



Response to the Senate Inquiry into The complaints mechanism administered under the Health Practitioner Regulation National Law

Health Consumers Council
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Health Consumers Council

The Health Consumers' Council (WA) Inc. advocates for a patient-centred health care system that is responsive to patients' needs and preferencesⁱ. We recognise the importance of complaints mechanisms to drive safety and quality of health services.

The Health Consumers' Council is unique among consumer advocacy bodies in most of Australia's states in that we undertake individual advocacy. We can at times be the agency of last resort, when all other complaints mechanisms have been exhausted, including the Health and Disability Complaints Services Office, and the Australian Health Practitioner Regulation Authority.

We provide a flexible advocacy service for health consumers at any stage of their journey, from trying to access services to trying to access complaints processes.

Senate Inquiry Terms of Reference

- a. the implementation of the current complaints system under the National Law, including the role of the Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards;

The Health Consumers' Council supports the establishment of a national registration scheme for health practitioners. We understand it to be an essential component of identifying health practitioners who are breaching their professional and clinical standards.

However, we would reflect that one casualty of the change to a national health practitioner regulation authority has been transparency and speed. In the past, Boards have been more willing to post up public information about notifications that AHPRA is willing to.

- b. whether the existing regulatory framework, established by the National Law, contains adequate provision for addressing medical complaints;

It is important to consider whether "addressing" means following procedures or if it means providing an outcome. It was suggested at the Medical Forum's debate on the topic in April 2015 that all issues are treated with the same consideration, even if they are eventually reviewed as not requiring a response from the health professional.¹ Similar comments were noted in the August 2016 debate. This creates a large workload and contributes to the delay.

The length of time taken to deal with matters is not in the provider's interest but it most certainly is not in the consumers' interest. The lack of transparency exacerbates the frustration with the process. HCC has provided case studies of consumers who have come to us for assistance after exhausting the AHPRA process.

ⁱ https://www.safetyandquality.gov.au/wp-content/uploads/2012/03/PCC_Paper_August.pdf page ii

¹ <http://www.medicalhub.com.au/component/content/article/9-top-stories/4552-medical-board-and-ahpra-friendly-fire>

C presented at HCC for the following issue:

C was referred by her GP to a private psychiatrist due to symptoms of depression. During the initial appointment, the psychiatrist prescribed a change in medication and indicated that it may take up to 6 weeks for it to become effective. C says her low mood deteriorated and she consulted with the psychiatrist earlier than planned. C recalls explaining to the psychiatrist that since commencing on the new medication she had significantly declined and was feeling suicidal and that she feared the decline was a direct result of the new medication. C states that the psychiatrist advised her to continue the medication and she recalls him doubling the dose. She says he advised the medication would soon take effect and a follow up appointment was arranged in a fortnight's time; C says that he organised no safeguards (such as notifying her family to monitor her). C says that the psychiatrist only suggested she access a government mental health website.

Shortly after this appointment, C took an overdose, when she had a cardiac arrest and sustained a significant brain injury. It took several years for C to overcome the injuries sustained from the overdose, even she having to learn to walk again. After substantial occupational therapy, C regained some cognitive abilities and sought further psychiatric support. C is convinced that the medication prescribed by the psychiatrist resulted in a significant worsening of her symptoms, causing an adverse reaction. She believes that the doctor should have reviewed the medication following her raising concern and that had he have done so, her suicide attempt could have been avoided. C's later research on the medication revealed evidence that the risk of suicide in the early stage of commencement, especially in females is significantly increased.

C submitted an AHPRA notification in July. AHPRA took until September to make their decision to take no further action against the psychiatrist and concluded that he had provided appropriate treatment to C. The clinical records held by the doctor were in sharp contrast to C's recollection of treatment. The psychiatrist had recorded a low-dose trial of medication, recorded that side effects and discontinuation of symptoms had been discussed. There was no record of C's discussion around her concerns of not coping with the medication or that she felt suicidal, in fact, to the contrary, the psychiatrist had recorded a positive response to the medication, albeit with some residual symptomology. All of which paints a very different timeline than that of C's.

H presented at HCC with the following issue, whereby an advocate assisted her in lodging an AHPRA notification:

That she had separated from her husband but continued to live with him in the family home. H had a surgery scheduled overseas which meant she gone for ten days.

H travelled overseas for the surgery and returned as planned. Upon her return, she discovered that her estranged husband had visited their family GP (with whom she had a long relationship) and informed him H had left the country indefinitely and thus abandoned their children. The GP completed and signed a statutory declaration stating as such. This had huge implications as the estranged husband used the declaration to convince various agencies, including Centrelink that she was no longer the children's caregiver. The Centrelink payments for H and her children was ceased which caused months of financial hardship. H submitted an AHPRA notification. H recognised that

the GP was not responsible for her husband's actions however, her complaint pertained to him providing the statutory declaration.

The GP made no enquires to substantiate the husband's claims and therefore in her opinion acted unprofessionally and without proper consideration of the facts. She accepted that GP's signed declarations however believed that her GP should not have done so in matters relating to parenting. H hoped that APHRA would investigate and recognise how the GP's actions resulted in significant distress and because of his declaration. Centrelink conceded that she had 0% care of her children which caused major issues later, in the family court. It took a lengthy battle of tribunal hearings before Centrelink overturned their decision. H described that the GP and her husband as friends and believes boundaries between doctor and patient were blurred. H suggested the GP was, in fact, acting as a friend when he signed the declaration and therefore should not have used his GP status.

The notification was sent in December and heard by the panel in March, a period of three months. The board decided to take no further action and saw no issue with the conduct of the GP

AHPRA complaint about adverse outcome

In 2016 MA needed surgery for her eye lids and was seen by an oculoplastic specialist at major teaching hospital. Surgery was performed at smaller suburban hospital. After the surgery, under instruction from the specialist, the hospital staff put eye ointment the patient was allergic to. There were multiple warnings about her allergies but the specialist determined he would only heed the allergy advice from his hospital's Immunology Department which did not state that she was allergic to the ointment. On the application of the ointment to her eyes, the consumer was almost blind, and staff had to flush for 1.5 hours and applying ice packs to reduce the pain, swelling and inflammation. The initial pain was extreme, lasting for weeks. The sensation of dry eyes remained and grittiness continued for 3 months and longer, with loss of vision which the consumer says is worse than prior to surgery.

The consumer maintained the ointment had caused the post-operative complication whereas the surgeon maintained it was another cause.

The patient submitted a complaint to AHPRA and after they investigated it, they referred it to the Health and Disability Services Complaints Office (HaDSCO). AHPRA stated that there was insufficient evidence to substantiate that the consultant's performance or conduct was seriously below the standard reasonably expected and nor had the safety to the public had been placed at risk. From the patient's perspective, there were red allergy stickers all over her file, she wore a red allergy alert patient ID wrist band and there was a statutory declaration in her file listing all the medications she was allergic to, including this eye ointment. She did not feel that the AHPRA process was sufficiently robust.

- c. the roles of AHPRA, the National Boards and professional organisations, such as the various Colleges, in addressing concerns within the medical profession with the complaints process;
It is difficult for consumer agencies to address this as the process is not transparent.
- d. the adequacy of the relationships between those bodies responsible for handling complaints;
It is difficult for consumer agencies to address this as the process is not transparent.
- e. whether amendments to the National Law, in relation to the complaints handling process, are required; and
*Notifiable conduct as noted in s.140 of the Health Practitioner Regulation National Law (WA) Act 2010 represents a very high level of offending behaviour prior to a notification being made (see third case study above, where the consumer thought that prescribing a medication that the patient's records documented an allergy to would pass that test, and was shocked when it didn't).
Generally speaking, there are many things that consumers are unhappy with the health system that are not notifiable offences, and often relate to communication and attitude, underpinned by a culture which is not patient-centred. Legislation will not necessarily drive the required culture change.*

HCC advocates the use of tools such as Patient Opinion, a moderated platform which allows for a completely transparent and real-time reporting of patient feedback on their care in hospitals and health services. This platform does not name individual practitioners, but does identify hospitals and health services. The patient remains anonymous. Patient Opinion tracks the quality improvement cycle from the patient's story first being told until any resultant changes in practice are implemented. The transparency helps to change the culture which underpins phenomena such as the way health services write letters, which technically address the complaint (i.e. they provide a letter), but do not provide an actual outcome of addressing the consumer's initial concerns or progressing any safety and quality improvements.

Transparency is an important driver of culture change. Legislation is not the right tool here. However, within the existing legislation HCC is confident that there is more opportunity for openness, transparency and discretion to better process the complaints that come through to AHPRA. Both providers and consumers all seek much more information on how decisions are reached. There must be grounds to appeal and to be able to seek external independent reviews with consumers included on the review panels

- f. other improvements that could assist in a fairer, quicker and more effective medical complaints process
- *Better triaging of complaints to AHPRA to facilitate quicker resolution*
 - *It is long overdue for AHPRA to involve consumers in their assessments and decision making.*
 - *HCC and other consumer agencies should be orchestrating reviews and appeals.*
 - *AHPRA should be recommending at the very least that consumers are paid re-imbursement for their financial losses or remedial treatment.*