



Health Care Consumers' Association (HCCA) of the ACT was formed over 30 years ago to provide a voice for consumers on local health issues and now provides opportunities for health care consumers in the ACT to participate in all levels of health service planning, policy development and decision making.

The Health Care Consumers' Association welcomes the opportunity to make a submission on the Consultation Paper on Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters to the Practitioner Regulation Subcommittee. Thank you for the detailed consideration of issues in the paper – this has made the task of commenting on this important and complex project somewhat easier.

We have sought views from our members and consulted with other health consumer organisations and drawn on that input in preparing our submission. HCCA is aware of the Consumer Health Forum submission and supports it.

There are a number of general issues that the HCCA wishes to comment on. The general comments are followed by specific comment on those issues and proposals raised in the Consultation Paper.

Overview

First of all the HCCA strongly supports the National Registration and Accreditation Scheme for Health Professions. This scheme has the potential to bring considerable benefits to consumers as well as to the health professions and the health care system. The development of a comprehensive health complaints system as part of those national workforce proposals also has the potential to provide substantial benefits in terms of quality of care and patient safety.

HCCA recognises that in developing a national system for handling complaints and related performance issues there needs to be some concessions and flexibility. The unstated issue is that the system will only deal with complaints relating to individual health professionals. The broader issues of conciliation and systemic and organisational failure in public and private health care are not addressed; there is therefore a need for much of the jurisdictional complaints and health care quality and standards structure to remain and often to be enhanced. The proposal to “build on the best aspects of State and Territory schemes, rather than replicating one existing disciplinary scheme” - Principle 1.5.1 (b) is supported as a general principle. This does offer an important opportunity to develop a health care complaints system that provides a coordinated linked system that could enable both individual and systemic concerns to be addressed.

Principles

There are a number of principles and features that the HCCA as a health consumer body wishes to see included in the structure and processes put in place with the joint national registration. Underlying structures that could provide a basis for the complaints process include the Australian Charter of Healthcare Rights (Australian Commission on Safety and Quality in Healthcare), Better Practice Guidelines on Complaints Management for Health Care Services (Australian Commission on Safety and Quality in Healthcare) and Listening and Looking – ACT Health Consumer Feedback Standards (ACT Health).

HCCA regards the following aspects as critical:

- consistency between jurisdictions to provide a national system
- streamlined and transparent processes between the agencies within jurisdictions
- coverage of all aspects of health care both individual and systemic
- the complaints system should:
 - provide consumers with easy access to the complaints mechanism
 - simplify the path and support the decision making process for consumers
 - provide support and assistance to consumers in lodging a complaint
 - make decisions in a timely manner
 - communicate with consumers on the progress and outcome of complaints
- health consumers should have a shop front type access that is comfortable to approach and can deal with the breadth of complaints
- consumers should not have to choose which complaint process to use
- boards and tribunals should include a community /consumer voice
- regular reporting of complaints outcomes to health authorities and public

From the health consumers' point of view the actual complaint structure is not the critical issue. The issue is the service provided within that structure, which must be responsive to the concerns of consumers, result in improved health outcomes, be free of both professional and bureaucratic conflicts of interest, have a seamless flow of information with other relevant bodies, be transparent, communicate well and be timely in its decision making.

The national complaints system, together with State and Territory systems, has the potential to provide an invaluable national database on a number of aspects of the operation of the Australian healthcare system. These data could provide current, reliable, validated, national information on the safety and quality issues as well as the national health workforce. This data should be reported both to health authorities and made available publicly.

Roles of national and jurisdictional complaints bodies

The lack of clarity in the Consultation Paper in defining the respective roles of the jurisdictional Health Complaints Commissioners (HCCs) and their relationships with the boards is regarded as a major issue. The Consultation Paper refers to the value of the HCCs and comments the “contribution of health care complaints bodies to the maintenance and improvement of health services is important and valuable” (P11). However, the Paper goes on to suggest that the HCC role should simply be that of conciliation. (Ref Proposal 5.3.1 P 17) It appears from the Consultation Paper that the new system through the boards is to address individual shortcomings, not those due to systemic or organisational failure. ACT health consumers would be concerned if the role of the ACT Health Services Commissioner was reduced to a conciliation role. Currently the ACT Commissioner is able to initiate independent reviews and

investigate systemic issues. While accepting the need for coordinated action and consultation with appropriate boards it is important that the Commissioner retain this role.

The lack of clarity does also result in the potential for complex and unresolved complaints “falling into cracks” or the resolution being paralysed. (Ref initial para of 5.4) There is much evidence that the decision to complain or not is a complex one and depends on a number of factors⁽¹⁾ and the nature of the redress sought may be better health outcomes rather than compensation.

A keystone of the current ACT health complaints system is its independence from the health bureaucracy and the health registration boards. The Health Services Commissioner is part of the ACT Human Rights Commission. HCCA sees this independence as an important issue in giving assurance to consumers that the complaint resolution mechanism is independent from the health care professions and the health arm of government.

The ACT experience is that while the contribution from conciliation is important, the wider contribution by investigation of professional competence and standards and systemic issues are also critical contributions. Certainly in the ACT the HCC has developed a reputation for independence and impartiality. If the boards are designated as the only recipients of complaints regarding professional competence there needs to be a careful explanation to consumers and consumer bodies about the rationale, processes and safeguards.

The Commissioner's role is also to promote:

- improvements in the provision of health services and services for older people;
- the rights of users of health services and services for older people; an awareness of the rights and responsibilities of users and providers of health services and services for older people; and
- investigate complaints about contraventions of the privacy principles or of a consumer's right of access to his or her health records under the *Health Records (Privacy and Access) Act 1997*.

Comments on specific proposals

Comments on the specific proposals included in the Consultation Paper follow - as set out in the Consultation Paper.

2.1.1 - Notification

The reasoning for using the term notification is understood but from a consumer perspective there is a strong preference to use a clearer term such as complaint. An alternative word for notification could be report or consumer feedback. Currently the State and Territory health complaint offices all use the term complaint – it has wide public and consumer acceptance. The term notification is clearly different in meaning and perception to complaint. The preference is to use **report (for notification) and complaint**.

2.1.3 - Similarly **complaints** is preferred for the assessment committee.

It is noted also, that the terms notification and complaint are used differently (refer 5.3 Liaison with HCCs, Proposal 5.3.1, National registration legislation, second para.) which suggest different meanings.

If the term notification is used it is critical that the term complaint is used in advertising and public notices about the process.

4.1.1 The proposal to allow for any person or organisation to make a complaint is strongly supported.

4.2.2 - Support the proposal to assist consumers to prepare and lodge a complaint – the examples are superfluous – any consumer needing assistance in this complex area should be assisted without restriction.

If there two points of entry for complaints/notifications, the boards and the HCCs, it is unlikely to be conducive to a smooth process. HCCA would prefer that a single easily identifiable entry point be made provided for consumers. There may be a need for the agency responsible to have “navigators” who assist consumers in the correct channelling of the complaint.

4.3.1 - Supported

4.3.2 - Supported

Proposal 4.4 – Mandatory reporting

Options 1b and 2b are supported: HCCA believes that it is fundamental to health care standards and patient safety that boards should receive information about any registrant that is or is at risk of endangering any person or the public through their activities or behaviour. Apart from the health consumers the most effective information source is likely to be health professional colleagues and employers.

Similarly, those students who have direct clinical involvement with patients and are required to be registration should encompassed by the scheme and be subject to being reported.

The term mandatory may present some presentational problems for the professions' acceptance. The issues here are partly the presentation about also the penalties applied for non-compliance. The presentation may be best in terms of the ultimate objective of patient safety and quality. While the penalties need to range from counselling to temporary suspension/deregistration, there should be an initial strong emphasis on the education and support programs approach. The approach outlined in 6.1.1 as a cooperative and educative process rather than disciplinary would also be supported here. The issue should also be covered in safety and quality terms during professional training and in information provided during the implementation of the scheme.

4.5.1 - supported. However, this provision should be extended to include the NSW Health Care Complaints Commission legislation that “Complainants have the right to make a complaint free from harassment or intimidation. The Act provides penalties for any person trying to intimidate a complainant or witness.”

5.3.1 – the issues here for consumers, are:

- the need to implement a seamless system that ensure complaints do not fall between stools or fall into cracks, and
- complaints are dealt with in a timely and accountable manner
- as mentioned previously State and Territory HCCs should have roles regarding systemic failures and other organisational issues.

There needs to be some performance standards for the boards in relation to action on complaints, such as:

- acknowledgement of complaint – within 5 working days (3.12 ACT Health Consumer Feedback Standards)
- provide updates on complaints every 21 calendar days(3.13 ACT Health Standards)

5.6 – Review of Preliminary Assessment

Option 2 is strongly preferred – with a preference for independent input from an HCC nominee.

6.1.1 – strongly supported that a cooperative and educative process be used.

8.3.2 – supported

8.3.4 - supported

8.3.5 – supported but noting that the issue of an acknowledgement of the complaint is not mentioned. Also note that the proposed periods are at variance (longer) with the current ACT Health consumer feedback standards.

9.1.1 – there is a need for the capacity to review decisions if demanded and for the decisions to be publicly accountable – neither consumers nor the professions will have confidence in the system if the decisions are not reviewable and transparent. Either **Option 2 or Option 3 is supported.**

9.3 – legal representation: Option 4b is supported

10.6.1 – the proposal is supported on the understanding that a community or consumer voice be included in tribunal hearing panels. The inclusion of a legal member does not meet that requirement. The need for an active and informed consumer voice at this level is critical to consumer understanding and acceptance of the scheme.

We thank you for the opportunity to comment and would welcome the opportunity to be involved in further consultations on development of the system during 2009.



Darlene Cox
Executive Director

Australian Charter of Healthcare Rights (Australian Commission on Safety and Quality in Healthcare)

[http://www.safetyandquality.gov.au/internet/safety/publishing.nsf/Content/52533CE922D6F58BCA2573AF007BC6F9/\\$File/17537-charter.pdf](http://www.safetyandquality.gov.au/internet/safety/publishing.nsf/Content/52533CE922D6F58BCA2573AF007BC6F9/$File/17537-charter.pdf)

Better Practice Guidelines on Complaints Management for Health Care Services (Australian Commission on Safety and Quality in Healthcare)

http://www.health.qld.gov.au/quality/docs/complaints_guidelines.pdf

Listening and Learning – ACT Health Consumer Feedback Standards

<http://www.health.act.gov.au/c/health?a=dlpol&policy=1151122359&did=10107160&sid=>

(1) Hackworth, Naomi. *Development and Application of a Methodology for the Evaluation of a Health Complaints Process*, PhD Thesis; 2007: Swinburne University of Technology: p 45

<http://adt.lib.swin.edu.au/public/adt-VSWT20070928.092053/>