



**Rachel Stephen-Smith MLA**

Minister for Health

Minister for Families and Community Services

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Mr Peter Cain

Chair

Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)

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Dear Chair *Peter*

Thank you for providing Scrutiny Report No. 32 of 23 August 2023, and the comments of the Standing Committee on Justice and Community Safety (the Standing Committee) on the Human Rights Commission Amendment Bill 2023 (now the Act).

I offer the following comments in relation to the matters the Committee has raised in its report regarding the National Code of Conduct (the Code of Conduct) in the Act, noting the Act was passed by the Legislative Assembly on 28 June 2023.

The National Code of Conduct for Healthcare Workers was agreed to by the Council of Australian Governments (COAG) Health Council in April 2015 and is intended to be enacted by every Australian state and territory. As you are aware, the Code of Conduct sets minimum standards of care required in the delivery of a health service. This is not limited only to health and safety issues but is more broadly targeted to promoting trust in relationships between health care workers and consumers, and ensuring businesses are required to treat consumers ethically. For example, the Code of Conduct includes requirements such as:

- ensuring competency to provide the health service (regulation 8(2)(a));
- an obligation not to give false, misleading or deceptive information about the health service, or the person's training or experience (regulation 10);
- to provide accurate advice (regulation 12); and
- not to financially exploit a consumer (regulation 13).

The *Competition and Consumer Act 2020 (Cth)* and the *Fair Trading (Australian Consumer Law) Act 1992 (Consumer Laws)* include a range of offences which are also designed to protect consumers

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from unfair and unethical business practices. For example, Consumer Laws protect consumers against misleading and deceptive conduct during business; require that pricing is clear and transparent; protect consumers from unconscionable conduct; and prohibit pyramid schemes.

When such conduct is viewed in the context of delivery of a health service, this behaviour can be damaging to the relationship of trust between health care workers and consumers (in the same way as breaches of the Code of Conduct address broader ethical issues).

The balance of offences (other than the Consumer Laws) relates specifically to matters concerning public health and health services. Section 94H of the Act requires that, in order to issue a prohibition order, the relevant offence must occur in the delivery of a health service – this operates as a safeguard to ensure the offence is linked to a relevant health service.

As an example, the inclusion of the Consumer Laws would allow a prohibition order to be issued in relation to a health care worker who has been found guilty of an offence under the Consumer Laws in relation to misleading and deceptive conduct in the delivery of a particular health service. A healthcare worker who has committed such an offence in the course of providing a health service will have misrepresented the nature of the health service provided in some way, which poses a similar level of risk to the community as that posed by a breach of the Code of Conduct.

The particular offences referred to in section 94H were also identified so as to ensure consistency with the basis upon which prohibition orders can be made under the corresponding laws in NSW – see section 45 *Health Care Complaints Act 1993 (NSW)*. Ensuring consistency in relation to the threshold and requirements for a prohibition order between NSW and ACT is important given the high probability of consumers receiving, and health-care workers providing, health services across the ACT/NSW border.

While section 94H does not require either the breach of the Code of Conduct, or the offence against another law committed in delivering the health service to be the cause of serious health and safety concern, other safeguards protect rights of health care workers. As referenced in Scrutiny report 32, section 94H separately requires the Commission to be reasonably satisfied that there is a serious health and safety risk before issuing a prohibition order.

Further, a final order can only be made for the period reasonably required to protect the health or safety of the public (see section 94J(2)), and the Commission is required to vary a condition or prohibition order (section 94L) or cancel the prohibition order (section 94M) if the Commission is no longer satisfied that the public health or safety concern persists.

I hope this information is of assistance and addresses the Standing Committee's concerns.

Yours sincerely



Rachel Stephen-Smith MLA  
29 September 2023