

## DRAFT SECOND READING SPEECH

HON. MICHAEL FERGUSON MP

### *Health Complaints (Code of Conduct) Amendment Bill 2018*

*\*check Hansard for delivery\**

Madam Speaker

The purpose of this Bill is to introduce the Code of Conduct for Health Care Workers (the Code) that are not nationally registered.

The Code has been under consideration for a number of years at the National level.

The COAG Health Council agreed that jurisdictions would examine local implementation of the Code in respect of health care workers that extends to those practising in roles not covered by the National Registration and Accreditation Scheme.

This decision followed an extensive national consultation process, including release of a regulatory impact statement in 2013 on options for the regulation of unregistered health professionals. The regulatory impact statement was prepared in accordance with COAG requirements, and found the Code was likely to deliver the greatest net public benefit to the community in the most cost-effective manner given the level of risk.

The Code will not restrict entry to practice, but will allow action to be taken against an unregistered health care worker who fails to comply with proper standards of conduct or practice.

The Code will establish a scheme which sets out minimum practice and ethical standards, and enhances statutory powers to investigate a complaint and permits new actions to be taken in relation to a complaint where a risk to the public exists. These actions include public warning statements and orders to prohibit the practice of non-registered health practitioners who have been found in breach of the Code.

It allows the vast majority of ethical and competent members of a non-registered health profession and their professional associations to self-regulate. However, it gives an additional level of public protection through national prohibition of health workers found to be in breach of the Code where the breach presents a serious risk to public health and safety.

A statutory code of conduct scheme already operates in New South Wales and South Australia, Queensland and Victoria and is in the process of being implemented in other jurisdictions.

The proposed implementation for the Code is via amendments to the *Health Complaints Act 1995*. This will be done by including the Code in regulations so that any future changes to the Code can be made by amendment regulations.

The national policy framework notes each jurisdiction is responsible for determining the entity or entities empowered to hear matters and issue prohibition orders. In Tasmania, the Health Complaints Commissioner is the appropriate officer for Tasmania.

The Act currently contains a relatively broad definition of health service. For the purposes of the Code the current broader definition in the Act is retained but there is flexibility in the Bill for the ability to exclude services by regulation from the application of the Code. For example the National Disability Support Service (NDIS) is currently developing its own similar complaints and quality processes. Service providers in the disability support sector can be excluded from the Code of Conduct if the sector is adequately covered by the NDIS arrangements.

The application of the Code will be to any person who provides or offers to provide a health service who is not a registered health practitioner or student under the National Registration and Accreditation Scheme. It also applies to registered health practitioners or students under National Registration and Accreditation Scheme who provide health services that are unrelated to their registration or study.

The Bill provides for consistency with the national policy framework for the Code of Conduct. Some of the key features are as follows.

The Bill provides that any person is able to make a complaint about a breach of the Code, not just service users and their representatives.

The Health Complaints Commissioner administering the code-regulation regime has 'own motion' powers to initiate an investigation of a possible breach of the code, with or without a complaint.

The Bill provides a period of two years from the date the service was provided (or the health user became aware of the circumstances that gave rise to the complaint) for complaints concerning the Code. The Commissioner has a limited discretion to accept complaints outside this timeframe.

The national policy framework notes each jurisdiction is responsible for determining the grounds for issuing a prohibition order. Following consultation with stakeholders in 2017, the Bill provides for the following grounds for issuing a prohibition order:

- a breach of the Code;

- cancellation of registration, where the practitioner is registered under the National Registration and Accreditation Scheme;
- the commission of a “prescribed offence” whether or not a breach of the Code has occurred, with prescribed offences to include certain breaches of Tasmania’s criminal code or certain other offences under other Tasmanian legislation; and breaches of another jurisdiction’s criminal code or other prescribed offences in that jurisdiction.

The Bill inserts a new Division 5 in Part 6 of the Act to provide for public warnings and prohibition orders for health care workers who breach the code or commit prescribed statutory offences. The issue of a public warning or prohibition order are conditional on there being a risk of harm to the community from the practitioner.

Interim orders can be issued in cases where there is a perceived risk of immediate harm to the community but a full investigation of the matter has not yet been completed.

The Bill provides for penalties for breach of a prohibition order to be a maximum of 150 penalty units or imprisonment for one year as an alternative to the financial penalty.

The Health Complaints Commissioner does not currently have a monitoring function under the Act. The Bill amends the functions of the Health Complaints Commissioner by providing for a monitoring function in relation to prohibition orders. This permits the Commissioner to determine what monitoring may be required in relation to prohibition orders.

The Bill provides for broad powers to enable the Commissioner to publish a prohibition order or make a public warning statement as appropriate. This will include publication of prohibition orders and public warning statements on a shared national website as required.

Persons affected by decisions to deny or restrict the right to practice have a right of appeal against that decision. The Bill provides that persons aggrieved by the decision of the Commissioner to issue a prohibition order or make a public warning statement have a right of appeal to the Administrative Division of the Magistrates Court.

The Bill provides for the sharing of information between health complaints entities and between health complaints entities and other regulators. This will include professional associations responsible for the enforcement of professional codes of conduct for their profession and the National Disability Insurance Scheme Commissioner.

The Bill provides for the Health Complaints Commissioner to be able to notify employers or other affected parties that a person is under investigation for a breach of the Code.

The national policy framework notes there should be mutual recognition of prohibition orders in other jurisdictions. The Bill establishes a penalty for breaching a prohibition order made in another jurisdiction.

For the preparation of the Bill, Tasmania undertook public and stakeholder consultation on the implementation issues in respect of scope of professions covered and administrative arrangements to support the Code. There is widespread stakeholder support for the introduction of the Code in Tasmania.

As agreed by COAG Health Council, an independent review of the national code regulation regime is to be initiated by Health Ministers no later than five years after implementation.

I commend the Bill to the House.