

Health Insights

Health Complaints Act 2016 (Vic) – does it really apply to me? Important implications for registered health professionals employed by bodies corporate in Victoria

In 2016, the Victorian government introduced the *Health Complaints Act 2016 (Vic)* (the **Act**) which launched a new framework for managing and resolving complaints regarding all Victorian health service providers. As part of these reforms, the office of the Health Complaints Commissioner (the **HCC**) was established, replacing the former office of the Health Services Commissioner.

The new HCC has expanded powers and responsibilities when compared with its regulatory predecessor. There are several key features to these new powers, including the HCC's ability to accept complaints from anyone, including from third parties or other practitioners, and to commence own motion investigations, even when no complaint has been made.

One of the often cited purposes of establishing the new HCC framework, was to fill a regulatory gap in relation to health service providers who were not among the professions registered under the Health Practitioner Regulation National Law (Victoria). At the time of its introduction, the then Minister for Health, Ms Jill Hennessy, described the public policy motivation for this expansion of powers as being that

...unregistered health service providers are not subject to the same regulatory controls or sanctions as registered practitioners. Under the act as it currently stands, there is no capacity for the health services commissioner, or any other authority, to prevent incompetent, unethical or unscrupulous unregistered health service providers from practising.¹

To capture unregistered health service providers within the HCC's jurisdiction, the Act introduced a new term into the regulatory landscape: 'general health service provider', which means "a person who provides a general health service²". A 'general health service' is defined as being "a health service that is not a health profession service³", with the term 'health profession service' meaning "the practice of a health profession⁴", and the term 'health profession' meaning "a health profession⁵ within the meaning of the National Law⁵". Under the National Law, the term 'health profession' is defined with a list of recognised AHPRA-regulated professions including medical, dental and chiropractic.⁶

At the time of the introduction of the Act, it seemed that the intention of the new framework was to ensure the appropriate regulation of health service providers who were *not* already regulated by AHPRA under the

¹ Second Reading Speech for the Health Complaints Bill 2016 (Assembly Daily Extract, 10 February 2016 at page 100)

² *Health Complaints Act 2016 (Vic)*, section 3.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Health Practitioner Regulation National Law (Vic)*, section 5.

National Law, or who were registered as health professionals with AHPRA, but who were also providing health services outside the scope of their registration. In her Second Reading Speech for the Act, Ms Hennessy made reference to the types of persons included in the definition of 'general service health provider', as being:

...for example, dental technicians, massage therapists, speech pathologists, counsellors and psychotherapists, homeopaths and reiki therapists, along with many others. Some of these general health service providers will belong to professional associations with specific membership requirements and standards; others will not. Importantly, the definition of general health service provider will include individuals who are registered as a health professional under the Health Practitioner Regulation National Law (Victoria) to the extent they are providing health services outside the scope of their registration and not using their registered title. It also applies to individuals who have previously been, but are no longer, registered under the Health Practitioner Regulation National Law (Victoria).⁷

However, the HCC recently confirmed to Meridian Lawyers that it considers that the jurisdiction of the HCC to *also* include bodies corporate who employ persons who provide health profession services under the National Law.

The HCC takes the position that if a body corporate employs health profession service providers to provide health profession services (such as doctors or dentists, for example), the body corporate will be captured by the Act as a 'general health service provider'. In its view, this is because a body corporate cannot be registered under the National Law and as such must be a 'general health service provider.' The HCC takes this view despite the fact that the health services in question fall outside the definition of a 'general health service' by virtue of them being 'health profession services'.

The result of the HCC's interpretation, is that the regulatory ambit for the Act's framework is much broader than previously understood, and in practical effect has the ability to reach through bodies corporate to the registered health practitioners they employ – practitioners who would otherwise be excluded from the definition of 'general health service provider' and the correlating provisions of the Act. If correct, it means that all of the provisions and powers pertaining to a general health service provider under the Act will apply to bodies corporate who employ health profession service providers, including the General Code of Conduct, the HCC's powers of investigation, and troublingly, the power to make Interim Prohibition Orders which can prohibit the general health service provider from providing all or part of a general health service being investigated for up to 12 weeks⁸.

The issue with this interpretation, is that it results in double regulation of registered health practitioners. For example, if the HCC issues an interim prohibition order against a corporation employing dentists, and requires the cessation of a particular aspect of the dental health service provided by the body corporate, it is the dentists employed by the body corporate who are required to cease work. This appears to overlap with AHPRA's jurisdiction to oversee and regulate the practice of registered health professionals.

⁷ Second Reading Speech for the Health Complaints Bill 2016 (Assembly Daily Extract, 10 February 2016 at page 101)

⁸ *Health Complaints Act 2016* (Vic), section 90.

Although Meridian Lawyers respectfully maintains some reservations about the HCC's interpretation of the Act, it is important for Victorian registered health practitioners to be aware that the HCC is operating on the basis that this asserted interpretation is correct, and that it is investigating relevant bodies corporate accordingly. Further, bodies corporate who employ registered health professionals ought to familiarise themselves with the obligations associated with being a 'general health service provider' under the Act, including the General Code of Conduct⁹ and the corresponding regulatory powers.

Meridian Lawyers regularly assists practitioners regarding Health Complaints Commissioner investigations. This article was written by Principal, Kellie Dell'Oro and Associate, Anna Martin. Please contact us if you have any questions or for further information.



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⁹ Set out in Schedule 2 of the *Health Complaints Act 2016* (Vic).