—Commencement

These regulations come into operation on the day on which section 11 of the *Health and Community Services Complaints (Miscellaneous) Amendment Act 2018* comes into operation.

## 3—Interpretation

In these regulations, unless the contrary intention appears—

*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 entity with respect to the provision of the service by bringing an action before the South Australian Civil and Administrative Tribunal (whether as a review of an internal review or otherwise).
- (2) For the purposes of subregulation (1), *prescribed housing entity* means—
  - (a) South Australian Housing Trust; or
  - (b) a community housing provider registered under the *Community Housing Providers National Law*.

## 5—Corresponding laws

The following laws are *corresponding laws* for the purposes of the Act:

- (a) *Health and Community Services Complaints Act* of the Northern Territory;
- (b) *Health and Disability Services (Complaints) Act 1995* of Western Australia;
- (c) *Health Care Complaints Act 1993* of New South Wales;
- (d) *Health Complaints Act 1995* of Tasmania;
- (e) *Health Complaints Act 2016* of Victoria;
- (f) *Health Ombudsman Act 2013* of Queensland;
- (g) *Human Rights Commission Act 2005* of the Australian Capital Territory.

## 6—Warrant (section 49 of Act)

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

## 7—Code of conduct (section 56A of Act)

Pursuant to section 56A of the Act, the code of conduct set out in Schedule 2 is prescribed.

## 8—Prescribed offences against other laws (sections 56B and 56C of Act)

- (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 Part 7 Division 10 of the *Health Practitioner Regulation National Law (South Australia)*;
  - (d) 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 Part 7 Division 10 of the *Health Practitioner Regulation National Law (South Australia)*;
  - (d) an offence against the *South Australian Public Health Act 2011*.

## 9—Interstate orders (section 56EA of Act)

- (1) The following orders are *interstate interim orders* for the purposes of section 56EA of the Act:
  - (a) an order under section 41AA of the *Health Care Complaints Act 1993* of New South Wales;
  - (b) an order under section 68 of the *Health Ombudsman Act 2013* of Queensland;
  - (c) an order under section 90 of the *Health Complaints Act 2016* of Victoria.
- (2) The following orders are *interstate final orders* for the purposes of section 56EA of the Act:
  - (a) an order under section 41A of the *Health Care Complaints Act 1993* of New South Wales;
  - (b) an order under section 113(4) of the *Health Ombudsman Act 2013* of Queensland;
  - (c) an order under section 95 of the *Health Complaints Act 2016* of Victoria.

## 10—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.

### **11—Returns by prescribed providers (section 76 of Act)**

- (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.

### **12—Returns by prescribed bodies (section 77 of Act)**

For the purposes of section 77 of the Act, the following bodies are prescribed pursuant to section 77(5):

- (a) the Australian Association of Social Workers (South Australian Branch) Incorporated;
- (b) the Australian Natural Therapists Association Limited;
- (c) the Australian Naturopathic Practitioners Association Incorporated;
- (d) the Australian Traditional-Medicine Society Ltd.

## **Schedule 1—Warrant**

### **Warrant**

*Health and Community Services Complaints Act 2004*—section 49

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 [*insert name of Magistrate*] 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:

[*provide details, (eg position title) of the person seeking authority to exercise the powers conferred by the warrant*]

The address of the premises subject to the warrant is as follows: [*insert address*]

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 at 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: [*insert date of issue*]

Signed: *Magistrate of the Magistrates Court of South Australia*

## Schedule 2—Code of conduct for certain health care workers

### 1—Interpretation

In this Schedule—

**health care worker** means a natural person who provides a health service (whether or not the person is registered under the *Health Practitioner Regulation National Law (South Australia)*);

**health service** has the same meaning as in the *Health and Community Services Complaints Act 2004*.

### 2—Application of code

This Schedule applies to the provision of health services by—

- (a) health care workers who are not required to be registered under the *Health Practitioner Regulation National Law (South Australia)* (including de-registered health practitioners); and

- (b) health care workers who are registered health practitioners under the *Health Practitioner Regulation National Law (South Australia)* and who provide health services that are unrelated to their registration.

### **3—Health care worker to provide services in a safe and ethical manner**

- (1) A health care worker must provide a health service in a safe and ethical manner.
- (2) Without limiting subclause (1), a health care worker must comply with the following:
  - (a) a health care worker must maintain the necessary competence in the health care worker's field of practice;
  - (b) a health care worker must not provide health care of a type that is outside the health care worker's experience or training, or provide services that the health care worker is not qualified to provide;
  - (c) a health care worker must only prescribe or recommend treatments or appliances that serve the needs of clients;
  - (d) a health care worker must recognise the limitations of the treatment that the health care worker can provide and refer clients to other competent health service providers in appropriate circumstances;
  - (e) a health care worker must recommend to clients that additional opinions and services be sought, where appropriate;
  - (f) a health care worker must assist a client to find other appropriate health care services, if required and practicable;
  - (g) a health care worker must encourage clients to inform their treating medical practitioner (if any) of the treatments or care being provided;
  - (h) a health care worker must have a sound understanding of any possible adverse interactions between the therapies and treatments being provided or prescribed and any other medications or treatments, whether prescribed or not, that the health care worker is, or should be, aware that a client is taking or receiving, and advise the client of these interactions;
  - (i) a health care worker must provide health services in a manner that is culturally sensitive to the needs of the health care worker's clients.

### **4—Health care workers to obtain consent**

Prior to commencing a treatment or service, a health care worker must ensure that consent appropriate to that treatment or service has been obtained and complies with the laws of South Australia.

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

- (1) A health care worker must accept the right of clients to make informed choices in relation to their health care.
- (2) A health care worker must not attempt to dissuade a client from seeking or continuing medical treatment.
- (3) A health care worker must communicate and cooperate with colleagues and other health service providers and agencies in the best interests of their clients.

## **6—Health care workers to report concerns about the conduct of other health care workers**

A health care worker who, in the course of providing treatment or care, forms the reasonable belief that another health care worker has placed or is placing clients at serious risk of harm must refer the matter to the Health and Community Services Complaints Commissioner.

## **7—Health care workers to take appropriate action in response to adverse events**

- (1) A health care worker must take appropriate and timely measures to minimise harm to clients when an adverse event occurs in the course of providing treatment or care.
- (2) Without limiting subclause (1), a health care worker must—
  - (a) ensure that appropriate first aid is available to deal with any adverse event; and
  - (b) obtain appropriate emergency assistance in the event of any serious adverse event; and
  - (c) promptly disclose the adverse event to the client and take appropriate remedial steps to reduce the risk of recurrence; and
  - (d) report the adverse event to the relevant authority, where appropriate.

## **8—Health care workers to adopt standard precautions for infection control**

- (1) A health care worker must adopt standard precautions for the control of infection in the course of providing treatment or care.
- (2) Without limiting subclause (1), a health care worker who carries out a skin penetration or other invasive procedure must comply with—
  - (a) the *South Australian Public Health Act 2011*; and
  - (b) the *Guidelines on the Safe and Hygienic Practice of Skin Penetration* published by the Department and as in force from time to time.

## **9—Health care workers diagnosed with infectious medical conditions**

- (1) A health care worker who has been diagnosed with a medical condition that can be passed on to clients must ensure that the health care worker practises in a manner that does not put clients at risk.
- (2) Without limiting subclause (1), a health care worker who has been diagnosed with a medical condition that can be passed on to clients must take and follow advice from a suitably qualified registered health practitioner on the necessary steps to be taken to modify the health care worker's practice to avoid the possibility of transmitting that condition to clients.

## **10—Health care workers not to make claims to cure certain serious illnesses**

- (1) A health care worker must not claim or represent that they are qualified, able or willing to cure cancer or other terminal illnesses.
- (2) A health care worker who claims to be able to treat or alleviate the symptoms of cancer or other terminal illnesses must be able to substantiate such claims.

## **11—Health care workers not to misinform their clients**

- (1) A health care worker must not engage in any form of misinformation or misrepresentation in relation to the products or services the health care worker provides or the qualifications, training or professional affiliations the health care worker holds.
- (2) Without limiting subclause (1)—
  - (a) a health care worker must not use possession of a particular qualification to mislead or deceive clients or the public as to the health care worker's competence in a field of practice or ability to provide treatment; and
  - (b) a health care worker must provide truthful information as to the health care worker's qualifications, training or professional affiliations; and
  - (c) a health care worker must not make claims either directly to clients or in advertising or promotional materials about the efficacy of treatment or services the health care worker provides if those claims cannot be substantiated.

## **12—Health care workers not to practise under the influence of alcohol or unlawful substances**

- (1) A health care worker must not provide treatment or care to clients while under the influence of alcohol or unlawful substances.
- (2) A health care worker who is taking prescribed medication must obtain advice from the prescribing health practitioner or dispensing pharmacist on the impact of the medication on the health care worker's ability to practise and must refrain from treating or caring for clients in circumstances where the health care worker's capacity is or may be impaired.

## **13—Health care workers with certain mental or physical impairment**

- (1) A health care worker must not provide treatment or care to clients 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 places or is likely to place clients at risk of harm.
- (2) Without limiting subclause (1), if a health care worker has a mental or physical impairment that could place clients at risk of harm, the health care worker must seek advice from a suitably qualified health practitioner to determine whether, and in what ways, the health care worker should modify the health care worker's practice, including stopping practice if necessary.

## **14—Health care workers not to financially exploit clients**

- (1) A health care worker must not financially exploit their clients.
- (2) Without limiting subclause (1)—
  - (a) a health care worker must only provide services or treatments to clients that are designed to maintain or improve clients' health or wellbeing; and
  - (b) a health care worker must not accept or offer financial inducements or gifts as a part of client referral arrangements with other health care workers; and



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

### **15—Health care workers not to engage in sexual misconduct**

- (1) A health care worker must not engage in behaviour of a sexual or close personal nature with a client.
- (2) A health care worker must not engage in a sexual or other inappropriate close personal, physical or emotional relationship with a client.
- (3) A health care worker should ensure that a reasonable period of time has elapsed since the conclusion of the therapeutic relationship before engaging in a sexual relationship with a client.

### **16—Health care workers to comply with relevant privacy laws**

A health care worker must comply with relevant privacy laws that apply to clients' health information, including the *Privacy Act 1988* of the Commonwealth.

### **17—Health care workers to keep appropriate records**

- (1) A health care worker must maintain accurate, legible and up-to-date clinical records for each client consultation and ensure that these are held securely and not subject to unauthorised access.
- (2) A health care worker must take necessary steps to facilitate clients' access to information contained in their health records if requested.
- (3) A health care worker must facilitate the transfer of a client's health record in a timely manner when requested to do so by the client or their legal representative.

### **18—Health care workers to be covered by appropriate insurance**

A health care worker should ensure that appropriate indemnity insurance arrangements are in place in relation to the health care worker's practice.

### **19—Health care workers to display code and other information**

- (1) A health care worker must display or make available a copy of each of the following documents at all premises where the health care worker practices:
  - (a) a copy of this code of conduct;
  - (b) a document, in a form determined by the Commissioner, that gives information about the way in which clients may make a complaint to the Health and Community Services Complaints Commissioner.
- (2) Copies of these documents must be displayed or made available in a manner that makes them easily visible or accessible to clients.
- (3) This clause does not apply in respect of 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 the *SA Ambulance Service Incorporated*;

- (d) premises of an approved provider (within the meaning of the *Aged Care Act 1997* of the Commonwealth).

### **Schedule 3—Revocation of *Health and Community Services Complaints Regulations 2005***

The *Health and Community Services Complaints Regulations 2005* are revoked.

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

#### **Made by the Governor**

with the advice and consent of the Executive Council  
on 14 March 2019

No 20 of 2019

HEAC-2018-00087