



**Health Issues Centre**  
Consumer voices for better healthcare

## **Health Issues Centre response**

# **Modernising Victoria's Health Complaints Legislation: Consultation paper on the implementation of the recommendations made by the Expert Panel that reviewed the *Health Services (Conciliation and Review) Act 1987***

*August 2015*



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## EXECUTIVE SUMMARY

Health Issues Centre (HIC) welcomes the consultation paper on the implementation of the recommendations made by the Expert Panel that reviewed the *Health Services (Conciliation and Review) Act 1987*. We are grateful for the opportunity to comment on the recommendations of the Expert Panel with specific focus on the five key identified issues.

Our response is based on past consultation with consumers, previous work undertaken by HIC in 2014 for the Australian Health Practitioner Regulation Agency (AHPRA)<sup>1</sup>, publication of a research study on consumer experiences of complaints to the Victorian health practitioner boards in 2004<sup>2</sup>, our participation in the 2012 review of Victoria's complaints legislation, and our knowledge of and experience with representing the views of consumers. It is our view that there continue to be significant failings for Victorian consumers in the management of their health complaints; the new legislation and its implementation provide an opportunity to address these.

In response to the Minister's stated intention of modernising and improving Victoria's health complaints legislation, we have focused our comments on improving the experience of complaints handling for consumers, whom the system is foremost intended to serve. As a backdrop to this, we suggest that primary consideration be given to what we have identified from our work to be the key requirements for a good consumer experience. They are:

- consumers feel heard
- confidence that improvement has or will occur as a result
- fair and impartial process
- easy, accessible and seamless process
- timely process with consistent, clear, non-bureaucratic communication and information
- reasonable expectations set from the beginning about possible outcomes.

We strongly advocate that any changes to the Act or the role of the Health Services Commissioner embed these consumer-oriented principles in them. With a commitment to this, we believe Victoria's health complaints system will have the best possible chance of achieving its intended purposes of protecting and upholding the best interests of the public and improving the health system.

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<sup>1</sup> Health Issues Centre, *Setting things right: Improving the consumer experience of AHPRA including the joint notification process between AHPRA and OHSC*, June 2014.

<sup>2</sup> Health Issues Centre and Resolution Resource Network, *'Bringing in the consumer perspective: Consumer experiences of complaints processes in Victorian health practitioner registration boards'*, October 2004.

## INTRODUCTION

Health Issues Centre (HIC) works towards a health system with better health outcomes and experiences for all. Using the valuable and unique insights of consumers as health service users, carers and citizens, we work with others to create a better health system, shaped by consumer voices. HIC actively supports the involvement of consumers and the community in shaping policy and practice. It is through this health consumer-focused lens that we are responding to this consultation paper.

We understand that the *Health Service (Conciliation & Review) Act 1987* has two key functions. One is to provide a trusted system that resolves the complaints of health consumers when resolution has not, or cannot, occur locally. The other function is to respond to public interest issues that arise via consumer complaints. It is our belief that both of these functions can be significantly improved through many of the changes proposed by the Expert Panel (the Panel), chaired by Michael Gorton, and summarised in their January 2013 report.

A ‘trusted’ health complaints system builds confidence in health care by reassuring the public that it recognises errors (in practice or behaviour) and is committed to assuring transparency, timeliness and respect, followed by apology, resolution and rectification. It should not only protect users of health services from poor and unprofessional conduct, but restore their confidence in the health system that has caused them physical or psychological harm. This is the first function of the Act and we believe it relates closely to the second function. There is clear evidence that one of the main motives driving patients to complain after harm is the socially responsible aim of stopping the same thing occurring again.<sup>3</sup> According to Dutch researcher Friele, 95 per cent of complainants want to prevent the incident happening to others.<sup>4</sup> For this aim to be realised, complaints must systematically drive improvements in the quality of health care.

The primary focus of our response to the consultation paper is on changes required to legislative and practice change to substantially improve both of these two functions of the Victorian health complaints system from the perspective of consumers.

### Key Issue 1: Scope of the Act

#### ***Who may complain?***

The current Act is highly restrictive in its understanding of who can make a complaint.

- HIC is in agreement with the Expert Panel’s recommendation that the Act be broadened to allow complaints to the Health Services Commissioner (the Commissioner) to be lodged by anyone.

We would support this for two reasons. First, from the consumer perspective, family members and carers are generally viewed as having an essential role in the health care experience. They often bring personal knowledge and experience of the patient and their wishes and, thus, are in a unique and important position to express a complaint. There is also evidence that family and carer input and perspectives usefully shape quality improvements.<sup>5</sup> Second, patients are often not in the best

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<sup>3</sup> See for example Charles Vincent, Magi Young and Angela Phillips Why do people sue doctors? A study of patients and relatives taking legal action, *Lancet* 1994;343:1609; Ann E Daniel, Raymond J Burn and Stefan Horarik, Patients’ complaints about medical practice, *MJA* 1999;170:598-602.

<sup>4</sup> Friele, R.D. and Sluijs, E.M. (2006) Patient Expectations of fair complaint handling in hospitals: empirical data *BMC Health Service Research*, 6:106).

<sup>5</sup> Australian Council for Safety and Quality in Health Care 2005, *Complaints management handbook for health care services*, Commonwealth of Australia, Canberra.

UK Government 2007, *Safeguarding patients: the Government’s response to the recommendations of the Shipman Inquiry’s fifth report and to the recommendations of the Ayling, Neale and Kerr/Haslam Inquiries*, UK Government, London.

position to complain because of illness, incapacity, low literacy/language skills, or fear of repercussions on future treatment.

The Panel also recommended allowing carers to complain to the Commissioner not only about treatment received for the person they care for, but on their own behalf regarding behaviour directed at them (or directed at their loved one, but impacting on them) by health professionals. Given the fundamental importance of the carer role in a health care setting – particularly for those caring for children, the aged and those critically unwell – the right to an informed and respectful partnership for carers is critical. One way to enshrine these basic rights is to allow carers to complain when the health system fails them in their caring role. We support the expert panel in this.

### ***Who may they complain about?***

Most consumers using a health service from an unregistered practitioner would have little knowledge or awareness of the provider's status (registered vs unregistered). They would be even less likely to understand that this might impact on their ability to complain effectively to an appropriate body if they suffer an adverse event or inappropriate treatment leading to physical or psychological harm. The Australian public assumes a level of 'protection' from its government in the area of health, believing that there will be formal structures to support them if they are harmed in the broad pursuit of better health. We believe the Act is currently overly restrictive in the range of health services it covers. From the consumer point of view, it is essential that the Commissioner be given the capacity to receive and handle complaints about unregistered practitioners.

- HIC supports the panel's recommendation for a more flexible and inclusive definition of 'health services'. We have no specific advice about the definition or which unregistered health practitioner services should be included within the scope of the legislation.

## **Key Issue 2: Resolution and support**

### ***Flexible and effective resolution scheme: Are there ways in which the Commissioner's resolution function can be made even more effective for complainants and providers?***

From both the consumer and provider perspective, there is much to be gained through local and early resolution of complaints. There is evidence that if an issue is addressed quickly and an apology received locally (particularly if from the relevant practitioner), it is likely to substantially reduce the time and resources allocated to it.<sup>6</sup> Equally importantly, a local resolution is less likely to sever the ongoing relationship between patient and health professional, an outcome that is of particular importance for rural consumers or those with a chronic or rare condition where the choice of practitioners is limited.

HIC believes the Act must clearly signal the singular importance of local resolution in nearly all circumstances, as recommended by the Panel. However, we want to emphasise that any action to push complaints back to the local providers must be combined with both a legislative and a practice change to develop appropriate, consistent standards on best practice local complaints handling.

Thus, we would endorse the following changes to the Act:

- require all providers to make information about the complaints system readily available to consumers

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NHS Scotland 2003, *Reforming the NHS complaints procedure: patient focus and public involvement*, NHS Scotland, Edinburgh.

Commission on Dignity in Care for Older People 2012, *Delivering dignity: securing dignity in care for older people in hospitals and care homes*, Commission on Dignity in Care for Older People, London.

<sup>6</sup> See for example the list of references in this regard cited by David McD Taylor, Rory S Wolfe and Peter A Cameron, *Analysis of Complaints lodged by patients attending Victorian hospitals*, MJA 2004;181:31 at p.34.

- require the Commissioner to set and publicly promote a set of consistent best practice standards for complaints handling for all providers
- allow complaints to the Commissioner against providers on the grounds of not meeting these best practice standards and include non-institutional providers in this provision.

Currently the Commissioner does not have a clear or effective role in reviewing how local health complaints resolution occurs. Our experience indicates that there are significant variations in both resourcing and approach to complaints management across the state. HIC strongly supports the Commissioner having power and resources to review and improve local complaints resolution.

In our submission to the Review, we proposed that when the new Act is enacted, the Commissioner should conduct a review of local complaint handling arrangements. This would establish an informed picture of the strength and quality of local health services complaints management. There may be other means for achieving this, but we note that there is currently no good information about the quality of local complaints management processes and arrangements. A review process could provide an excellent opportunity for shared learning and best practice quality improvement, based on the top services across the system. It would inform the development of best practice standards. There is great scope (if properly resourced) for the Commissioner to not only educate, train and support local services to improve their complaints handling, but also to facilitate connections between services with well-developed systems and their peers who may be in need of support and guidance.

We note that the Commissioner needs to have the resources to enable this role to be undertaken effectively.

If local resolution is not possible, the next best option for both parties is early resolution. The Act does not currently support this, due to the rigidity of its process. Consumers have consistently expressed dissatisfaction with the slowness of the current complaints system; the outdated and overly formal approach to resolution is at least partly to blame for this. From the consumer perspective, a move to a much more flexible resolution system would improve the likelihood of early and appropriate resolution – and consumer satisfaction.

- We strongly endorse the recommendation that the Act require the Commissioner to facilitate early resolution and enable the Commissioner to select the most appropriate dispute resolution tool for achieving a quick and satisfactory resolution.

***Support: How can the legislation ensure that the complaints system is fair, supportive, person-centred and responsive to the needs of all parties?***

This question focuses on some of the most challenging aspects of the current complaints system from the perspective of consumers. The capacity of the legislation alone to address these aspects may prove limiting; there is also a need for practice change at both the local level and Commissioner’s office.

The concept of fairness is critically important to consumers in complaints management. The key conclusion from the 2012 study by the Commissioner was the following:

*‘Complainants have high levels of dissatisfaction with the Commissioner’s complaint service. This is not generally a result of unrealistic expectations about the service the Commissioner provides. A majority of complainants perceive that they have not achieved an outcome, or that the outcome achieved is of poor quality, that it is unfair and does not resolve the complaint for the service user.’<sup>7</sup>*

It is clear from these findings that a large number of consumers currently believe that the system’s process or outcomes are, at best, unhelpful and, at worst, unfair. For the consumer to have any hope of a satisfactory experience of making a complaint they must believe that the process is fair and

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<sup>7</sup> Victorian Health Services Commissioner complainant study, June 2013, p. 8.

impartial. It is absolutely essential that consumers have confidence that their complaint will be heard by an independent third party who will hear both sides with an open mind and equal weight. Often by the time a consumer reaches the stage of making a complaint to the Commissioner, they have been through a similar process at their local health service (reaching an outcome they were dissatisfied with) and may already lack faith in the fairness of the system. This may stem in part from a perception that the local complaints handling staff are primarily interested in protecting the service and/or the practitioner.

Therefore, some of the improvements will link back to the previously endorsed recommendations for best practice standards as well as training and education of health complaints officers at a local level.

Research indicates there are three dimensions of fairness which are important for consumers in the handling of health complaints:

- fair procedures
- fair communication process
- fair outcomes.<sup>8</sup>

For consumers to view the overall process as fair, our experience shows that all three of these dimensions are critical. We believe that the complaints handling system should be underpinned by principles which encourage fairness in all of these domains. The principles to support such fairness are encompassed in our recommendations below (repeated from our submission to the review in 2012).

Principles that should be adopted to support a fair consumer focussed complaints handling system are that it must:

- be accountable to the public through regular reporting and evaluation of its impact and outcomes, including follow up of recommendations for action by providers
- aim to address the concerns of the particular complainant as well as the public interest
- focus on outcomes that include attention to both validation of the complainant's concerns, and what changes will be implemented to avoid a recurrence of the problem.<sup>9</sup>

In terms of support, consumers often report feeling overwhelmed by the process of complaining and 'outgunned' by the resources (perceived or real) of the health professional. Many comment on the enormous effort and determination the complaints process required of them, at a time when they often feel least able to cope with such an emotional and administrative challenge. The Panel's own review found that 'complainants can face barriers when accessing and participating in the Commissioner's complaints process...'<sup>10</sup>

HIC agrees with the conclusion of the Panel that for many consumers, improving the process, communication and outcomes to be (and be perceived as) fair will go a long way towards consumers feeling more supported. Rather than looking to an external support service, we endorse the Panel's view that effort should be focused on improving aspects of the process which are currently causing dissatisfaction for consumers. We agree with the Panel's proposed changes for offering a more supportive service to consumers, to include:

- better information about the role of the Commissioner and what can reasonably be achieved
- more highly developed front-line customer-relations skills for staff, so that complainants feel heard and understood, and their initial needs, such as language support, are assessed early

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<sup>8</sup> Marie M Bismark, Matthew J Spittal, Andrew J Gogos, R Gruen, D Studdert, Remedies sought and obtained in healthcare complaints *BMJ Qual Saf* 2011;20:806-810; Roland D Friele and Emmy M Sluijs, Patient expectations of fair complaint handling in hospitals: empirical data (Patient expectations), *BMC Health Services Research* 2006, 6:106.

<sup>9</sup> Health Issues Centre, Submission to Review of Health Services Conciliation & Review Act, August 2012, p. 20.

<sup>10</sup> State of Victoria, Review of the Health Services (Conciliation and Review) Act 1987, Department of Health 2012 p.15, and p.56.

- practical assistance and advice where required at first contact, lodgement and throughout the process
- improved regularity and transparency of communication with complainants, including direct contact (such as face to face, or via phone or Skype)
- active engagement with the complainant about the range of actions undertaken in the process of assessing the complaint and engaging the healthcare provider
- user-friendly correspondence, including use of correspondence to confirm oral communication, rather than it being used as a principal form of communication
- development of a case closure process that involves the complainant
- appropriate referral after assessment of the complainant's needs and discussion with them of options and preferences.<sup>11</sup>

In addition, because of the fundamental importance of these particular reforms for improving the complaints handling process for consumers, we repeat below the recommendations HIC made in our submission to the 2012 review concerning support for consumers:

- adopt the proposals, outlined in the 2012 Discussion Paper, designed to promote simpler and more responsive complaints lodgement processes
- specify a requirement in the Act that the Commissioner provide support for vulnerable people to make complaint, including refugees, people from culturally or linguistically diverse backgrounds, people with disabilities and prisoners
- require the Commissioner to conduct ongoing monitoring of who complains, noting groups identified by research as less likely to make a complaint, and assessing whether the support provided to vulnerable groups is effective in increasing the level of complaints made by them
- specify the Act to require systemic links between Community Advisory Committees, quality committees and the Commissioner; and that the Department of Health and Human Services provide incentives to support such links
- give consideration to a new title such as Health Complaints Bureau or Health Complaints Office.<sup>12</sup>

In addition, there are good examples of online resources that provide consumers with advice about how to make a complaint, such as the Telecommunications Ombudsman<sup>13</sup>; we consider that there is value in developing this type of resource, to support consumers in their complaints. This would sit on the website of the Commissioner and consumer organisations such as Health Issues Centre could provide a link to it.

Finally, we would like to respond to the suggestion of making the complaints system person centred. Person centred care is increasingly seen as integral to high quality, appropriate health care. Its fundamental principles are commonly considered to be the following (or similar): respect and dignity, shared information, participation and collaboration. We believe that each of these principles is relevant for inclusion in any health complaints system. In our experience with consumers we have heard repeated concerns about all of these domains. A lack of feeling respected (or heard) and failure to receive adequate information (about timing, process, rights) are particularly common concerns for consumers. Restoring these two areas must be an absolute priority.

In person centred care, participation generally refers to the ability of the patient or family to be involved in care and decision making at the level they choose. Collaboration describes the opportunity for patients and their families to be involved at a system-wide level in development, implementation and evaluation of policy, programs, education and facility design. HIC believes that a serious commitment to applying the principles of participation and collaboration as consumer (complainant) rights within the health complaints system would address many of the persistent

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<sup>11</sup> State of Victoria, Review of the Health Services (Conciliation and Review) Act 1987, Department of Health 2012 p.15, and p.57.

<sup>12</sup> Health Issues Centre, Submission to Review of Health Services Conciliation & Review Act, August 2012, p. 39-40.

<sup>13</sup> [www.tio.com.au/consumers](http://www.tio.com.au/consumers)

failings of the current system. It could enable consumers to feel that they have been heard, that they are fully informed, that they are invited to participate in the complaints process to the degree they choose and are able, and that their involvement can extend to the point of helping to implement important improvements and innovations to the system, protecting others in the future. Such a system would go a long way to restoring the confidence of consumers.

- HIC recommends that the principles of person centred care – respect and dignity, shared information, participation and collaboration – be applied to the health complaints system, establishing them as agreed rights for complainants.

### Key Issue 3: Protecting the public

#### ***Do the Panel's recommendations reflect the right balance between protecting the public from risks to health and safety and upholding the rights of providers of healthcare in Victoria?***

From the perspective of health consumers, there is currently a clear gap in the ability of the regulatory system to manage the (few) unregistered practitioners whose actions threaten to harm the community, physically or psychologically.

- HIC strongly backs the recommendation that the Commissioner be given stronger powers to respond to unethical, incompetent or exploitative unregistered practitioners. The recommendations made by the Panel reflect, in our view, an appropriate balance between the rights of consumers and providers.

### Key Issue 4: Quality improvement

#### ***Feedback is sought about how the Commissioner can best contribute to quality improvement.***

The question of quality improvement is particularly relevant for health consumers who make a complaint. As previously mentioned, one of the main reasons consumers choose to go through what is often a time-consuming, emotionally draining and intimidating experience of complaining about a health practitioner or service is because they want to prevent the same thing happening to someone else.<sup>14</sup> A principal way this can occur (apart from placing limits on unethical, impaired or incompetent practitioners) is to use the experiences of complainants to change and improve the system.

HIC views learning and quality improvement as a crucial area for change in the complaints system for several reasons. First, this has been shown to be a very important part of the healing and restoration process for consumers. Second, because this future system improvement is a fundamental motivator for many consumers who choose to complain; the inability to achieve it is one of the sources of their current dissatisfaction with the system. Part of this stems from the fact that even when changes are made, the consumer is rarely able to contribute to or comment on the proposed changes, and often has no knowledge that any change has occurred. Finally, in an era of health care when quality improvements are seen as integral to making the system safe and high quality, it makes financial and efficiency sense to make use of data, stories and experiences which are already captured in order to bring about needed reforms.

There are a number of steps that we believe should be taken for greater learning and quality improvement from complaints.

Although limited by the current lack of a national system of data collection, if given the authority and proper resourcing, the Commissioner could use the data that is already collected in Victoria and direct it towards practice change and improvement within Victorian health services. Given, as noted

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<sup>14</sup> Friele et al. 2006, 'Complaints handling in hospitals: an empirical study of discrepancies between patients' expectations and their experiences', *BMC Health Services Research*, vol. 8, no. 199, pp. 1–9.

by the Panel, that the Commissioner is only one player in a crowded health care quality improvement environment, we believe there is particular value in working in partnership with other organisations.

At present there is a largely untapped body of data including: complaints to the Commissioner gathered from health services; notifications collected by AHPRA (who could provide Victorian level information); patient safety statistics at the Department on Health and Human Services; and good emerging data from the Victorian Health Experience Survey. There is an opportunity to bring this data together to establish a profile of areas for improvement in patient experience and outcomes across the Victorian health system. Ideally this would lead to a program of initiatives to address priority issues, reducing the need for consumers to be making complaints and improving health care across the state. We would suggest, for example, that the Commissioner currently collects enough data on communication breakdowns to develop a substantial piece of work on improvement in this area.

One state-level body for such a partnership might be the Standing Committee on Health Quality, Safety and Outcome of the Health Innovation and Reform Council (HIRC) or equivalent committee. The HIRC provides advice to the Minister on possible improvements and innovations to the system. Working in partnership with HIRC, which is intended to have a broader perspective on the overall system, areas for clear improvement might be easily extracted from complaints and other relevant data. The Participation Advisory Committee could collaborate on this.

From the perspective of consumers, HIC believes it is particularly important that consumers (complainants) are informed of – and offered the chance to contribute to – any improvements that occur locally or system-wide as a result of their complaint. More thought must be given to the potential role of the consumer in any ongoing improvement projects in relation to their complaint/incident. Although some consumers may not wish to be involved in any ongoing way, in most circumstances this can and should be offered. The new National Safety and Quality Health Service Standards place a strong emphasis on the role of consumers in improving the quality and safety of health care – for themselves and for others who use the system.<sup>15</sup>

Finally, HIC believes there is value in the development of a Community Reference Group to support and inform the work of the Commissioner's office. In 2013, AHPRA developed such a body and involved it in 'providing feedback, information and advice on strategies for building better knowledge in the community about health practitioner regulation, but also advising AHPRA on how to better understand, and most importantly, meet, community needs'.<sup>16</sup> A similar group could provide ongoing input into innovations and improvements in the Commissioner's office and would be a significant sign to the community of an intention to consult and listen.

Health Issues Centre recommends the following:

- adopt the Panel's recommendations for legislative and practice change regarding learning and quality improvement (p. 79 & 81, Final report on the review of the Act)
- develop partnership relationships for the Commissioner's office with other organisations more broadly positioned and better able to apply currently collected complaints data for system-wide improvements
- require that all recommendations for quality improvement changes occurring as a result of a complaint to the Commissioner are communicated to the consumer involved in the complaint
- require the offer of involvement for consumers (complainants) in ongoing quality improvement projects locally

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<sup>15</sup> Australian Commission on Safety and Quality in Health Care, National Safety and Quality Health Service Standards (September 2012). Sydney. ACSQHC, 2012.

<sup>16</sup> <http://www.ahpra.gov.au/About-AHPRA/Advisory-groups/Community-Reference-Group.aspx>

- amend the Act to require establishment of a Consumer Advisory Group for the Commissioner's office, giving appropriate Terms of Reference for this group, including a advising on use of complaints data and reaching and supporting under-represented groups

## Key Issue 5: Accountability

### ***How could the accountability and transparency of the Commissioner be enhanced?***

Transparency and accountability are often quoted by consumers as key factors in their dissatisfaction with the complaints handling system. Lack of transparency, particularly, can lead consumers to doubt the integrity or fairness of the system. Thus, building as much transparency as possible into the system is essential. One aspect of this involves communication with complainants and the general public; for the former, throughout their complaint resolution and the latter, through general information. We recommend that all information on the Commissioner's website should be co-produced with plain English professionals and strong consumer input, emphasising the need for clear, simple, jargon-free and acronym-free language, available in a variety of appropriate languages. This is especially relevant for any process-related explanations which can be very difficult for those unfamiliar with health services and government organisations to understand.

In terms of accountability, there are clear limitations on the role of the Health Services Review (HSR) Council within the current legislation. HIC believes this role should be broadened to include involvement in quality improvement as well as review and evaluation of the Commissioner's office. This should include regular public reporting of complaints data and trends of importance for both health services and the public. As we suggested in our original submission to the Panel, we recommend that the HSR Council should publish data not only in annual reports but on the website, to include demographics of complainants, levels of satisfaction with complaints handling processes, key sources of complaint and remedies. It might also include general examples of compensation and resolution.

We support a clear monitoring and review role for the HSR Council in terms of strategy, priority work areas and follow-through of the Commissioner's office. Clearly, they will need to function fully independently in complaints handling, but would benefit from the advice and expertise of an appropriate and engaged board.<sup>17</sup>

As recommended in our 2012 submission, HIC suggests the following:

- amend the Act to reformulate the role of the HSR Council to promote a proactive role, including:
  - promoting accountability and transparency of the work of the Commissioner
  - prevention and quality assurance across the health system
  - review of the Commissioner's office priority setting and strategic plans.

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<sup>17</sup> Health Issues Centre, Submission to Review of Health Services Conciliation & Review Act, August 2012, p. 44.

## SUMMARY

Health Issues Centre believes that a health complaints system should have at its core the needs and concerns of the consumer. Recent research both in Australia and abroad continues to point to a high level of dissatisfaction with the process and overall experience of making a complaint. The excellent work of the Expert Panel and their 2013 report and recommendations provide a rare opportunity and solid grounding to make significant improvements to the Victorian health complaints system. This can, and should, occur through the dual mechanisms of legislative and practice change. The recommended changes will go a long way towards achieving the Minister's aim of modernising and improving the system.

From the consumer perspective, we would like to close by re-emphasising that a fundamental aim of any proposed changes must be a positive consumer experience in making a health complaint. To achieve this — whether through the Commissioner's office or the local service — the process must ensure the following:

- consumers feel heard
- confidence that improvement has or will occur as a result
- fair and impartial process
- easy, accessible and seamless process
- timely process with consistent, clear, non-bureaucratic communication and information
- reasonable expectations set from the beginning about possible outcomes.

Once again, Health Issues Centre is thankful for the opportunity to comment on the proposed legislative and practice changes to the health complaints system. We were closely involved in the development of the *Health Services (Conciliation and Review) Act 1987*, including running a health complaints phone line to help inform the development of Victoria's legislation. We welcome the modernisation of that legislation, seeing it as an opportunity both to improve the experience of Victorians who make complaints about their health care and for those complaints to play an important role in improving the health system for all of those who rely on it.

For any enquiries about this submission, please contact Susan Biggar on (03) 9664 9343 or [s.bigg@healthissuescentre.org.au](mailto:s.bigg@healthissuescentre.org.au)

## Health Issues Centre's Recommendations

### Key Issue 1: Scope of the Act

#### ***Who may complain?***

We are in agreement with the Expert Panel's recommendation that the Act be broadened to allow complaints to the Health Services Commissioner (the Commissioner) to be lodged by anyone.

#### ***Who may they complain about?***

We support the panel's recommendation for a more flexible and inclusive definition of 'health services'. We have no specific advice about the definition or which unregistered health practitioner services should be included within the scope of the legislation.

### Key Issue 2: Resolution and support

#### ***Flexible and effective resolution scheme: Are there ways in which the Commissioner's resolution function can be made even more effective for complainants and providers?***

We endorse the following proposed changes to the Act:

- require all providers to make information about the complaints system readily available to consumers
- require the Commissioner to set and publicly promote a set of best practice standards for complaints handling for all providers
- allow complaints to the Commissioner against providers on the grounds of not meeting these best practice standards and include non-institutional providers in this provision
- require the Commissioner to facilitate early resolution and enable the Commissioner to select the most appropriate dispute resolution tool for achieving a quick and satisfactory resolution.

#### ***Support: How can the legislation ensure that the complaints system is fair, supportive, person-centred and responsive to the needs of all parties?***

We agree with the Panel's proposed changes for offering a more supportive service to consumers. They are:

- better information about the role of the Commissioner and what can reasonably be achieved
- more highly developed front-line customer-relations skills for staff, so that complainants feel heard and understood, and their initial needs, such as language support, are assessed early
- practical assistance and advice where required at first contact, lodgement and throughout the process
- improved regularity and transparency of communication with complainants, including direct contact (such as face to face, or via phone or Skype)
- active engagement with the complainant about the range of actions undertaken in the process of assessing the complaint and engaging the healthcare provider
- user-friendly correspondence, including use of correspondence to confirm oral communication, rather than it being used as a principal form of communication
- development of a case closure process that involves the complainant
- appropriate referral after assessment of the complainant's needs and discussion with them of options and preferences.

We repeat below the recommendations HIC made in our submission to the 2012 review concerning support for consumers:

- adopt the proposals, outlined in the 2012 Discussion Paper, designed to promote simpler and more responsive complaints lodgement processes
- specify a requirement in the Act that the Commissioner provide support for vulnerable people to make complaint, including refugees, people from culturally or linguistically diverse backgrounds, people with disabilities and prisoners
- require the Commissioner to conduct ongoing monitoring of who complains, noting groups identified by research as less likely to make a complaint, and assessing whether the support provided to vulnerable groups is effective in increasing the level of complaints made by them
- specify the Act to require systemic links between Community Advisory Committees, quality committees and the Commissioner; and that the Department of Health and Human Services provide incentives to support such links
- give consideration to a new title, such as Health Complaints Bureau or Health Complaints Office.

We recommend that the principles of person centred care – respect and dignity, shared information, participation and collaboration – be applied to the health complaints system, establishing them as agreed rights for complainants.

### Key Issue 3: Protecting the public

***Do the Panel's recommendations reflect the right balance between protecting the public from risks to health and safety and upholding the rights of providers of healthcare in Victoria?***

We strongly back the recommendation that the Commissioner be given stronger powers to respond to unethical, incompetent or exploitative unregistered practitioners. The recommendations made by the Panel reflect, in our view, an appropriate balance between the rights of consumers and providers.

### Key Issue 4: Quality improvement

***Feedback is sought about how the Commissioner can best contribute to quality improvement.***

We recommend the following:

- adopt the Panel's recommendations for legislative and practice change regarding learning and quality improvement (p. 79 & 81, Final report on the review of the Act)
- develop partnership relationships for the Commissioner's office with other organisations more broadly positioned and better able to apply currently collected complaints data for system-wide improvements
- require that all recommendations for quality improvement changes occurring as a result of a complaint to the Commissioner are communicated to the consumer involved in the complaint
- require the offer of involvement for consumers (complainants) in ongoing quality improvement projects locally
- amend the Act to require establishment of a Consumer Advisory Group to assist the Commissioner's office and consideration be given to appropriate Terms of Reference for this group including a particular role in advising on use of complaints data and advise on reaching and supporting under-represented groups

### ***How could the accountability and transparency of the Commissioner be enhanced?***

We suggest the following:

- amend the Act to reformulate the role of the HSR Council to promote a proactive role including:
  - promoting accountability and transparency of the work of the Commissioner
  - prevention and quality assurance across the health system
  - review of the Commissioner's office priority setting and strategic plans.