



8 December 2016

Major changes in Victorian health complaints

As you may be aware, the Victorian Government passed the *Health Complaints Act 2016* (Vic) in April of this year. This will replace the current health complaints legislation, which an expert review panel found was not allowing the office to fully meet the needs of the Victorian community.

This change will bring into operation a new office of the Health Complaints Commissioner (HCC), with new functions and powers, to commence operation on 1 February 2017.

The new Act includes a much broader definition of 'health service' than the one currently in use, in part describing it as an activity performed "*to assess, predict, maintain or improve the person's physical, mental or psychological health or status*". This means the new legislation covers a wide range of providers who were previously outside the health complaints system and brings greater consistency to how health complaints are handled.

Anyone will be able to make a complaint to the HCC about a health service in Victoria. This includes third party complaints from other practitioners, the public, media organisations and professional bodies. Of course, health privacy is an important consideration in third party complaints and how we deal with them will differ from other complaints. We will be able to use this third party information as intelligence about the health sector as a whole, including the non-registered health service practitioner sector.

In a significant step, the new Act introduces a Code of Conduct for practitioners not registered under the National Law, or those practicing outside their area of registration. The Code (attached) sets out 17 standards non-registered health service practitioners must meet. Any departure from these standards may be used as a basis of a complaint to the HCC and any departure which threatens the health, safety or welfare of an individual or the public may result in an investigation and prohibition order.

This is consistent with other jurisdictions and there is mutual recognition of prohibition orders with New South Wales, Queensland and South Australia.

Practitioners must also make this Code of Conduct, as well as information on how to make a complaint to the HCC, available to consumers. Check the new HCC website from 1 February 2017 for resources.

The new Act envisages a much greater capacity to investigate matters. The HCC will undertake follow-up investigations into undertakings made by health services, the Minister will be able to refer matters for investigation and the Commissioner will be able to undertake own motion investigations. Prior to commencing an own motion investigation the Commissioner must seek advice from the President of the HCC Advisory Council.

The new Act includes powers to undertake hearings and to compel attendance and produce documents. The HCC will also be able to require a response to requests for information within specified timeframes, which should make our processes more efficient.

As part of the new focus on protection of the public, there is scope for the HCC to issue public warning statements about both registered and non-registered practitioners where there is a need to avoid a serious risk to the life, health or safety of individuals or the public.

The new Act enables better information sharing between the HCC, AHPRA and the Department of Health & Human Services (DHHS). The HCC will work closely with Safer Care Victoria and a new information agency in the DHHS to further the quality and safety agenda. This information sharing will apply to registered and non-registered health service providers in Victoria.

Part of that information sharing will include complaints about health services not meeting the legislated complaints handling standards. The interim standards included in the Act will be replaced by a new set to be developed by the HCC over the next two years.

These changes modernise the office and enable the HCC to address the present needs in our health system. We are committed to maintaining our independent and impartial approach to complaints resolution and supporting safe and ethical healthcare in Victoria. It is an exciting time and the HCC looks forward to working with you in this important work.

Should you wish to know more about the legislation, it can be downloaded at www.legislation.vic.gov.au/. Should you have any further queries, we would welcome the opportunity to discuss the new Act with you. Please contact Ms Julie-Anne Anderson, Executive Assistant and Project Officer on 9032 3120 or by emailing Julie-Anne.Anderson@dhhs.vic.gov.au to arrange a time to discuss these important changes.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Grant Davies', with a large loop at the top and a long horizontal stroke at the bottom.

Dr Grant Davies
Health Services Commissioner

Schedule 2—General code of conduct in respect of general health services

1 General health service providers to provide services in a safe and ethical manner

- (1) A general health service provider must provide general health services in a safe and ethical manner.
- (2) Without limiting subclause (1), general health service providers must comply with the following—
 - (a) a general health service provider must maintain the necessary competence in the provider's field of practice;
 - (b) a general health service provider must not provide a health service of a type that is outside the provider's experience or training, or provide services that the provider is not qualified to provide;
 - (c) a general health service provider must only prescribe or recommend treatments or appliances that serve the needs of clients;
 - (d) a general health service provider must recognise the limitations of the treatment the provider can provide and refer clients to other competent health service providers in appropriate circumstances;
 - (e) a general health service provider must recommend to clients that additional opinions and services be sought, where appropriate;
 - (f) a general health service provider must assist a client to find other appropriate health care services, if required and practicable;

- (g) a general health service provider must encourage clients to inform their treating medical practitioner (if any) of the treatments or care being provided;
- (h) a general health service provider 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 provider is, or should be, aware that a client is taking or receiving, and advise the client of these interactions;
- (i) a general health service provider must provide general health services in a manner that is culturally sensitive to the needs of the provider's clients.

2 General health service providers to obtain consent

Prior to commencing a treatment or service, a general health service provider must ensure that consent appropriate to that treatment or service has been obtained and complies with the laws applying in Victoria.

3 Appropriate conduct in relation to treatment advice

- (1) A general health service provider must accept the right of the provider's clients to make informed choices in relation to the health services the client seeks or receives.
 - (2) A general health service provider must not attempt to dissuade a client from seeking or continuing medical treatment.
 - (3) A general health service provider must communicate and co-operate with colleagues and other health service providers and agencies in the best interests of their clients.
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4 General health service providers to report concerns about the conduct of other health service providers

A general health service provider who, in the course of providing treatment or care, forms the reasonable belief that another health service provider has placed or is placing clients at serious risk of harm must refer the matter to the Commissioner.

5 General health service providers to take appropriate action in response to adverse events

- (1) A general health service provider 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 general health service provider 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.

6 General health service providers to adopt standard precautions for infection control

- (1) A general health service provider must adopt standard precautions for the control of infection in the course of providing treatment or care.
 - (2) Without limiting subclause (1), a general health service provider who carries out skin penetration or other invasive procedures must comply with the laws applying in Victoria.
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7 General health service providers diagnosed with infectious medical conditions

- (1) A general health service provider who has been diagnosed with a medical condition that can be passed on to clients must practise in a manner that does not put clients at risk.
- (2) Without limiting subclause (1), a general health service provider 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 provider's practice to avoid the possibility of transmitting that condition to clients.

8 General health service providers not to make claims to cure certain serious illnesses

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

9 General health service providers not to misinform their clients

- (1) A general health service provider must not engage in any form of misinformation or misrepresentation in relation to the products or services the provider provides or the qualifications, training or professional affiliations the provider holds.
 - (2) Without limiting subclause (1)—
 - (a) a general health service provider must not use the provider's possession of a particular qualification to mislead or deceive clients or
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the public as to the provider's competence in a field of practice or ability to provide treatment; and

- (b) a general health service provider must provide truthful information as to the provider's qualifications, training or professional affiliations; and
- (c) a general health service provider must not make claims either directly to clients or in advertising or promotional materials about the efficacy of treatment or services the provider provides if those claims cannot be substantiated.

10 General health service providers not to practise under the influence of alcohol or unlawful substances

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

11 General health service providers with certain mental or physical impairment

- (1) A general health service provider 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.
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- (2) Without limiting subclause (1), if a general health service provider has a mental or physical impairment that could place clients at risk, the general health service provider must seek advice from a suitably qualified health practitioner to determine whether, and in what ways, the provider should modify the provider's practice, including stopping practice if necessary.

12 General health service providers not to financially exploit clients

- (1) A general health service provider must not financially exploit the provider's clients.
- (2) Without limiting subclause (1)—
- (a) a general health service provider must only provide services or treatments to clients that are designed to maintain or improve clients' health or wellbeing; and
 - (b) a general health service provider must not accept or offer financial inducements or gifts as a part of client referral arrangements with other health service providers; and
 - (c) a general health service provider must not ask clients to give, lend or bequeath money or gifts that will benefit the general health service provider directly or indirectly.

13 General health service providers not to engage in sexual misconduct

- (1) A general health service provider must not engage in behaviour of a sexual or close personal nature with a client.
- (2) A general health service provider must not engage in a sexual or other inappropriate close personal, physical or emotional relationship with a client.

- (3) A general health service provider 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.

14 General health service providers to comply with relevant privacy laws

A general health service provider must comply with the relevant privacy laws that apply to clients' health information, including—

- (a) the **Health Records Act 2001**; and
- (b) the **Privacy and Data Protection Act 2014**; and
- (c) the Privacy Act 1988 of the Commonwealth.

15 General health service providers to keep appropriate records

- (1) A general health service provider 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 general health service provider must take necessary steps to facilitate clients' access to information contained in their health records if requested.
- (3) A general health service provider must facilitate the transfer of a client's health record in a timely manner when requested to do so by the client or the client's legal representative.

16 General health service providers to be covered by appropriate insurance

A general health service provider should ensure that appropriate indemnity insurance arrangements are in place in relation to the provider's practice.

17 General health service providers to provide access to code of conduct and other information

- (1) A general health service provider must bring each of the following documents to the attention of, or make available a copy of each of the following documents to, the clients of the general health service provider when providing or offering to provide a general health service—
 - (a) a copy of this code of conduct;
 - (b) a document that gives information about the way in which clients may make a complaint to the Commissioner.
 - (2) Copies of these documents must be made available in a manner that makes them easily accessible to clients.
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