



**Submission on the proposed arrangements for handling complaints
and dealing with performance, health and conduct matters**

November 2008

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Introduction

The Consumers Health Forum of Australia Inc (CHF) is the national voice for health consumers. As an independent non-government organisation, CHF helps shape Australia's health system by representing and involving consumers in health policy and program development (see Appendix 1). For many years CHF has advocated for strong consumer health complaints mechanisms as one of the principles for health system improvement.

In this submission¹ CHF considers key issues for consumers identified in the National Registration and Accreditation Scheme for the Health Professions Consultation Paper² on the 'Proposed arrangements for handling complaints and dealing with performance, health and conduct matters' and recommends practical strategies to address them.

This submission recommends practical steps to make the scheme and complaints processes work better for consumers rather than responding to the specific steps in the process for health practitioners.

CHF has based this submission on discussions with consumers about health complaints mechanisms over a number of years, including recent input from CHF members and consumer representatives about the proposed arrangements³, and consumer consultations on the Australian Charter of Healthcare Rights and Open Disclosure⁴.

The key recommendations and strategies in this paper are based on the principle that health care works better when consumers are partners in decision-making. The principles and recommendations are outlined on the following page.

The National Registration and Accreditation Scheme

The National Registration and Accreditation Scheme (NRAS) was established by the Council of Australian Governments (COAG) in March 2008. CHF welcomes the establishment of NRAS as it will take safety and quality to a new level in Australia. Health professionals will be assessed against national standards, closing the gaps and inconsistencies between the states.

For consumers, the Scheme provides for a central place to check health professional registrations, obtain information about the different roles and experiences of various health professionals and to raise concerns about health professionals, while being sure that they will be directed to the right place for action and that their health care will not be compromised. Consumers have a valuable viewpoint to contribute so that the Scheme is the best it can be and has consumer confidence.

¹ This submission is part of the CHF Shaping the Health Workforce Project 2008-09, funded by the Australian Government Department of Health and Ageing on behalf of the Practitioner Regulation Subcommittee of the Health Workforce Principal Committee and the National Registration and Accreditation Project team.

² See <http://www.nhwt.gov.au/natreg.asp>

³ This includes discussions with consumer representatives on complaints boards; a teleconference with the state based consumer organisations: Health Issues Centre, Health Care Consumers of the ACT, Health Consumers QLD Ministerial Advisory Committee and the Health Consumers Alliance SA; input from representatives from the Health Consumers Council WA; and individuals who responded to a CHF newsletter article.

⁴ The consultations were part of the CHF Safety and Quality Project 2007-08: 'It's all about communication' funded by the Australian Commission for Safety and Quality in Health Care. <http://www.chf.org.au/projects/PROJ11/>

Principles and Recommendations

For the proposed arrangements for handling complaints and dealing with performance and health conduct matters

Principles

- Health care works better when consumers are partners in decision-making
- The national system must be easy for consumers to use
- Consumers need support to navigate through the complaints management and disciplinary system
- Consumer confidentiality must be maintained throughout the complaints process
- Consumer representatives should be involved in all levels of decision making and governance
- There must be ongoing communication with consumers during all stages of the complaints process
- Good communication is fundamental to the success of any complaints and performance monitoring process

Recommendations

- The national complaints process should include a 'one stop shop' where consumers can raise concerns and lodge confidential complaints
- CHF recommends three strategies to assist consumers to navigate through the complaints system:
 1. A flow chart that clearly outlines all options and pathways
 2. Information available on a website with a telephone inquiry line for further information or people without the internet
 3. A complaint liaison person identified within the NRAS that can assist consumers through the process
- The National Charter of Healthcare Rights should be recognised as part of the National Complaints arrangements
- A 'plain English' guide to complaints processes in Australia is developed for consumers
- A tracking system should be developed to provide consumers with information about the status of their complaint
- The complaint liaison person identified within the NRAS should keep consumers informed of the process and any referrals to other complaints processes if agreed
- The arrangements include two levels of raising concerns:
 - Level 1: Reporting a concern
 - Level 2: Making a formal complaint
- Community members who are able to bring forward community values must be included on all boards, committees, panels and tribunals established to investigate complaints or review registered health practitioner performance.

The current system

Australia has an array of distinct systems that aim to monitor safety and quality of health care delivery. At present there are a number of different jurisdictions and organisations involved in regulating the health professions and managing health care complaints. Furthermore, the current system has multiple entry points for consumers wanting to make a complaint including:

- Individual health professionals
- Health services
- Health Care Complaints Commissions
- Professional boards
- Medicare.

Currently there is no guide to how the complaints system works and the different ways to access them. Consumers often have difficulty knowing the appropriate place to raise their concerns.

Furthermore consumers are finding themselves navigating a complex system with multiple players when making a report about an adverse event or incident. For example, many consumers are unaware that they can raise a complaint about health professionals conduct with professional registration boards or even that such boards exist. CHF sees the national system as an opportunity to simplify the process for consumers.

The proposed arrangements

CHF supports proposal 4.1.1 that legislation will provide for any person (including organisations) to make a complaint to a board. This proposal requires that a number of strategies are developed in order to facilitate report making and understanding of the complaints process by consumers.

As the current complaints system is difficult to navigate, the national scheme must make every effort to provide easy access for consumers to the complaints process. CHF recommends that the scheme includes a ‘one stop shop’ national resource where consumers can raise concerns and are assisted in lodging a confidential formal complaint.

The ‘one stop shop’ approach must meet the needs and requirements of all health consumers. For example, a website, with a telephone inquiry line for further information or assistance, or for people who do not have or use the internet will ensure that geographically isolated consumers, consumers without the internet and consumers with hearing and vision impairments can access the service. CHF is concerned that the paper stops short of outlining a single place where the complainant makes their report.

Principle	The national system must be easy for consumers to use.
Recommendation	The national complaints process should include a ‘one stop shop’ where consumers can raise concerns and lodge confidential complaints.

Making a complaint

CHF supports the adoption of a change in culture to mandatory reporting when the public is at risk. Consumers need information to assist them to navigate the complaints process including:

- Deciding whether to make a complaint about a health service and seek mediation through a health complaints commissioner or to make a complaint about a professional’s conduct through a board

- Information about the interplay between the national system and health complaint commissioners
- Information on how to make a complaint
- What happens once a complaint is made, including the pathways for investigating and dealing with complaints, and
- Outcomes of complaints.

Principle	Consumers need support to navigate through the complaints management and disciplinary system.
Recommendation	CHF recommends three strategies to assist consumers to navigate through the complaints system: <ol style="list-style-type: none"> 1. A flow chart that clearly outlines all options and pathways 2. Information available on a website with a telephone inquiry line for further information or people without the internet 3. A complaint liaison person identified within the NRAS that can assist consumers through the process.

The paper proposes three pathways for investigating and dealing with complaints. The pathways are based on whether the complaint is about the performance, capacity to practice safely or unsatisfactory professional conduct of a health professional.

CHF believes the pathways provide a useful way of looking at complaints. However, each pathway must be clearly defined and guidance on the management of incidents, where more than one pathway is applicable, must be included within legislation and available to consumers. Regardless of the pathway, the process must be fair and accountable to the public.

Confidential complaints

Currently, consumers experience several barriers to making complaints and raising concerns. For example, some consumers have:

- Found it difficult to have their complaint taken seriously
- Not made complaints because they are scared of adverse consequences to their health or a loss of privacy⁵, and
- Reported that they have been ‘blacklisted’ by local practitioners for raising concerns.

To overcome these barriers, consumer confidentiality must be maintained through national complaints arrangements. The consultation paper does not address how confidential information will be protected nor does it refer to procedures for obtaining consumer consent to transfer their complaint to another agency. Consumers see the national Scheme as offering a way to raise a complaint about a health professional that will not be heard by their immediate peers within the state.

The complaints process must also provide witness support and appropriate steps in place to minimise re-victimisation of consumers when giving evidence.

Principle	Consumer confidentiality must be maintained throughout the complaints process.
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⁵ For example, concerns were raised about the loss of privacy when making a complaint in the CHF Open Disclosure Workshop held in MacKay in December 2007. For further information, please see the report on the CHF website at http://www.chf.org.au/Docs/Downloads/471_Mackay_S%26Q_Workshops.pdf (Accessed November 2008)

A national and collaborative approach

Health complaints systems that have well-developed links between different bodies reassure consumers and health professionals that their reports are taken seriously and investigated appropriately.

Health Complaints Commissioner

It is unclear what the roles of the national agency and state/territory based health complaints bodies are under the new arrangements. The consultation paper indicates that some consumer complaints will be referred to state based health complaints commissions for action. The arrangements must build on the strong work already undertaken by these bodies. This lack of clarity is of great concern to consumers.

Clarification is needed about the role of Health Complaints Commissioners, particularly in regards to their role of mediation and supporting consumers through the complaints system. Furthermore, there cannot be a national complaints system until there is consistency between the states and how they manage complaints and health professional performance issues.

Charter of Healthcare Rights

It is also unclear about how the proposed national arrangements will link to the Australian Commission on Safety and Quality in Health Care National Charter of Health Care Rights⁶. CHF strongly recommends that the proposed national complaints system strongly link to the Healthcare Rights of:

- **Safety** - you have the right to safe and high quality care
- **Respect** - you have the right to respect, dignity and consideration
- **Privacy** - you have the right to privacy and confidentiality of your personal information, and
- **Comment** - you have the right to comment on your care and to have your concerns addressed.

CHF believes that the Healthcare Rights are fundamental to a health system that provides safe and high quality health care for consumers. Recognising these rights as part of the national system will strengthen its commitment to a safe and high quality health system.

Recommendation The National Charter of Healthcare Rights should be recognised as part of the National Complaints arrangements.

Open disclosure

Open disclosure and good communication about mistakes is crucial to any health professional performance and conduct monitoring arrangements. Often, open and honest communication about a mistake as soon as it has occurred can prevent it from escalating to a complaint or consumers' taking legal action. For example, health consumers at a CHF Open Disclosure Workshop in MacKay in 2007 said that they expect open, reliable, sensitive and timely information when something goes wrong.

If they apologise upfront and are honest about what has happened, that will build our trust in the process. Rebuilding trust is the most important thing to me when something goes wrong. MacKay health consumer.

⁶ Available on the Australian Commission on Safety and Quality in Health Care website at www.safetyandquality.gov.au

CHF recommends that the Scheme ensures that good, upfront communication is incorporated into the NRAS arrangements for handling complaints. This includes assisting consumers to know what is going on and providing support to consumers through the NRAS complaints process or by referral to health complaints commissioners where appropriate. Furthermore, the scheme should link to the National Open Disclosure Standard⁷.

Principle	Good communication is fundamental to the success of any complaints and performance monitoring process.
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International standards

CHF also strongly recommends that the arrangements are developed in accordance with international standards of good complaints handling (ISO Standard 0002-2006). CHF is concerned that the proposed arrangements currently do not meet international standards.

Communication strategy

It is vital that the implementation of the proposed arrangements is supported by an appropriate communications strategy for consumers and health professionals. Consumer input into the development of the strategy will lead to better understanding of the scheme and of the way that the public interest is being protected.

Recommendation	A 'plain English' guide to complaints processes in Australia is developed for consumers.
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Effective and appropriate communication about mistakes, concerns and complaints is a fundamental part of health professional performance, conduct and the handling of complaints. This includes communication about mistakes (open disclosure) through to ongoing communication about the handling and outcomes of complaints. The NRAS and the professional boards have a part to play that must be clearly communicated.

Ongoing communication throughout the complaints process

All complaints need to be acknowledged in a timely way. The consultation paper does not provide enough detail on how the system will respond early to the complainant about their report, or the health professional, for assessment and management.

The initial decision on whether or not to investigate a complaint is very important. The consultation paper does not adequately address the process and criteria to be used in making this initial assessment and decision. Consumers need to know when and why a decision has been made not to investigate their complaint and what they can do to have it reviewed

Information about the progress of an investigation should be readily available to complainants. For example, consumers at the CHF MacKay Open Disclosure Workshop in 2007 recommended that a central point of contact be available where they could obtain consistent information about the status of their complaint process. This could include a tracking system, accessed through a website to provide consumers with information on the status of their complaint.

The paper proposes that complainants be informed on progress of the investigation at least three monthly (proposal 8.3.5). The proactive approach to informing complainants is welcomed, however CHF is concerned that the timeframe is too long.

⁷ The Standard is available on the Australian Commission on Safety and Quality in Health Care website at <http://www.safetyandquality.gov.au/internet/safety/publishing.nsf/Content/PriorityProgram-02>

Timeliness from notification to completion of investigation is also very important. CHF recommends that initial investigation should occur within 30 days of the complaint being lodged and a written decision on the outcome made available to the complainant with 14 days.

Consumers must be fully informed about the outcome of a complaint. For example, knowing that measures have been taken to ensure that inappropriate professional conduct does not reoccur and that improvements to safety and quality have been made is a priority for consumers when making complaints.

Principle	There must be ongoing communication with consumers during all stages of the complaints process.
Recommendation	A tracking system should be developed to provide consumers with information about the status of their complaint. The complaint liaison person identified within the NRAS should keep consumers informed of the process and any referrals to other complaints processes if agreed.

Terminology

The consultation paper proposes that the term ‘notification’ be used in the legislation instead of ‘complaint’ to describe a matter referred to the board about a registered practitioner (proposal 2.1.1).

The term ‘complaint’ is a generic term referring to the verbal or written statement of dissatisfaction about a service or actions of an agency or its staff. It is readily understood in the Australian community. It is not limited in use to consumers and advice to the board from colleagues or employers of health professionals, or from other agencies, is also likely to express dissatisfaction with the actions of a registered practitioner.

Use of the term ‘notification’ in the legislation while using the term ‘complaint’ in everyday language with consumers, as proposed in the consultation paper, could lead to confusion regarding the nature of the issues being dealt with when a consumer ‘complains’ and a health professional or agency ‘notifies’ the board about a health care issue.

CHF therefore recommends that the term ‘complaint’ be adopted and appropriately defined in the legislation. CHF also recommends that two levels of raising concerns are adopted:

Level 1 – Reporting a concern

Providing health consumers and providers with the option of reporting a concern, without making a formal complaint, is an important step in and dealing with health professional performance and ultimately, handling potential complaints.

This would allow health care providers to raise concerns or provide information without necessarily making a formal complaint. Ensuring that this report is confidential could help health care professionals monitor and report on the performance of others.

Level 2 – Making a formal complaint

As mentioned above, CHF strongly supports the use of the term complaint, as a formal process by which a health consumer or health care professional can make a complaint about the conduct of a health professional or service.

Recommendation	The arrangements include two levels of raising concerns: - Level 1: Reporting a concern - Level 2: Making a formal complaint
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An accountable system

The consultation paper outlines a range of powers and decisions available to boards, committees, panels and tribunals as well as for investigators. CHF supports a flexible approach that allows for procedural fairness while protecting the public interest. A focus on working with registered practitioners to improve their skills, knowledge or health status is preferable to a culture of 'blame' where no-one benefits.

To ensure accountability and transparency, results of investigations and hearings must be made available to the public. Where conditions are placed on a registered practitioner's ability to practice, these restrictions need to be noted on a publicly available list of registered practitioners as soon as the decision is made. This information must be reported in a way that is meaningful and accessible to consumers.

Where a complainant is not satisfied with the outcome of the investigation, they should have the right to both internal and, in serious cases, external review of decisions.

It is important that the roles and responsibilities of the boards, committees, panels and tribunals are clearly outlined and that there is no duplication. The paper proposes that membership of performance panels include at least one person who 'is not and has never been a registrant in a regulated health profession'. In discussing membership of tribunals the paper suggests that the community interest will be represented by the legal member who is likely to chair the hearing (section 10.6).

Consumers would argue that the community voice is not well represented by members of the legal profession. CHF strongly recommends that community members who are able to bring forward community values are included on all boards, committees, panels and tribunals established to investigate complaints or review registered health practitioner performance.

Consumer representatives must be selected through a transparent and open process and accountable to the community⁸.

Principle	Consumer representatives should be involved in all levels of decision making and governance ⁹ .
Recommendation	Community members who are able to bring forward community values must be included on all boards, committees, panels and tribunals established to investigate complaints or review registered health practitioner performance.

Monitoring continuous safety and quality improvements

The establishment of a national system allows an unprecedented opportunity for monitoring health professional conduct across States and Territories as well as across a range of disciplines.

The information that will be collected could provide a valuable resource to inform the continuous improvement of health care training programs and practice requirements, not only

⁸ For further information see the CHF Position Statement: Consumer Representative's shape Australia's Health, at http://www.chf.org.au/Docs/Downloads/Consumer_representatives_shape_health_in_Australia.pdf and the CHF submission on Matters relating to the accreditation and regulation scheme for health professionals dated 22 September 2008.

⁹ This principle is in the CHF Submission on the Australian Commission on Safety and Quality in Health Care Consumer Engagement Strategy, available on the CHF website at http://www.chf.org.au/Docs/Downloads/491_Aust_Comm_S%26Q_Consumer_Engagement.pdf

for individual disciplines but for interdisciplinary activities and future health workforce planning.

Consumers would also like to be sure that there are proactive ways in place to monitor professional practice apart from public complaints and mandatory reporting. The national register provides an important opportunity for the professions to analyse frequency of concerns that are raised that do not progress to complaints and to build in supported practice and continuing professional development processes that address potential issues or concerns.

Conclusion

Consumers want a system that is easily accessed, which investigates their complaints appropriately and ensures remedial action is taken, where appropriate, to reduce the risk of adverse health outcomes and improve the quality of health care. The system should reflect best practice from existing systems and be transparent and accountable.

The preferred model of access is a 'one stop shop', as part of the NRAS, where consumers can discuss their concerns, obtain assistance in lodging a complaint, as well as seek information about the progress and outcome of their complaint.

CHF appreciates the opportunity to comment on the proposed arrangements. The establishment of nationally consistent systems is a key area for consumers. Over the next months, CHF will be consulting with consumer organisations more specifically about the proposed arrangements and will provide further input during the development of the second stage of the legislation in 2009¹⁰.

Once again, CHF welcomes the establishment of NRAS as it will take safety and quality to a new level in Australia. For consumers, the Scheme offers the opportunity to be a central place to check health professional registrations, obtain information about the different roles and experiences of various health professionals and to raise concerns about health professionals, while being sure that they will be directed to the right place for action and that their health care will not be compromised. It will also support publicly accountable complaints management; performance and health conduct procedures for registered health professionals.

Consumers have a valuable viewpoint to contribute so that the Scheme is the best it can be and has consumer confidence.

¹⁰ Consultations will be part of the CHF Shaping the Health Workforce Project 2008-09, funded by the Australian Government Department of Health and Ageing on behalf of the Practitioner Regulation Subcommittee of the Health Workforce Principal Committee and the National Registration and Accreditation Project team.



Background information

The Consumers Health Forum of Australia Inc (CHF) is the national voice for health consumers. As an independent non-government organisation, CHF helps shape Australia's health system by representing and involving consumers in health policy and program development.

Health consumers have a unique and important perspective on health as the users and beneficiaries of health care and, ultimately, those who pay for it. CHF takes consumers' views to government and policy makers, providing an important balance to the views of health care professionals, service providers and industry to achieve a health system that reflects the needs of all stakeholders.

CHF member organisations reach millions of Australian health consumers across a wide range of health interests and health system experiences. Health policy is developed through wide consultation with members, ensuring a broad, representative, health consumer perspective.

Current priorities include safety and quality in health care, safe and appropriate use of medicines and health care for people with chronic conditions. CHF also facilitates the appointment of consumer representatives on over 200 national health-related committees.

CHF believes all consumers should receive affordable, safe, good quality health care at the time they need it. The best outcomes are achieved when consumers are involved in decisions about and management of their own health care. Consumers should receive health care information when they need it in a form they can understand, particularly about using medicines.

Established in 1987, CHF receives funding from the Australian Government Department of Health and Ageing and membership fees. It seeks external funding for priority projects.

With its ability to access a variety of health consumer networks and extensive knowledge of consumer issues, CHF is a respected and influential contributor to the Australian health debate.

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