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18 November 2008

Ms Bronwyn Nardi
Chair
Practitioner Regulation Subcommittee
Level 12
120 Spencer Street
MELBOURNE VIC 3000

Dear Ms Nardi

Complaints Arrangement Submission

This submission is in response to the "CONSULTATION PAPER: Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters" issued by the Practitioner Regulation Subcommittee of the Health Workforce Principal Committee on 7 October 2008.

I have strong concerns about the proposed arrangements in so far as they deal with liaison between the Health Complaints Commissions (HCCs) and a Board. The submission as it currently stands places unacceptable risks to Principles 1.5 being achieved, particular principles a, b and c. It is clear that the paper was written by someone who did not have an appreciation of the role and functions of the HCCs.

Section 12 of the *Health and Community Services Complaints Act* details the role and functions of the Health and Community Services Complaints Commission (HCSCC). The role of the HCSCC, like other similar Commissions, is not just related too "*resolution of complaint*" as suggested on page 11 under the heading **Consultation with HCC or equivalent State and Territory bodies**. Its powers and functions include:

- protecting the health and safety of the public (as do the Boards)
- Conciliating and investigating complaints (including those involving a registered provider)
- Improving health services and community services
- Promoting community and health rights and responsibilities
- Considering action taken by providers where complaints are found to be justified.

- Investigating any issue arising from a complaint or group of complaints if it appears to me to be a significant issue of public health or safety or public interest, or to be a significant question as to the practice of a health service provider: s 48(1)(c).

Resolving consumer complaints is thus just one aspect of a role which HCCs undertake. In broad terms it is about the protection of the rights of health service users, and about independent scrutiny of public health or safety and public interest issues arising in connection with the State's and Territory's health systems.

The misinterpretation of powers and function of the HCCs and the acceptance of the proposal as per the report is likely to:

1. Compromise public safety and the rights and interests of consumers.
2. Impair the ability of HCCs to exercise independent oversight over the health system in their jurisdiction, and to achieve improvements in that system.

In the Northern Territory, Part 8 of the *Health and Community Services Complaints Act*, specifies the relationship and notification/referral requirements between the HCSCC and the Boards, of which there are eleven. In summary, both the HCSCC and Board must notify each other of the complaint and then consult as to who can best handle the matter. Detailed protocols have been developed for this purpose. Decisions on who will manage a complaint are based on the nature of the issue/s of complaint and which jurisdiction is best placed to achieve the desired outcome. For example, many minor complaints against a registered provider, while notified to the relevant Board, are managed by the HCSCC as it has the powers and expertise to resolve such issues expeditiously. In an appropriate case, the HCSCC could determine to split the matter, and refer part to the Board and retain part for its own attention. Of importance is the fact that the Board does not have overriding power to make a determination that they must manage the complaint.

In contrast, the model presented in the consultation paper appears to give the Board the final decision on how the matter is dealt with: last paragraph, page 11; paragraph 7, page 18. The stated criterion for deciding whether the HCCs should have the matter (or part of it) is whether the Board considers it suitable for conciliation: last paragraph, page 11. This is very limiting and restrictive and is not a decision for a Board to make, ie, they should not have the power to tell HCCs how to manage a complaint or issues of a complaint.

The question must be asked whether it is better for the decision on who deals with a particular complaint to lie with a professional body whose concern is with the maintenance of standards in their own profession, or with an independent and impartial statutory officer whose function is to look at the matter from the point of view of protecting the public interest and improving the health system generally. I submit that it should be the latter, as it currently is in other States such as Tasmania. The risk of giving this decision to the Board is that public interest or system issues arising from the notification are only dealt with through the lens of, and in light of the interests of, the particular profession, or are not examined at all.

Even if this is not accepted, the criteria for deciding who should handle the matter must be much wider than proposed and, at the very least, be a consultative process bound by agreed protocols, as is the case at present in the Northern Territory. In line with this protocol, the following matters will usually be referred to or retained by a Board:

- Matters that relate to professional practice or conduct and classified as substantial¹ or serious². This does not preclude the HCSCC, in accordance with s30(3), from pursuing issues raised in a complaint of this classification that have not been, or cannot be, raised with the Board, eg. the issue of compensation for alleged negligence.
- Matters that involve the maintenance of the standards of professional practice; or
- Following consultation, some matters relating to professional practice and conduct classified as routine³.

All other matters are either referred to or retained by the HCSCC

The proposal allows the Boards to go back to a gate keeping role that has been proven to be flawed in the past. The current position where HCCs have a major say in determining the most appropriate means to manage a complaint has proven to be very effective in achieving the principles as set out in 1.5 and should be reinforced in this proposal.

The “watchdog” role of the HCCs over the outcome of a Board’s investigation is another role that should not be diminished as a result of this proposal. It is important that the HCCs retain the power to review a Board’s findings. Boards are currently required to inform HCCs of their findings, the reasons for their decisions and of any action which they have taken or propose to take. In this way HCCs can determine whether all issues of complaint have been dealt with and, if not, take action to have the remaining issues referred back to them for action. Only then can HCCs be assured that any significant issue of public health or safety or public interest, or a significant question as to the practice of a health service provider has been or is still to be addressed.

The proposal totally undervalues the power and functions of the HCCs and if implemented establishes a National Registration and Accreditation Scheme without an accountable and effective complaints scheme. The scheme as proposed:

- Will not protect public safety as it diminishes the role and responsibilities of the HCCS.
- Does not build on the best aspects of State and Territory schemes as it only focuses on the narrow role of the Boards and disregards the complementary powers and functions of the HCCs
- Does not balance the rights and interests of the consumers with those of the health professionals as it is not consumer focused or driven. The outcomes of the consumer are not what drives the Boards, it is the provider’s conduct.

The proposals in the paper about how HCCs and Boards are to interact, and about how a deadlock between them regarding a referral is to be resolved, are far too limited in conception, and do not represent optimum policy.

¹ Significant issues of standards, quality of care, or denial of rights; complaints with clear quality assurance implications

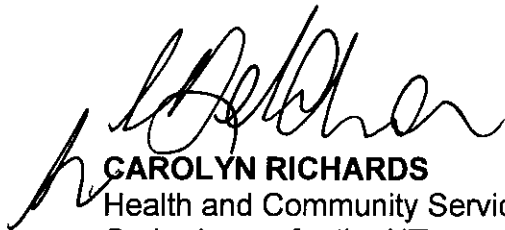
² Long-term or severe damage, including death; seriously adverse outcome; grossly substandard care; professional misconduct

³ Legitimate consumer complaints, especially about communication or practice management, but causing no lasting detriment

As I am both Ombudsman and Health Complaints Commissioner, I believe that only Option 1 under paragraph 9.8, page 34 of the Consultation Paper is viable. It would be inappropriate, in my view, for a State Ombudsman to have any role to play in respect of the administrative actions of national bodies.

I hope that these observations are of assistance to the Subcommittee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Carolyn Richards', written in a cursive style.

CAROLYN RICHARDS
Health and Community Services Complaints Commissioner
Ombudsman for the NT