



Health Issues Centre
Consumer voices for better healthcare

Health Issues Centre submission to the

Review of the National Registration and Accreditation

Scheme for health professionals:

Consultation paper

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EXECUTIVE SUMMARY

Health Issues Centre welcomes the Review of the National Registration and Accreditation Scheme for health professions and its consultation paper. We appreciate the opportunity to comment on the successes and limitations of the National Scheme from the perspective of consumers.

Interestingly, we note that the National Scheme has three guiding principles, the first of which is particularly relevant for evaluating it from a consumer perspective. 'It [the National Scheme] must operate in a transparent, accountable, efficient, effective and fair way.' If strongly embedded in implementation, we believe this principle alone could greatly improve the consumer experience of making a complaint through the National Scheme. Thus, any changes must aim to uphold this principle more fully.

It is our view —based on consultation with consumers, previous work undertaken by Health Issues Centre on the Australian Health Practitioner Regulation Agency (AHPRA), our participation in the review of Victoria's complaints legislation, and our knowledge of and experience with representing the views of consumers – that there continue to be significant failures for consumers in the management of their complaints and notifications.

Many of these ongoing problems occur because of the particular role of the notifier, consumers ending up in the 'wrong place' with their complaint, and incorrect expectations or lack of understanding of what AHPRA and Health Complaint Entities (HCEs) can or cannot do in response to a complaint. The model of managing consumers' notifications is often at odds with the way consumers want to see their concerns handled. We believe that there are a number of important changes that could be made to improve the system from a consumer perspective. While a co-regulatory approach to managing complaints and notifications, as with the Queensland Health Ombudsman model, may provide a better alternative to the current system, we are conscious that the Queensland model is very new and untested which makes it challenging to draw clear conclusions about results for consumers and their experiences. Additionally, we are not convinced that structural change alone would address the ongoing deficiencies in the current system from a consumer perspective. In lieu of making a strong structural recommendation we focus our response on the key criteria that must be present for an improved system.

A positive consumer experience in making a complaint or notification through the National Scheme must ensure the following criteria:

1. Consumers felt heard
2. Confidence that improvement has or will occur as a result
3. Fair and impartial process
4. Easy, accessible and seamless process
5. Timely process with consistent, non-bureaucratic communication and information
6. Reasonable expectations set from the beginning about possible outcomes

We strongly advocate that any changes to the National Scheme's approach to complaints and notifications embed these elements in it. With a commitment to this we believe the National Scheme will have the greatest possible chance of achieving its intended purpose for the protection and best interest of the public.

INTRODUCTION

Health Issues Centre aims to represent the voice of consumers in health issues across Victoria. The organisation promotes improvements to the healthcare system from the perspectives of consumers, with an emphasis on equity, as well as promoting and providing expertise on consumer participation in health and patient centred care. It is through this health consumer-focused lens that we are responding to this consultation paper.

The primary focus of our submission is improvements to the complaints and notifications aspect of the National Scheme as we feel this is of fundamental importance for consumers. We will also comment briefly on several other areas of the scheme which have potentially important impacts for consumers.

The community must have confidence in the capacity of AHPRA and the HCEs to regulate our health professions. While notifications about health practitioners' fitness to practice come from health services and other health practitioners, consumers are another important source to identify concerns about health practitioners. Without confidence in the process, and the willingness of the community to register complaints or notifications, the system cannot function. Consumer involvement – and belief – in the system is of paramount importance.

In responding to the question 'What changes are required to improve the existing complaints and notifications system under the National Scheme?' we would emphasise the key characteristics necessary for a good consumer experience, which we will outline in slightly more detail below. While our perspective is firstly that of the consumer, we note that there is overlap with the concerns often raised by health professionals about their experience of complaints and notifications, particularly timeliness, open and accessible communication and a seamless process.

In considering recommended changes to the National Scheme, we are most concerned about the way the consumer experience is structured, managed and experienced by them. There is a real need to improve the level of consumer satisfaction with complaint resolution, ensuring that they believe their complaint has been heard, assessed and responded to in an appropriate manner. There are aspects of the Queensland approach that we believe are likely to address some of the fundamental weaknesses of the current scheme for consumers. For example, the single point of entry for complaints and notifications should assure that the consumer does not find themselves in the 'wrong place' for the outcomes they hope to achieve. It would also avoid duplication of effort and potential bottlenecks, hopefully speeding up the process for consumers and health professionals. Given that the Queensland system is in early stages of implementation, and because we are not yet aware of work that captures the experiences of consumers in that system, we are hesitant to suggest that it alone will remedy the problems experienced by consumers. Instead, we wish to emphasise the key components of a workable system for consumers. It is also vital that there are nationally consistent standards and protection of consumers across the country from actions of a practitioner with restrictions attempting to move from state to state.

In early 2014¹ Health Issues Centre undertook a project examining the experience of consumers as notifiers. This was informed by research undertaken in 2004² on the experiences of consumers with health practitioner boards in which Health Issues Centre was a partner. Our current submission builds in part on the work this year. The aim of that project, in partnership with AHPRA, was to provide recommendations on potential actions to increase public confidence in AHPRA and, specifically, to improve the experience of consumers as notifiers. The work involved extensive interviews with a number of key stakeholders, including community and practitioner members of health professional boards, AHPRA staff, Office of Health Service Commissioner staff (Victoria), and other key figures. It also involved a review of consumer complaints to AHPRA (those who complained about their experience of the process) and an evaluation of the organisation's communication templates. We have included here a small number of relevant quotes from individuals interviewed through that process.

We also conducted a face-to-face consultation session with a group of experienced consumers in September 2014 in order to understand their key concerns and recommendations on the consultation paper.

Note: We wish to clarify that in our submission we will use the term 'complaint' when describing the experience from the perspective of the consumer as that is how they generally perceive this. We understand that once that 'complaint' has entered AHPRA it becomes a 'notification'; however, the importance for consumers is in having their complaint or concern resolved and that is our focus. We also understand that notifiers are not always consumers, but we are focusing specifically on the cases where it is a consumer making a notification.

WHAT A POSITIVE EXPERIENCE LOOKS LIKE FOR CONSUMERS

In thinking about improving the complaints and notifications process, we believe that the best place to begin is by presenting a clear picture of what is necessary for a positive experience. We are convinced that the following are essential criteria from the consumer perspective. We recommend that any approach to the National Scheme guarantee these ingredients.

Consumers felt heard

'My motive was to be taken seriously. I had suffered much pain and anxiety and the doctor had not taken it seriously.' - Notifier³

The desire to have someone properly listen to their concern is a theme which is consistently repeated by consumers both as a reason for making a complaint and as the source of their frustration when the complaint process has been unsatisfactory. We see this as one of the fundamental limitations of the current notification system because the role of the notifier is strictly limited to raising a concern and leaving AHPRA to deal with it.

¹ Setting things right: Improving the consumer experience of AHPRA including the joint notification process between AHPRA and the OHSC, 2014. Available from AHPRA's website.

² Resolution Resource Network and Health Issues Centre (2004), *Bringing in the Consumer Perspective Final Report. Consumer Experiences of complaints processes in Victorian Health Practitioner Regulation Boards. Department of Human Services.*

³ Friele, R.D. and Sluijs, E.M. (2006) Patient Expectations of fair complaint handling in hospitals: empirical data BMC Health Service Research, 6:106

Confidence that improvement has or will occur as a result

'My motive is to prevent it happening in the future. People should learn from it. Something must change.' - Notifier⁴

The majority of consumers express a strong wish for their complaint to lead to a better system or a 'changed health professional'. There is good evidence from research internationally that this is a fundamental reason why consumers go to the effort of making a complaint. According to Dutch researcher Friele⁵, 95 per cent of complainants want to prevent the incident happening to others. If restrictions are placed on the health professional as a result of the notification (a relatively rare occurrence), the notifier is not necessarily given full disclosure about the details of that restriction. It is also not within the aims of the current National Scheme to show consumers that improvement has occurred or that the complaint has led to a change in the practice of the health professional. There is clearly overlap between what the consumer wants to achieve (to have their complaint addressed and know it won't be repeated) and the aims of the National Scheme (notification about a practitioner to ensure protection of the public). Both are concerned about protection of the public. However, because the consumer is given so little information about the outcome, they have little confidence that anything has been achieved.

Fair and impartial process

'There is this real perception talking to notifiers that AHPRA is working for the actual practitioner and not working for the notifier.' – Office of Health Service Commissioner staff member

For the consumer to have any hope of a satisfactory experience of making a complaint they must believe that the process is fair and 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 AHPRA or an HCE 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. Questions are often raised by consumers about the perception of bias or 'protection' when health practitioner boards are tasked with determining outcomes behind closed doors. Although there is community representation on the health professional boards, it is unlikely that the public has good awareness of this.

Easy, accessible and seamless process

'Making a complaint is hard...It can be quite confronting for a notifier...you do need a fair bit of resilience and an understanding of the system as a consumer.' - Practitioner member of health professional board

'The punter is completely confused about the various authorities...They do not understand the re-direction to another authority.' – Practitioner member of health professional board

A good experience for consumers who are making a complaint means that they have a clear understanding of where to go, what to do and how to do it. They have already suffered through a negative experience of health care; the process of complaining should not damage them further. The public is generally not interested in this issue until they have a complaint to make. Thus, most of

⁴ Friele and Sluijs, (2006)

⁵ Friele and Sluijs, (2006)

them come to the process with zero or little knowledge of how to go about it so it must be very user-friendly with no prior knowledge required. This is particularly important for consumers who are disadvantaged by language, education levels or geography.

The seamless experience is particularly relevant to referral from one agency (AHPRA) to another (HCE) or vice versa or even within one agency. The vast majority of consumers have no understanding of the difference between the organisations, their purpose or their authority. A good experience means that there is 'no wrong door', no calling around endlessly to discover the right place to lodge a complaint and no surprises of ending up in a different organisation and with different options than originally assumed.

Timely process with consistent, non-bureaucratic communication and information

'It generally takes about six months to close a case even if we don't proceed. Sometimes it's warranted but the wait can't be good for the notifier.' - Community member of health professional board

One of the most commonly expressed frustrations about the experience of making a complaint through the National Scheme is the slowness of it. This is a complaint strongly expressed by consumers and health professionals alike. While it is imperative that the process allow for input from both sides, and that can take some time, the frustration levels suggest there is room for improvement. Alongside of this – and probably at least a partial antidote – is clear and consistent communication with all parties. Consumers feel that this is 'their complaint', they are vested in it and often vulnerable, and thus they expect and need a reasonable timeline and regular, easy-to-understand updates about progress.

Reasonable expectations set from the beginning about possible outcomes

'They [the consumer] don't understand that a practitioner is not going to be deregistered because he/she was rude. Especially in a state of emotional damage, it is difficult for them to understand why the Board doesn't consider rudeness serious misconduct.' – AHPRA staff member

The majority of consumers who have an unsatisfactory experience of the complaints process are unhappy with the decision of the Board. Many also state that they never had a chance to achieve what they most wanted (e.g., a face-to-face conversation with the practitioner or financial compensation). In a number of these cases the likelihood that the result would be a 'No Further Action (NFA)' was quite high, yet the consumers rarely seem to understand that. This is a persistent problem which undermines the experience for many consumers. It is, thus, imperative that the process be structured in such a way that consumers fully understand what outcomes are possible and are not sent down the 'wrong path' chasing an outcome which they will never receive.

WHAT CHANGES ARE REQUIRED TO IMPROVE THE EXISTING COMPLAINTS AND NOTIFICATIONS SYSTEM UNDER THE NATIONAL SCHEME?

If we look at this question from the perspective of the consumer and consider the elements of what makes for a positive experience of the complaints process, there are some important changes we would recommend.

Consumers felt heard:

The first changes that could be made to improve the consumer feeling heard in the process is to ensure that the initial contact they have with either AHPRA or the HCE is both a very positive one and sets appropriate expectations. We know that one of the main aims for many consumers (either clearly expressed or as a subtext) is to have their side of the story heard compassionately. To do this, there must be an investment in ensuring that the staff who are the initial contact (either face-to-face or on the phone) have well-developed communication skills, empathy and a keen understanding of the importance of that first contact for the consumer.

Another possible change is to allow for alternative dispute resolution (ADR) to play a more integral role in the process. We believe this is best achieved through proper allocation of the complaint to HCEs in the first place where conciliators are skilled in ADR and view that as an essential component of the work they do.

Additionally, one of the most substantial limitations to the current system is the role of the consumer as notifier. There needs to be some serious consideration given to changing the role of the notifier (at least when the notifier is a consumer) and recognising their centrality to the process, not merely as a witness, but as a participant in the resolution of the complaint. This would require both cultural change and probably legislative change.

Confidence that improvement has or will occur as a result:

One of the best ways to achieve this confidence is by building into the process of both AHPRA and the HCEs ways of using complaints and notifications to contribute to systems change. Both individual experiences and aggregated data should be regularly relied on to prioritise and drive improvement. This work must then be demonstrated to both the community and to health practitioners. Thus, while an individual complaint may not lead to the desired outcome for a particular consumer, they can see that it contributes along with other complaints to improving the system. There is also a case to be made for greater transparency about what information is placed on the national register. Relative to international comparisons, the Australian minimalist approach may overly favour protection of the practitioner's privacy. The lack of information about the outcome can leave the consumer wondering if their complaint has truly been heard, has changed anything and whether the public is truly protected as a result.

Fair and impartial process:

Making the process be – and appear to be – completely fair and impartial requires improved communication at all stages. Access to information about the outcome is an important aspect of this, as noted above. Another option to be considered is to allow further involvement in the process by the notifier (possibly requiring legislative change) as consumers are often frustrated by their inability to see the response of the health professional to their complaint or to have any detail of the proceedings if the practitioner does have a panel hearing. Another suggestion is that there be a

greater acknowledgement of the role (and possibly expansion of that role) of the community members of the health practitioner boards. Their role is not widely known or well-publicised, both of which could be helpful for improvement in the perception of fairness. Without some expanded scope for consumer involvement or at least greater access to information, we believe consumers will continue to question the fairness and impartiality of the process.

Easy, accessible and seamless process:

It is essential that AHPRA and the various HCEs work in close collaboration to develop seamless complaint management and resolution across the organisations. This should be based on the 'consumer journey' and seek to address the full range of issues in the consumer's complaint in the most timely and complete manner. Serious consideration should be given to the concept of a 'one door' approach to complaints and notifications. We are not suggesting that this necessarily needs to be a co-regulatory approach, but we would suggest consideration of an approach which requires all complaints (including those which may become notifications) to go through the HCEs. If not 'one door', then there must at least be the ability for AHPRA and the HCE to concurrently address differing aspects of the complaint/notification (this amendment is currently before the Victorian Parliament). We believe this would potentially address many of the issues involving consumer dissatisfaction with the complaints and notifications process. In our view, the process of managing the 'total' consumer complaint or notification needs as much attention as the structure of the organisations.

It is worth restating here we believe it is necessary to have a nationally consistent set of standards and nationwide protection of consumers from restricted practitioners.

Timely process with consistent, non-bureaucratic communication and information:

The need for swift resolution of complaints is a longstanding concern among both consumers and health professionals. When complaints or notifications lag in the system this generally leads to increased consumer dissatisfaction, raised expectations and poorer experiences. It is believed that some work has begun on this within both AHPRA and the Victorian Office of the Health Service Commissioner, which is commendable. However, the commitment to swift resolution needs to be consistent across all states and territories and embedded within the National Scheme.

There are a number of steps which could be taken to improve the consumer experience in relation to communication throughout the process. One of the most important is to provide better and more accessible information on the AHPRA website, as has been commenced, and ensure that the same is done for the various HCE websites. This content 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 approach needs to apply to all correspondence sent to consumers from AHPRA or the HCEs. Health Issues Centre has made a number of detailed communication-related recommendations in its 2014 report to AHPRA (available on the AHPRA website), many of which would be relevant here. We applaud the commitment AHPRA has shown to begin to implement these proposed changes and encourage the review to endorse those actions.

Additionally, more meaningful and consistent communication with consumers throughout the notification process is necessary. In partnership with AHPRA's Community Reference Group, we recommend a review of the key communication points in the process. This would assess when

notifiers currently receive updates about the process and determine whether that is sufficient or if more regular updates should be mandated.

Reasonable expectations set from the beginning about possible outcomes:

This issue is a difficult one because it's evident that both AHPRA staff and staff from the Victorian HCE (and possibly others) make strong attempts to set consumer expectations at a reasonable level regarding potential outcomes. However, there continues to be a distinct mismatch between what is likely (or even possible) and what actions consumers believe could result following their complaint. Given the context of often deep distress following a negative health care experience, we acknowledge the challenge of this.

We believe improvement could come from a variety of changes. First, greater engagement with consumers and the community as a whole would help to raise awareness of AHPRA's role and what kind of issues they are able to address. An investment in further training for staff who have the initial contact with consumers is essential here. Greater collaboration and a more seamless process between AHPRA and the HCEs should lead to less inappropriate referral of complaints between the agencies. Another option is the 'one door' solution, as previously suggested. It is of fundamental importance that consumers are in the 'right place' (that is, the most appropriate agency) for their complaint and for the outcomes that they hope to achieve. There must be recognition that consumer notifications often have a variety of aspects to them and that the consumer may be seeking more than one outcome from that notification or complaint. Any model must take this into account. AHPRA is likely to have other aims that it needs to achieve with the notification, namely protection of the public. We see no reason why both the consumer's aims and AHPRA's cannot both be achieved.

OTHER KEY AREAS OF THE REVIEW THAT IMPACT ON CONSUMERS

Public protection

Are the legislative provisions on advertising working effectively or do they require change?

Health Issues Centre acknowledges the challenge for health professionals attempting to regulate commentary and testimonials within the context of social media. We also agree that there could be greater scope for consumer feedback on online platforms. Thus, we would endorse option 2, amending the National Law provision preventing the use of testimonials to clarify when comment is permissible.

National Code of Conduct for unregistered health practitioners

We know that consumers do not necessarily understand or have full information about registered versus unregistered health practitioners and would thus assume a national standard would apply to anyone who provides such services. We would endorse the model that is being proposed for unregistered practitioners as a helpful middle ground between full registration for all practitioners and the opposing risk of no accountability for those unregistered.

Governance of the National Scheme (HEADING 2)

Constitution of National Boards

The current requirement that 'at least two of the members of a National Board must be persons appointed as community members' is viewed by some consumers as tokenistic and potentially

limiting the scope of community involvement. We suggest that it could be reworded to something like 'a minimum of 40% of the board must be community members'. Another approach to this that could realise the same end would be to require that the quorum at Board meetings must include community members in order for the meeting to proceed. This would encourage the recruitment of a larger number of community members.

Appointing community members to office bearing positions

We endorse the proposal that the appointment of Chairperson of a National Board be on the basis of merit.

SUMMARY

In summary, Health Issues Centre believes that, overall, the establishment of the National Scheme was an important step forward for the protection of consumers in Australia. However, in the area of the management of complaints and notifications, we are convinced that there remains serious work to improve the experience for consumers.

In this report we have focused on the six key criteria for a positive experience of the complaints and notification process for consumers. They are:

1. Consumers felt heard
2. Confidence that improvement has or will occur as a result
3. Fair and impartial process
4. Easy, accessible and seamless process
5. Timely process with consistent, non-bureaucratic communication and information
6. Reasonable expectations set from the beginning about possible outcomes

Based on those, we have made recommendations for each which, if enacted, would help to solve many of the existing problems consumers face when navigating the system. We strongly encourage the Review to embed these six criteria into any new structure or changes.

The climate of health is moving rapidly towards participatory health care, but unfortunately the process of dealing with notifications and determining their management has been experienced as quite passive for consumers. Indeed, the original complaint was often about the very absence of this participatory approach in their health care experience. There is consistent feedback that consumers have often not felt part of any of the decision-making processes about management of their notification. Whatever structure is chosen, it is essential that it is a participatory model.

In returning to the first guiding principle of the National Scheme, we suggest that if this principle alone was applied across the system there would be great improvement for consumers. It requires that the National Scheme 'operate in a transparent, accountable, efficient, effective and fair way.' These may only be five descriptive words, but we believe that a commitment to them would take the National Scheme a long way toward achieving what it has promised for consumers.

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