

TASMANIA

HEALTH COMPLAINTS AMENDMENT (CODE OF CONDUCT) BILL 2018

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HEALTH COMPLAINTS AMENDMENT (CODE OF CONDUCT) BILL 2018

*(Brought in by the Minister for Health, the Honourable
Michael Darrel Joseph Ferguson)*

A BILL FOR

An Act to amend the *Health Complaints Act 1995*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Health Complaints Amendment (Code of Conduct) Act 2018*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Health Complaints Act 1995** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

*No. 95 of 1995

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- (a) by inserting the following definition after the definition of *child*:

code of conduct means a code of conduct prescribed under section 56AAA;

- (b) by inserting the following definition after the definition of *Government department*:

health care worker means a person who provides, or holds himself or herself out as being able to provide, a health service on a paid or voluntary basis and who –

- (a) is not a registered health practitioner (including a person who is de-registered); or
- (b) is a registered health practitioner but provides a health service that is unrelated to his or her registration; or
- (c) is a student, within the meaning of the Health Practitioner Regulation National Law (Tasmania), but provides a health service that is unrelated to his or her area of study; or

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- (d) is a student of an
unregistered health
profession;
- (c) by omitting “paragraph (a);” from
paragraph (b) of the definition of *health
service* and substituting “paragraph (a) –
”;
- (d) by inserting the following after
paragraph (b) in the definition of *health
service*:
 - “but does not include a service
that is prescribed by the
regulations as not being a health
service;”
- (e) by omitting “service;” from paragraph
(b) of the definition of *health service
provider* and substituting “service; or”;
- (f) by inserting the following paragraphs
after paragraph (b) in the definition of
health service provider:
 - (c) a health care worker; or
 - (d) a registered health practitioner;
- (g) by inserting the following definition after
the definition of *health service user*:

interim prohibition order means an
order made under
section 56AAB;

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- (h) by inserting the following definition after the definition of *professional mentor*:

prohibition order means an order made under section 56AAC;

- (i) by inserting the following definition after the definition of *public authority*:

public warning statement means a statement prepared and published in accordance with section 56AAE;

- (j) by inserting the following definition after the definition of *register*:

registered health practitioner means a health practitioner registered by a registration board;

- (k) by inserting the following definition after the definition of *regulations*:

relevant law means a law prescribed by the regulations as a relevant law;

5. Section 6 amended (Functions of Commissioner)

Section 6 of the Principal Act is amended as follows:

- (a) by inserting the following subparagraph after subparagraph (iii) in paragraph (c):

(iv) a code of conduct; and

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(b) by inserting the following paragraphs after paragraph (g):

(ga) to investigate in accordance with Part 6, on his or her own motion and with or without a complaint, any matter relating to a possible breach of a code of conduct; and

(gb) to monitor compliance with, and the effectiveness of, prohibition orders and interim prohibition orders; and

6. Section 22A inserted

After section 22 of the Principal Act, the following section is inserted in Division 1:

22A. Complaints relating to health care workers

Any person may make a complaint to the Commissioner that a health care worker has acted in a manner that is in breach of a code of conduct.

7. Section 25 amended (Assessment)

Section 25 of the Principal Act is amended as follows:

(a) by omitting from subsection (5)(a) “under section 22”;

(b) by inserting the following paragraph after paragraph (c) in subsection (5):

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- (ca) in the case of a complaint relating to a health care worker, the complainant became aware of the circumstances that gave rise to the complaint more than 2 years before the complaint was made; or
- (c) by omitting from subsection (6) “Subsection (5)(c) does” and substituting “Subsection (5)(c) and (ca) do”.

8. Section 29 amended (Splitting of complaints)

Section 29(3) of the Principal Act is amended by inserting “or complainant” after “user”.

9. Section 40 amended (Matters that may be investigated)

Section 40 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(d) “Tasmania.” and substituting “Tasmania; and”;
- (b) by inserting the following paragraph after paragraph (d) in subsection (1):
 - (e) on his or her own motion and with or without a complaint, any matter relating to a possible breach of a code of conduct by a health care worker.

- (c) by inserting in subsection (2) “or (1)(e)” after “(c)”;
- (d) by inserting in subsection (2A) “or (1)(e)” after “subsection (1)(b)”;
- (e) by inserting in subsection (3) “or (1)(e)” after “(c)”.

10. Section 41 amended (Continuation of investigation after resolution)

Section 41 of the Principal Act is amended by inserting “or (e)” after “(c)”.

11. Part 6, Division 5 inserted

After section 56 of the Principal Act, the following Division is inserted in Part 6:

Division 5 – Codes of conduct for health care workers

56AAA. Codes of conduct

- (1) The regulations may prescribe codes of conduct for the provision of health services by health care workers.
- (2) A code of conduct may make different provisions for different classes of health services.
- (3) A person who breaches a code of conduct is not, on account of the breach alone, liable to any civil or criminal action.

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- (4) However, if a person breaches a code of conduct, the Commissioner may enforce compliance with the code of conduct in the circumstances contemplated by sections 56AAB and 56AAC.
- (5) Subsections (3) and (4) do not limit or derogate from any other provision of this Act or any other law.

56AAB. Making of interim prohibition orders

- (1) Subject to subsection (2), the Commissioner may, at any time during the investigation of a complaint against a health care worker, make an order (*interim prohibition order*) doing one or both of the following:
 - (a) prohibiting the health care worker from providing all or part of the health services being investigated;
 - (b) imposing any conditions that the Commissioner is satisfied are appropriate on the provision by the health care worker of all or part of the health services being investigated.
- (2) The Commissioner must not make an interim prohibition order unless –

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- (a) the Commissioner reasonably believes that the health care worker has –
 - (i) breached a code of conduct applying to the health services being provided; or
 - (ii) previously had his or her registration under the Health Practitioner Regulation National Law (Tasmania) cancelled; or
 - (iii) been convicted or found guilty of a prescribed offence; and
- (b) the Commissioner is satisfied that it is necessary to make the order to avoid an immediate risk to –
 - (i) the life, health, safety or welfare of a person; or
 - (ii) the health, safety or welfare of the public.
- (3) An interim prohibition order remains in force for a period of 12 weeks or a shorter period as may be specified in the order.
- (4) The Commissioner may, at any time before the expiry of an interim

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prohibition order, renew, vary or revoke the order.

- (5) An interim prohibition order takes effect on the service of the order on the health care worker to whom it applies.
- (6) The Commissioner must notify the health care worker of the decision to make an interim prohibition order, and provide the health care worker with a written statement of decision, as soon as practicable after the decision is made.
- (7) A statement of decision under subsection (6) is to include a copy of the order and the grounds on which the decision was made.
- (8) On the expiration of the 12-week period referred to in subsection (3), the Commissioner may make a further interim prohibition order.
- (9) A person who contravenes an interim prohibition order is guilty of an offence.

Penalty: Fine not exceeding 150 penalty units or a term of imprisonment not exceeding one year, or both.

56AAC. Making of prohibition orders

- (1) Subject to subsection (2), the Commissioner may, at the conclusion of an investigation against a health care

worker, make an order (***prohibition order***) doing one or both of the following:

- (a) prohibiting the health care worker from providing all or part of the health services that were the subject of the investigation for a period specified in the order, or indefinitely;
 - (b) imposing any conditions that the Commissioner is satisfied are appropriate, on the provision by the health care worker of all or part of the health services that were the subject of the investigation, for a specified period, or indefinitely.
- (2) The Commissioner must not make a prohibition order unless –
- (a) the Commissioner is satisfied that the health care worker has –
 - (i) breached a code of conduct applying to the health services being provided; or
 - (ii) previously had his or her registration under the Health Practitioner Regulation National Law (Tasmania) cancelled; or

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- (iii) been convicted or found guilty of a prescribed offence; and
- (b) the Commissioner is satisfied that it is necessary to make the prohibition order to avoid an immediate risk to –
 - (i) the life, health, safety or welfare of a person; or
 - (ii) the health, safety or welfare of the public.
- (3) The Commissioner may at any time vary or revoke a prohibition order.
- (4) A prohibition order takes effect on the service of the order on the health care worker to whom it applies.
- (5) A person who contravenes a prohibition order is guilty of an offence.

Penalty: Fine not exceeding 150 penalty units or a term of imprisonment not exceeding one year, or both.

56AAD. Commissioner to provide details of action taken

- (1) If the Commissioner makes a prohibition order, the Commissioner must, as soon as practicable after the prohibition order is made, provide the health care worker to

whom the order applies with a written statement of decision –

- (a) setting out the Commissioner's findings on significant questions of fact and including a copy of the prohibition order; and
 - (b) referring to any evidence or other material on which the findings of fact were based; and
 - (c) giving the reason, or reasons, for making the prohibition order.
- (2) Subject to subsections (3) and (4), the Commissioner –
- (a) in the case of a prohibition order made as the result of a complaint, must provide a copy of the statement of decision referred to in subsection (1) to the complainant; and
 - (b) must provide a copy of the statement of decision referred to in subsection (1) to any professional body or association that the Commissioner considers to be relevant to the health care worker or to the area of practice to which the action relates; and
 - (c) may publish the statement of decision referred to in subsection (1), or parts of the

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statement, in a manner, and in
any publication, that the
Commissioner considers
appropriate.

- (3) The Commissioner may remove from a statement of decision that is provided to a person or body, or made publicly available, under subsection (2), any material that it considers to be confidential information.
- (4) When confidential material is not included in a statement of decision, the statement should indicate that the material has been removed.
- (5) This section does not affect the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

56AAE. Public warning statements

- (1) As soon as practicable after completing an investigation, the Commissioner may prepare a statement (***public warning statement***) if the Commissioner reasonably believes that –
 - (a) a person has suffered, or is likely to suffer, a detriment as a result of the provision of the health service by the health care worker; and

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- (b) it is necessary to publish the statement to avoid an immediate risk to –
 - (i) the life, health, safety or welfare of a person; or
 - (ii) the health, safety or welfare of the public.
- (2) A public warning statement is to include –
 - (a) the name of the health care worker; and
 - (b) any warnings and other information that the Commissioner considers appropriate in relation to the health services provided by the health care worker.
- (3) As soon as practicable after preparing a public warning statement, the Commissioner is to –
 - (a) advise the health care worker of the Commissioner's intention to publish the statement; and
 - (b) provide the health care worker with a copy of the statement.
- (4) Within 14 days after being provided with a copy of the statement, the health care worker may lodge with the

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Commissioner a notice disputing the statement or requesting changes to it.

- (5) After the expiration of the period referred to in subsection (4), the Commissioner may decide to –
 - (a) withdraw the public warning statement; or
 - (b) publish the public warning statement with amendments; or
 - (c) publish the public warning statement without amendment.
- (6) The Commissioner must notify the health care worker of the Commissioner's decision.
- (7) A health care worker may appeal, in accordance with section 56AAG, against a decision under subsection (5).
- (8) After the resolution of any relevant appeal or the expiration of any relevant appeal period, the Commissioner may publish the public warning statement –
 - (a) in a newspaper circulating throughout the State; and
 - (b) on the Commissioner's internet site.
- (9) If the public warning statement is amended, the Commissioner must provide the health care worker with a

copy of the amended statement before publishing it.

- (10) The Commissioner may revoke a public warning statement by publishing, in a newspaper circulating throughout the State and on the Commissioner's internet site, a statement setting out the reason for the revocation.
- (11) If the Commissioner believes that a public warning statement contains a minor error, the Commissioner may amend the statement accordingly and must publish, in a newspaper circulating throughout the State and on the Commissioner's internet site, a statement setting out the reason for the amendment.

56AAF. Offence to provide health services if prohibited from doing so in another State or a Territory

A health care worker must not provide a health service in this State if that person is prohibited from providing that health service under a law of the Commonwealth or of another State or a Territory.

Penalty: Fine not exceeding 150 penalty units or a term of imprisonment not exceeding one year, or both.

56AAG. Appeals

- (1) A person in relation to whom the Commissioner makes an interim prohibition order or a prohibition order, or intends to publish a statement under section 56AAE(5), may appeal the decision to make the interim prohibition order or prohibition order, or to publish the statement, to the Administrative Appeals Division of the Magistrates Court.
- (2) An appeal under this section must be commenced within one month after notification of the decision to make an interim prohibition order under section 56AAB(6) or service of a prohibition order under section 56AAC(4) or provision of a public warning statement under section 56AAE, or such extended period as may be allowed by the Administrative Appeals Division of the Magistrates Court.
- (3) On an appeal under this section the Court may confirm, vary or revoke an order or publication the subject of the appeal.

56AAH. Related matters

- (1) The regulations may prescribe a specified person, or a person of a specified class, who is excluded 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.

12. Section 60 amended (Information from registration board and other bodies)

Section 60 of the Principal Act is amended by inserting “or any professional body or association that the Commissioner considers relevant” after “board”.

13. Sections 62C and 62D inserted

After section 62B of the Principal Act, the following sections are inserted in Part 8:

62C. Commissioner may give information or copies of orders to other bodies or jurisdictions

- (1) For the purposes of this Act, the Health Practitioner Regulation National Law (Tasmania) or a relevant law, the Commissioner may give information obtained in the course of administering this Act that is, or may be, the subject of, or relevant to, a complaint, investigation or inquiry under the Health Practitioner Regulation National Law (Tasmania) or a relevant law to –
- (a) in the case of the Health Practitioner Regulation National Law (Tasmania), the Australian

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Health Practitioner Regulation
Agency established by section 23
of the Health Practitioner
Regulation National Law
(Tasmania) or any relevant
National Board; or

(b) in any other case –

(i) the person or body
responsible for dealing
with the matter under the
relevant law; or

(ii) any professional body or
association that the
Commissioner considers
relevant to the health care
worker or the health care
worker's area of practice.

(2) If the Commissioner makes an interim
prohibition order or a prohibition order,
the Commissioner may give a copy of the
order to –

(a) the Australian Health Practitioner
Regulation Agency established
by section 23 of the Health
Practitioner Regulation National
Law (Tasmania) or any relevant
National Board; and

(b) any person or body dealing with
health complaints under the
jurisdiction of another State, a
Territory or the Commonwealth,

if the person or body has the power to make orders in the nature of the interim prohibition order or prohibition order; and

- (c) any professional body or association that the Commissioner considers relevant to the health care worker or the health care worker's area of practice.
- (3) If the Commissioner publishes a public warning statement, he or she may give a copy of the statement to –
- (a) the Australian Health Practitioner Regulation Agency established by section 23 of the Health Practitioner Regulation National Law (Tasmania) or any relevant National Board; and
 - (b) any person or body dealing with health complaints under the jurisdiction of another State, a Territory or the Commonwealth, if the person or body has the power to make statements in the nature of the public warning statement; and
 - (c) any professional body or association that the Commissioner considers relevant to the health care worker or the

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health care worker's area of
practice.

**62D. Commissioner authorised to receive
information under the Health Practitioner
Regulation National Law (Tasmania)**

To avoid doubt –

- (a) the Commissioner is a State entity for the purposes of sections 219 and 220 of the Health Practitioner Regulation National Law (Tasmania); and
- (b) a disclosure of protected information (within the meaning of the Health Practitioner Regulation National Law (Tasmania)) to the Commissioner is authorised and permitted for the purposes of section 216(2)(b) and (c) of that Law.

14. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.