



Western Australia

Health and Disability Services (Complaints) Act 1995

**Health and Disability Services (Complaints)
Amendment Regulations 2023**

Health and Disability Services (Complaints) Amendment Regulations 2023

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Health and Disability Services (Complaints) Amendment Regulations 2023

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Health and Disability Services (Complaints) Amendment Regulations 2023*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published on the WA legislation website;
- (b) the rest of the regulations — on the day on which the *Health and Disability Services (Complaints) Amendment Act 2022* section 3 comes into operation.

3. Regulations amended

These regulations amend the *Health and Disability Services (Complaints) Regulations 2010*.

4. Regulations 2A and 2B inserted

After regulation 2 insert:

2A. Prescribed offences (Act s. 52B(3), 52H(3) and 52R(2))

- (1) For the purposes of sections 52B(3)(a)(ii), 52H(3)(a)(ii) and 52R(2)(a)(ii) of the Act, each of the following is a prescribed offence —
 - (a) an offence specified in Schedule 1A;
 - (b) an offence of conspiracy, attempt or incitement to commit an offence referred to in paragraph (a);
 - (c) an offence against the law of the Commonwealth or of any place outside this State if the offender's acts or omissions that constituted the offence under that law would have constituted an offence under paragraph (a) or (b) if they had occurred in this State.
- (2) In Schedule 1A —

Australian Consumer Law means —

 - (a) the Australian Consumer Law as defined in the *Competition and Consumer Act 2010* (Commonwealth) section 4(1); and
 - (b) the *Australian Consumer Law (WA)* as defined in the *Fair Trading Act 2010* section 17(1).

2B. Interstate orders prescribed (Act s. 52Q(1))

- (1) For the purposes of the definition of ***interstate interim prohibition order*** in section 52Q(1) of the Act, each of

the following is an interstate interim prohibition order —

- (a) an order under the *Health and Community Services Complaints Act 2004* (South Australia) section 56B(2)(a) or (b);
 - (b) an order under the *Health Care Complaints Act 1993* (New South Wales) section 41AA(1);
 - (c) an order under the *Health Complaints Act 2016* (Victoria) section 90(1) or (1A);
 - (d) an order under the *Health Ombudsman Act 2013* (Queensland) section 68(1).
- (2) For the purposes of the definition of ***interstate prohibition order*** in section 52Q(1) of the Act, each of the following is an interstate prohibition order —
- (a) an order under the *Health and Community Services Complaints Act 2004* (South Australia) section 56C(2)(a) or (b);
 - (b) an order under the *Health Care Complaints Act 1993* (New South Wales) section 41A(2)(a);
 - (c) an order under the *Health Complaints Act 2016* (Victoria) section 95(1) or (1A);
 - (d) an order under the *Health Ombudsman Act 2013* (Queensland) section 90C(1).

5. Regulation 4 amended

In regulation 4(1)(b) delete “Australia (Western Australia) Inc.,” and insert:

Western Australia Ltd (ABN 55 028 468 715);

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6. Regulation 6 inserted

After regulation 5 insert:

6. Code of conduct prescribed (Act s. 77A)

For the purposes of section 77A of the Act, the code of conduct set out in Schedule 3 applies to the provision of health services by —

- (a) health care workers who are not registered providers; and
- (b) health care workers who are registered providers and who provide health services that are unrelated to their registration.

7. Schedule 1A inserted

After Schedule 1 insert:

Schedule 1A — Prescribed offences

[r. 2A]

Division 1 — Offences under Australian Consumer Law

Item	Provision	Description of offence
1.	s. 151	False or misleading representations about goods or services
2.	s. 155	Misleading conduct as to the nature etc. of goods
3.	s. 156	Misleading conduct as to the nature etc. of services

Division 2 — Offences under *Children and Community Services Act 2004*

Item	Provision	Description of offence
1.	s. 101	Failing to protect child from harm
2.	s. 104A(2)	Body piercing on certain parts of child's body
3.	s. 192	Employing child to perform in indecent, obscene or pornographic manner

Division 3 — Offences under *The Criminal Code*

Item	Provision	Description of offence
1.	s. 77	Conduct intended to incite racial animosity or racist harassment
2.	s. 78	Conduct likely to incite racial animosity or racist harassment
3.	s. 79	Possession of material for dissemination with intent to incite racial animosity or racist harassment
4.	s. 80	Possession of material for dissemination that is likely to incite racial animosity or racist harassment
5.	s. 80A	Conduct intended to racially harass
6.	s. 80B	Conduct likely to racially harass
7.	s. 80C	Possession of material for display with intent to racially harass
8.	s. 80D	Possession of material for display that is likely to racially harass
9.	s. 181	Carnal knowledge of animal

Item	Provision	Description of offence
10.	s. 186	Occupier or owner allowing young person to be on premises for unlawful carnal knowledge
11.	s. 187	Facilitating sexual offence against child outside WA
12.	s. 190	Being involved with prostitution
13.	s. 191	Procuring person to be prostitute etc.
14.	s. 192	Procuring person to have unlawful carnal knowledge by threat, fraud or administering drug
15.	s. 199	Abortion
16.	s. 204A	Showing offensive material to child under 16
17.	s. 204B	Using electronic communication to procure, or expose to indecent matter, child under 16
18.	s. 206	Supplying intoxicant to person likely to abuse them
19.	s. 214	Misconduct with regard to corpse
20.	s. 215	Interfering with corpse to hinder inquiry
21.	s. 217	Involving child in child exploitation
22.	s. 218	Producing child exploitation material
23.	s. 219	Distributing child exploitation material
24.	s. 220	Possession of child exploitation material
25.	s. 221BD	Distribution of intimate image
26.	s. 221E	Participating in activities of criminal organisation

Item	Provision	Description of offence
27.	s. 221F	Instructing commission of offence for benefit of criminal organisation
28.	s. 279	Murder
29.	s. 280	Manslaughter
30.	s. 281	Unlawful assault causing death
31.	s. 283	Attempt to unlawfully kill
32.	s. 288	Procuring etc. suicide
33.	s. 290	Preventing birth of live child
34.	s. 291	Concealing birth of dead child
35.	s. 292	Disabling in order to commit indictable offence etc.
36.	s. 293	Stupefying in order to commit indictable offence etc.
37.	s. 294	Act intended to cause grievous bodily harm or prevent arrest
38.	s. 297	Grievous bodily harm
39.	s. 298	Suffocation and strangulation
40.	s. 300	Persistent family violence
41.	s. 301	Wounding and similar acts
42.	s. 304	Act or omission causing bodily harm or danger
43.	s. 305	Setting dangerous thing
44.	s. 305A	Intoxication by deception

Item	Provision	Description of offence
45.	s. 306	Female genital mutilation
46.	s. 313	Common assault
47.	s. 317	Assault causing bodily harm
48.	s. 317A	Assault with intent
49.	s. 318	Serious assault
50.	s. 318A	Assault on aircraft's crew
51.	s. 320	Sexual offence against child under 13
52.	s. 321	Sexual offence against child of or over 13 and under 16
53.	s. 321A	Persistent sexual conduct with child under 16
54.	s. 322	Sexual offence against child of or over 16 by person in authority
55.	s. 323	Indecent assault
56.	s. 324	Aggravated indecent assault
57.	s. 325	Sexual penetration without consent
58.	s. 326	Aggravated sexual penetration without consent
59.	s. 327	Sexual coercion
60.	s. 328	Aggravated sexual coercion
61.	s. 329	Sexual offence by relative or the like
62.	s. 330	Sexual offence against incapable person

Item	Provision	Description of offence
63.	s. 331B	Sexual servitude
64.	s. 331C	Conducting business involving sexual servitude
65.	s. 331D	Deceptive recruiting for commercial sexual service
66.	s. 332	Kidnapping
67.	s. 333	Deprivation of liberty
68.	s. 336	Procuring apprehension or detention of person not suffering from mental illness or impairment
69.	s. 337	Unlawful detention or custody of person who is mentally ill or impaired
70.	s. 338A	Threat with intent to gain etc.
71.	s. 338B	Threats
72.	s. 338C	Statement or act creating false apprehension as to existence of threat or danger
73.	s. 338E	Stalking
74.	s. 343	Child stealing
75.	s. 378	Stealing
76.	s. 392	Robbery
77.	s. 393	Assault with intent to rob
78.	s. 396	Demanding property with threats with intent to steal
79.	s. 397	Demanding property with threats with intent to extort or gain

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Item	Provision	Description of offence
80.	s. 398	Threats etc. with intent to extort etc.
81.	s. 399	Procuring execution of deed etc. by threat etc. with intent to defraud
82.	s. 401	Burglary
83.	s. 407	Person found armed etc. with intent to commit crime
84.	s. 409	Fraud

Division 4 — Offences under *Human Reproductive Technology Act 1991*

Item	Provision	Description of offence
1.	s. 6	Unlicensed practices
2.	s. 7	Offences relating to reproductive technology

Division 5 — Offences under *Misuse of Drugs Act 1981*

Item	Provision	Description of offence
1.	s. 6(1)	Crime concerned with prohibited drugs generally
2.	s. 7(1)	Crime concerned with prohibited plants generally
3.	s. 7B(4)	Selling drug paraphernalia to child
4.	s. 8Q	Manufacture, sale or supply of psychoactive substances
5.	s. 8R	Promoting psychoactive substances

Item	Provision	Description of offence
6.	s. 14(1)	Possessing more than prescribed quantity of certain substances or things

Division 6 — Offence under *Prohibited Behaviour Orders Act 2010*

Item	Provision	Description of offence
1.	s. 35	Breach of prohibited behaviour order

Division 7 — Offences under *Prostitution Act 2000*

Item	Provision	Description of offence
1.	s. 7	Seeking to induce person to act as prostitute
2.	s. 16	Causing, permitting, or seeking to induce child to act as prostitute
3.	s. 17	Obtaining payment for prostitution by child
4.	s. 18	Agreement for prostitution by child

Division 8 — Offences under *Restraining Orders Act 1997*

Item	Provision	Description of offence
1.	s. 61(1)	Breach of family violence restraining order
2.	s. 61(1A)	Breach of violence restraining order
3.	s. 61(2a)	Breach of police order

Division 9 — Offences under *Voluntary Assisted Dying Act 2019*

Item	Provision	Description of offence
1.	s. 99	Unauthorised administration of prescribed substance
2.	s. 100	Inducing another person to request or access voluntary assisted dying
3.	s. 101	Inducing self-administration of prescribed substance
4.	s. 102	False or misleading information

8. Schedule 3 inserted

After Schedule 2 insert:

Schedule 3 — Code of conduct for certain health care workers

[r. 6]

1. Health care workers to provide services in safe and ethical manner

- (1) A health care worker must provide health services 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 their field of practice;
 - (b) a health care worker must not provide health services of a type that is outside their experience or

- training, or provide services that they are 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 they can provide and refer clients to other competent providers in appropriate circumstances;
 - (e) a health care worker must recommend to clients that additional opinions and services be sought, if appropriate;
 - (f) a health care worker must assist a client to find other appropriate health 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 medications, therapies and treatments being provided or prescribed and any other medications, therapies or treatments, whether prescribed or not, that the 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 clients.

2. Health care workers to obtain consent

Prior to commencing a treatment or other health service, a health care worker must ensure that consent appropriate to that treatment or service has been obtained and complies with the laws applying in this State.

3. 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 providers and agencies in the best interests of clients.

4. Health care workers to report concerns about conduct of other health care workers

A health care worker who, in the course of providing health services, 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 Disability Services Complaints Office.

5. 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 health services.
- (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, if appropriate.

- 6. 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 health services.
 - (2) Without limiting subclause (1), a health care worker who carries out a skin penetration or other invasive procedure must comply with the *Health (Skin Penetration Procedure) Regulations 1998*.
- 7. 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 they practise 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 their practice to avoid the possibility of transmitting that condition to clients.
- 8. 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 terminal or incurable illnesses.
 - (2) A health care worker who claims to be able to treat or alleviate the symptoms of cancer or terminal or incurable illnesses must be able to substantiate the claims.
- 9. Health care workers not to misinform clients**
- (1) A health care worker must not engage in any form of misinformation or misrepresentation in relation to the

products or services they provide or the qualifications, training or professional affiliations they hold.

- (2) Without limiting subclause (1) —
- (a) a health care worker must not use their possession of a particular qualification to mislead or deceive clients or the public as to their competence in a field of practice or ability to provide treatment; and
 - (b) a health care worker must provide truthful information as to their 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 treatments or other health services they provide if those claims cannot be substantiated.

10. Health care workers not to practise under influence of alcohol or unlawful substances

- (1) A health care worker must not provide health services 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 their ability to practise and must refrain from providing health services to clients in circumstances where their capacity is or may be impaired.

11. Health care workers with certain mental or physical impairments

- (1) A health care worker must not provide health services to clients while suffering from a mental or physical 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, disability, condition or disorder that could place clients at risk, the health care worker must seek advice from a suitably qualified health practitioner to determine whether, and in what ways, they should modify their practice, including stopping practice if necessary.

12. Health care workers not to financially exploit clients

- (1) A health care worker must not financially exploit clients.
- (2) Without limiting subclause (1) —
 - (a) a health care worker must only provide treatments or other health services 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.

13. Health care workers not to engage in sexual or other 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 inappropriate close personal, physical or emotional relationship with a client.
- (3) A health care worker must ensure that a reasonable period of time has elapsed since the conclusion of the therapeutic relationship before engaging in a relationship of a kind referred to in subclause (2) with a former client.

14. Health care workers to comply with relevant privacy laws

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

15. 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.

16. Health care workers to have appropriate insurance

A health care worker must ensure that appropriate indemnity insurance arrangements are in place in relation to their practice.

17. 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 carries on their practice —
 - (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 Health and Disability Services Complaints Office.
- (2) Copies of the documents referred to in subclause (1) 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 relation to any of the following premises —
- (a) premises of a health service provider as defined in the *Health Services Act 2016* section 6;
 - (b) a private hospital, other than a nursing home, as those terms are defined in the *Private Hospitals and Health Services Act 1927* section 2(1);
 - (c) premises of St John Ambulance Western Australia Ltd (ABN 55 028 468 715);
 - (d) premises of an approved provider as defined in the *Aged Care Act 1997* (Commonwealth) Schedule 1 clause 1.

B. D'SA, Clerk of the Executive Council