

Health and Disability Services Complaints Office

Statutory Review

Health and Disability Services (Complaints) Act 1995
Part 6 of the Disability Services Act 1993

Consultation Paper

August 2024



Health and Disability Services
Complaints Office



Acknowledgement of Country

The Health and Disability Services Complaints Office (HaDSCO) is honoured to be situated on the ancestral lands of the Whadjuk Noongar people. We acknowledge the First Australians as the traditional owners of the lands we represent and pay our respects to their Elders past, present and emerging.



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Message from the Minister for Health; Mental Health

Supporting Western Australians to engage in effective, impartial and sustainable complaints resolution is central to providing a world-class health care sector. It helps the sector to operate as effectively as possible, and reflect the innovative, and collaborative practices that the community has come to expect. Health and Disability Services Complaints Office (HaDSCO) plays a crucial role here in managing consumer feedback and complaints.

HaDSCO was established in 1996, and was designed to improve health, mental health, and disability services through complaints resolution.

Since this time the Office has managed more than 50,000 complaints, many of which have resulted in important service improvements. These improvements set new benchmarks in health care, strengthen the sector and work to support Western Australian, and Indian Ocean Territory communities.

The State Government has a responsibility to ensure that it delivers a world-class health care system, including a robust mechanism that allows the community to provide feedback, and complain about services that do not meet high expectations. This Statutory Review allows State Government an opportunity to explore how well the feedback and complaints system is working for the community.

As the review supports our understanding on how health complaints are managed in Western Australia, it also identifies what our stakeholders need from the service. The Western Australian Government recognises the community's right to provide feedback and complain about health care services and is committed to providing a service that can hear complaints and work with the community and service providers to resolve issues.

This consultation paper provides an opportunity for all health care sector stakeholders to provide input into how these complaints are managed and resolved in Western Australia and help to identify possible amendments that can be made to strengthen the sector, and improve health outcomes for all Western Australians.



AMBER-JADE SANDERSON MLA
MINISTER FOR HEALTH; MENTAL HEALTH



Making a submission

This document can be made available in alternative formats on request; please contact HaDSCO on (08) 6551 7600.

HaDSCO invites written submissions from the general public, users of health, mental health and disability services, their families and carers, service providers, advocacy and peak bodies, and public authorities on the issues identified in this consultation paper.

We would like to know if you think our legislation (the *Health and Disability Services (Complaints) Act 1995* and Part 6 of the *Disability Services Act 1993*) is working as intended and how it could be improved. Your feedback will help us make appropriate recommendations to the WA government that would benefit the wider community and make our complaint resolution service more effective.

You can either respond to all of the questions in this consultation paper or only the questions that are relevant to you or your organisation. Feedback can be provided anonymously.

If you wish to provide general feedback on HaDSCO's complaint resolution process, you can complete the short survey available on our website at www.hadsco.wa.gov.au.

Please email your submission to statutoryreview@hadsco.wa.gov.au.

Submissions can also be mailed to:

Strategy and Engagement Team
Health and Disability Services Complaints Office
PO Box B61,
Perth WA 6838

Please indicate whether the submission is being made by an organisation or an individual, your name and the name of your organisation (if applicable).

The closing date for submission is **31 October 2024**.

The feedback we receive may be quoted in HaDSCO's reports and publications. If you prefer your name, or any other information about you, to remain confidential, please let us know when you complete your submission. Please be aware that if subjected to freedom of information request, the information will be released in accordance with the law.



Health and Disability Services Complaints Office

About Us

The Health and Disability Services Complaints Office (HaDSCO) is an independent Statutory Authority providing an impartial resolution service for complaints relating to health, disability (non-National Disability Insurance Scheme and state based) and mental health services in Western Australia and the Indian Ocean Territories. Service provision covers the public, private, not-for-profit sectors, prison health services and immigration detention centres.

Our vision is to be the leading expert in providing quality, accessible and responsive complaint management services to influence improvements in the health, disability and mental health sectors.

HaDSCO is established by the *Health and Disability Services (Complaints) Act 1995* (the HaDSC Act) and also has responsibilities under Part 6 of the *Disability Services Act 1993* (DS Act) and Part 19 of the *Mental Health Act 2014* (MH Act). These Acts enable HaDSCO to manage complaints relating to health, mental health and disability services.

The main functions of HaDSCO under these Acts are to:

- Resolve complaints by negotiated settlement, conciliation or investigation.
- Review and identify the causes of complaints.
- Provide advice and make recommendations for service improvement.
- Educate the community and service providers about complaint handling.
- Inquire into broader issues of health, disability and mental health care arising from complaints received.
- Work in collaboration with the community and service providers to improve health, disability and mental health services.

The number of complaints received by HaDSCO has steadily increased since its establishment from 671 complaints in the first year of operation to 2,892 complaints in 2023-2024. We expect to see a continued increase in the number of complaints as people and providers become more aware of what we do and how they can raise concerns.

1. Introduction

Under the HaDSC Act, the Minister for Health is required to carry out a statutory review of, and report on, the operation and effectiveness of the HaDSC Act and Part 6 of the DS Act. The statutory review of the HaDSC Act and Part 6 of the DS Act commenced in the 2022-23 financial year. The MH Act was reviewed separately, with the Minister tabling a report on the outcomes of the review in Parliament on 16 April 2024. Further information can be found at www.mhc.wa.gov.au.

The statutory review will also consider the need for changes to HaDSCO's jurisdiction and/or functions, ensuring that HaDSCO offers a complaint resolution service that meets the needs of the community and service providers.

2. Background on HaDSCO

The Office of Health Review (OHR) was established under the *Health Services (Conciliation and Review) Act 1995* on 16 September 1996 to provide an office to deal with complaints by users of health services in an impartial manner and to improve the quality and accountability of the Western Australian health system. The dispute resolution focus was on conciliation rather than a litigation process to resolve complaints, allowing consumers a formal channel through which to raise concerns or grievances and for clinicians and administrators to respond in a non-adversarial way.

Since the establishment of the OHR, the Office's role and services have expanded. In 1999 the OHR was given responsibility for managing complaints about disability services under Part 6 of the *Disability Services Act 1993*. Following an operational review of the Office in 2003, the *Health and Disability Services (Complaints) Act 1995* came into effect in 2010. One of the most notable changes in the revised Act was the implementation of a negotiated settlement process which could be used to resolve a complaint by negotiating with the person who made the complaint and the provider to attempt to bring about a settlement of the complaint that is acceptable to both parties. The Office was also renamed the Health and Disability Services Complaints Office to better reflect its remit.

In 2015, the Office was given responsibility for the administration of Part 19 of the *Mental Health Act 2014* to manage complaints relating to mental health services. In 2021, with the implementation of the *Voluntary Assisted Dying Act 2019*, HaDSCO was given jurisdiction for complaints about the voluntary assisted dying process.

The *Health and Disability Services (Complaints) Act 1995* was amended again in 2023 to implement the Code of Conduct for certain health care workers (Code of Conduct). The Code of Conduct came into effect in Western Australia on 27 July 2023. The Code of Conduct applies to individuals providing a health service who are

not registered under the National Registration and Accreditation Scheme¹, or who provide services unrelated to their registration.

The Director of HaDSCO has the power under the HaDSC Act to issue an interim prohibition or a prohibition order to a health care worker who does not comply with the Code of Conduct. These orders prevent a health care worker from providing a health service(s). The Code of Conduct has a strong focus on protecting public health and safety, addressing the risks posed by unregistered practitioners in circumstances where their conduct or performance falls below the expected standards.

3. Consumer survey

As part of the statutory review process, consumers of our services, including prisoners, provided feedback on their experience of using HaDSCO's complaint resolution service via a survey. This feedback is included throughout this consultation paper.

The common themes that were raised through the consumer survey are summarised below:

- Provide a fair and impartial service.
- Provide support to complainants (to make a complaint and during resolution of the complaint).
- Allow anyone to make a complaint.
- Complaints to be taken seriously and investigated.
- Complaints to lead to meaningful service improvement i.e., changes in policy/process.
- HaDSCO to have powers to enforce action against service providers.
- Participation in the complaint resolution process by both parties to be made compulsory.

There were a number of respondents who advised that they had never heard of HaDSCO and were not aware of its role.

¹ Administered by the Australian Health Practitioner Regulation Agency (Ahpra)

4. Issues considered as part of this consultation

The following section is designed to prompt and guide your feedback on some of the key issues being considered by the statutory review. A consolidated list of consultation questions can be found at **Appendix A**.

Throughout this section reference is made to legislation in other Australian jurisdictions. This refers to the legislation administered by other health complaint entities; each state and territory has a health complaint entity with similar functions to HaDSCO. The table below details the health complaints entity in each state or territory that has responsibility for resolving complaints about health services.

Jurisdiction	Health Complaints Entity	Principal Legislation
Australian Capital Territory	ACT Human Rights Commission	<i>Human Rights Commission Act 2005</i>
New South Wales	Health Care Complaints Commission	<i>Health Care Complaints Act 1993</i>
Northern Territory	Health and Community Services Complaints Commission	<i>Health and Community Services Complaints Act 1998</i>
Queensland	Office of the Health Ombudsman	<i>Health Ombudsman Act 2013</i>
South Australia	Health and Community Services Complaints Commissioner	<i>Health and Community Services Complaints Act 2004</i>
Tasmania	Health Complaints Commissioner	<i>Health Complaints Act 1995</i>
Victoria	Health Complaints Commissioner	<i>Health Complaints Act 2016</i>

A. Who can make a complaint

The HaDSC Act specifies² that a complaint can be made by:

- The user of the service or the user's representative, including:
 - a representative whom the user has chosen, or
 - a representative not chosen by the user, if the user has died or the user is unable to complain.
- A carer if the complaint concerns the Carers Charter defined in the *Carers Recognition Act 2004*.
- A provider on behalf of the user regarding a service provided by another provider, if the user has died or it is impossible for the user to make a complaint because of the user's state of health or general situation.

The DS Act specifies³ that a complaint about a disability service can be made by:

- A person with disability;
- A representative on behalf of the person with disability;
 - a representative whom the person with disability has chosen,
 - a representative not chosen by the person with disability, if the person with disability has died, or is unable to complain or the representative has sufficient interest in the subject matter of the complaint.
- By two or more persons – on their own behalf or on behalf of themselves and another person or other persons.
- A professional registration board where the board becomes aware of complaints in relation to a member of its profession.
- A carer.

Consumers have told us that they want anyone to be allowed to make a complaint.

How can this be improved?

In most other Australian jurisdictions, the ability to make a complaint is not restricted to just the user and their representative, but the relevant legislation allows 'any person' or 'any other person' to make a complaint in relation to a health service.

² See section 19 of the *Health and Disability Services (Complaints) Act 1995*.

³ See section 32 of the *Disability Services Act 1993*.



Allowing any person to make a complaint to HaDSCO would ensure ease of access to the complaint resolution process and recognises the role of family, friends and community members in initiating complaints. This would also provide consistency in terms of who can make a complaint to HaDSCO, removing the distinction between complaints about the Code of Conduct and complaints about other types of service providers.

Tell us what you think

1. Do you think the ability to make a complaint should be open to any person in relation to health and disability services? Provide the reasons for your answer.

B. HaDSCO's complaint assessment process

When a complaint is received by HaDSCO, the complaint must be assessed and a decision must be made whether to accept, reject or refer the complaint. During the assessment stage, HaDSCO can make enquiries with the complainant and the provider as it considers appropriate. However, HaDSCO cannot compel a provider to provide information that might help in the assessment of the complaint.

Under the current legislation, once a complaint is determined to be appropriate for resolution, the complaint will have to be managed through a specific complaint resolution process. There is no provision for an early resolution of a complaint at the preliminary assessment stage. Section 34(7) of the HaDSC Act prevents HaDSCO from resolving the complaint at the preliminary assessment stage.

Consumers have told us that HaDSCO's processes can be bureaucratic and slow, and they want to see their complaints resolved quickly.

How can this be improved?

Preliminary assessment

Most jurisdictions have provisions in place to seek information at an early stage to enable a timely assessment of the complaint. In New South Wales⁴, South Australia⁵ and Tasmania⁶, any person or the provider can be compelled by the health complaints entity to provide information or documents that might assist in assessing a complaint. Failure to comply with the request may result in a penalty; for instance, in New South Wales, the penalty is 200 penalty units⁷ (equivalent to \$22,000) and in South Australia the penalty is \$10,000⁸.

Introduction of preliminary powers to compel providers or any other person to provide information or records during this preliminary assessment stage will help HaDSCO to assess complaints more efficiently. Appropriate controls on those powers such as upholding privacy principles, confidentiality of information obtained through using these powers and protection from its use in any other forum would be applied.

Early Resolution

Most organisations providing complaint resolution services have embraced the concept of 'early resolution'. Early resolution is an approach to assessing complaints which prioritises resolving complaints at the first possible opportunity.

⁴ Section 21A of the *Health Care Complaints Act 1993* (NSW).

⁵ Section 30(2) of the *Health and Community Services Act 2004* (SA).

⁶ Section 24 of the *Health Complaints Act 1995* (Tas).

⁷ Section 21A(3) of the *Health Care Complaints Act 1993* (NSW).

⁸ Section 30(5) of the *Health and Community Services Act 2004* (SA).

Jurisdictions like Victoria⁹, South Australia¹⁰ and Tasmania¹¹ have adopted the 'early resolution' approach which allows the complaint to be resolved in the preliminary enquiry stage of the complaints handling process.

Adopting the 'early resolution' approach has potential to assist HaDSCO in resolving complaints quickly in the least formal way at the preliminary enquiry/assessment stage, without the need for using a formal complaint resolution process. This would assist both parties (consumer and provider) in quickly achieving the desired outcome and will also allow HaDSCO to use more of its resources to manage complaints that are more complex and may require investigation.

Tell us what you think

2. Do you support the introduction of powers that would enable HaDSCO to compel information from providers or any other person to more effectively assess complaints?
3. Do you support the application of a penalty for non-compliance to the request made to a person or provider for additional information during preliminary assessment of a complaint? Why or why not?
4. Should there be a provision for early resolution while the complaint is in its preliminary assessment stage, prior to the complaint being placed into a formal complaint resolution process? If so, do you have any suggestions on how this should work in practice?

⁹ Section 12(4) and 12(5) of the *Health Complaints Act 2016* (Vic).

¹⁰ Section 30(7) to section 30(14) of the *Health and Community Services Complaints Act 2004* (SA).

¹¹ Section 25A of the *Health Complaints Act 1995* (Tas).

C. HaDSCO's complaint resolution process

Once a complaint is accepted into a HaDSCO process by meeting the requirements of the Act, the complaint is managed through one of HaDSCO's complaint resolution processes: negotiated settlement, conciliation or investigation.

Both negotiated settlement and conciliation are voluntary and both parties are expected to work together to facilitate a mutually satisfactory resolution. HaDSCO does not have the power to compel participation from both parties or compel the provision of records or documents through either of these processes. HaDSCO can however require a service provider to provide a written response to a complaint¹². If a provider does not give the Office a written response without a reasonable excuse, information on the failure to provide a written response must be included in HaDSCO's annual report¹³.

Through negotiated settlement and conciliation HaDSCO aims to achieve outcomes for the complainant and identify ways to improve services. The outcomes that may be achieved through the complaint resolution processes include: an explanation provided by service providers; apologies from service providers; refunds or a waiver of fee; facilitating access to services; staff training; changes to processes and procedures, and the introduction of new policies¹⁴.

Consumers have expressed frustration that HaDSCO's complaint resolution processes are voluntary and that HaDSCO does not have the power to compel the providers to participate in the complaint resolution processes. The outcomes achieved through these processes may not be satisfactory to complainants, as they often expect not only an explanation or an apology, but changes to the way services are delivered so that future incidents are avoided.

How can this be improved?

HaDSCO recognises the benefits of having different approaches available to resolve different types of complaints. A number of complaints received by the Office are more appropriate for early resolution, while alternative dispute resolution (negotiated settlement and conciliation) remains effective for more complex issues. Complaints that allege more serious matters, such as unreasonable conduct, are more appropriate for investigation.

As the Office was established to resolve complaints using a conciliation approach, it is important to get feedback on the effectiveness of this process to ensure it meets the needs of consumers and providers.

In Victoria, the complaint resolution process includes negotiation and conciliation. In the complaints resolution process (negotiation), the Health Complaints Commission

¹² Section 35(1)(ba) and section 36A(2) of the *Health and Disability Services (Complaints) Act 1995*.

¹³ Section 36A(7) of the *Health and Disability Services (Complaints) Act 1995*.

¹⁴ Case studies are detailed in HaDSCO's Annual Report 2022-23.

may issue a notice requiring the health service provider to provide a written response within a specific timeframe¹⁵. Failure to comply with this notice may result in a penalty¹⁶. However, if at any time during the process, a party to the complaint withdraws or no longer agrees to participate, the process will be ceased, and the complaint will be investigated (if required) or closed with no further action taken¹⁷.

In a conciliation process, the Health Complaints Commission may issue a notice requiring a health service provider to produce documents within a specific timeframe with failure to comply resulting in a penalty¹⁸.

In New South Wales, complaints are managed through either the complaints resolution process or conciliation. In both these processes, participation by parties is voluntary¹⁹. In the complaint resolution process, the Health Care Complaints Commission provides information, undertakes discussion and facilitates a direct resolution of the complaint between both parties.

In Queensland, the complaint resolution process includes local resolution and conciliation. In the local resolution process, the Health Ombudsman aims to facilitate a quick resolution of the complaint between both parties. In this process, the Health Ombudsman may give notice to the complainant, service provider or any other person to provide information within a specific timeframe. Failure to comply with this notice may result in a penalty²⁰.

In all other Australian jurisdictions, the conciliation process is voluntary with the ability for both parties to withdraw from the process at any time. In Tasmania, it is however compulsory that both parties attend the first conciliation meeting, with any subsequent participation in the conciliation process by the parties being voluntary²¹. Most jurisdictions also have rules around whether the parties can be represented at the conciliation meetings.

¹⁵ Section 33 of the *Health Complaints Act 2016* (Vic).

¹⁶ Section 35(3) of the *Health Complaints Act 2016* (Vic).

¹⁷ Section 34 of the *Health Complaints Act 2016* (Vic).

¹⁸ Section 41 of the *Health Complaints Act 2016* (Vic).

¹⁹ Section 48 and 58D of the *Health Care Complaints Act 1993* (NSW).

²⁰ Section 54 of the *Health Ombudsman Act 2013* (Qld).

²¹ Section 32A of the *Health Complaints Act 1995* (Tas).



Tell us what you think

5. Do you think the negotiated settlement currently used by HaDSCO is an effective way to resolve complaints? Provide reasons for your answer.
6. Do you think the conciliation process currently used by HaDSCO is an effective way to resolve complaints? Provide reasons for your answer.
7. Do you have any suggestions to improve the way the complaints are managed by HaDSCO?
8. Do you think HaDSCO should have the power to compel parties to produce information, records or documents while the complaint is being managed through the complaint resolution processes? Should there be a penalty attached for non-compliance by the parties?

D. HaDSCO's Investigation process

Complaints that are not suitable to be resolved through negotiated settlement or conciliation may be investigated. Investigation involves a formal process through which HaDSCO determines if any unreasonable conduct has occurred on the part of a provider²².

Investigation of complaints relating to the Code of Conduct may result in HaDSCO issuing an interim prohibition order or prohibition order to a health care worker that prevents their ongoing provision of health services. HaDSCO can also issue a public health warning statement depending on the risk posed by the unregistered health care worker²³.

HaDSCO has the power to conduct a Director-initiated investigation in relation to allegations of a breach of the Code of Conduct, as well as failure to comply with an interim prohibition order or a prohibition order²⁴. These investigations do not require a formal complaint to be made to HaDSCO about the conduct of an unregistered health care worker.

HaDSCO does not have the power to conduct a Director-initiated investigation into matters that are unrelated to the Code of Conduct. An investigation into other types of health and disability service providers require the Office to have received a formal complaint.

At the conclusion of an investigation into complaints relating to health or disability services, HaDSCO may make recommendations for service improvements to the provider. The provider is required to provide a written report to HaDSCO advising of the remedial action taken in relation to the recommendations made. Failure to provide this report may result in a penalty of \$2,500 and a report to Parliament about the refusal or failure to provide a report by the provider²⁵.

Consumers have raised the issue that HaDSCO's powers are somewhat limited; HaDSCO does not have the power to require a provider to implement recommendations resulting from an investigation, or to take disciplinary action against providers. Consumers have reiterated that HaDSCO should investigate complaints in a fair and impartial manner, and that a provider should be held accountable if they acted unreasonably.

²² An investigation is to enable the Director of HaDSCO to decide whether any unreasonable conduct, or other conduct, described in section 25 of the *Health and Disability Services (Complaints) Act 1995* has occurred.

²³ Part 3D of the *Health and Disability Services (Complaints) Act 1995*.

²⁴ Section 44A of the *Health and Disability Services (Complaints) Act 1995*.

²⁵ Part 3C of the *Health and Disability Services (Complaints) Act 1995*.

How can this be improved?

The disciplinary action that HaDSCO can enforce following an investigation into the breaches of the Code of Conduct is consistent with other jurisdictions where a comparable Code of Conduct is in force²⁶. With respect to the investigation of complaints concerning other types of providers, failure to take remedial action as recommended by the health complaint entity may result in a higher penalty in other jurisdictions. For instance, in Victoria the penalty is 60 penalty units for individual (around \$11,550) to 300 penalty units for a body corporate (around \$57,600)²⁷.

In Western Australia, the penalty that applies to providers for failure to take remedial action could be increased in line with other jurisdictions.

Consideration could also be given as to whether HaDSCO should have powers to use additional compliance tools such as issuing a compliance notice directing the provider to take specific action within a specified timeframe in order to rectify the issue, or accept an undertaking from a provider to take remedial action. Failure to comply with these actions could result in a penalty.

Tell us what you think

9. Should the current penalty that applies to a provider for failing to take remedial action recommended following an investigation be increased in line with the other jurisdictions? Why or why not?
10. Should HaDSCO have the power to take compliance action against a provider following an investigation? If so, what type of compliance actions would be appropriate and how can these be applied in practice?

²⁶ Code of Conduct is in force in Victoria, New South Wales, South Australia, Queensland and Australian Capital Territory.

²⁷ Section 52 of the *Health Complaints Act 2016 (Vic)*.

E. Administrative changes to the Office

HaDSCO currently operates under the three Acts – the HaDSC Act, Part 19 of the MH Act and Part 6 of the DS Act. The provisions for complaints management under these different Acts are consistent²⁸. Resolving complaints under three different Acts adds unnecessary complexity to HaDSCO’s complaint resolution process, with staff time spent on the administrative classification of complaints as opposed to resolving the issues central to the complaint.

Awareness of HaDSCO and its role in resolving complaints is not widely known in the community. This is evident through the consumer survey conducted for the statutory review; general feedback from stakeholders in the health and disability sectors; and HaDSCO’s experience promoting the Office and its services to consumers.

How can this be improved?

In all other Australian jurisdictions, the health complaint entities providing an independent complaint resolution service for complaints about health and related services are commissions, except for the Office of the Health Ombudsman in Queensland. These health complaint entities have comparable functions to HaDSCO; they have responsibility for resolving complaints through alternative dispute resolution or mediation focused processes, investigating more serious complaints and taking appropriate remedial or regulatory action following an investigation.

The term commission is familiar to consumers and is associated in Western Australia with agencies that have responsibility for the oversight of specific services or organisations. The term commission also tells consumers that an agency is independent and accessible.

There are benefits to HaDSCO being renamed a ‘commission’ that operates under a single Act. This would assist HaDSCO to raise awareness of its services in the community, while better communicating the Office’s role in administering the Code of Conduct and addressing issues relating to the provision of health, mental health and disability services. Operating under a single Act would also simplify the administrative processes for resolving complaints.

If operating under a single Act, a broad and flexible definition of a ‘health service’ would be required, as this definition determines the scope of HaDSCO’s jurisdiction i.e., the types of services that HaDSCO can accept complaints about. Depending on the outcome of the statutory review, the definition of health services may need to be expanded to include other types of disability and/or community services. It should be

²⁸ The notable differences between the three Acts concern the payment of a user’s representative under the MH Act and higher penalties for unreasonable refusal to assist in an investigation in the MH Act.

noted that the existing definition of a health service in the HaDSC Act already allows specific service types to be prescribed²⁹.

The current definition of the 'health service' is *'any service provided by way of –*

- (a) diagnosis or treatment of physical or mental disorder or injury, or suspected disorder or injury; and*
- (b) health care, including –*
 - (i) palliative health care; and*
 - (ii) voluntary assisted dying as defined in the Voluntary Assisted Dying Act 2019 section 5; and*
- (ba) prescribing or dispensing a drug or medicinal preparation; and*
- (bb) prescribing or dispensing an aid for therapeutic use; and*
- (c) a preventive health care programme, including a screening or immunization programme; and*
- (d) medical or epidemiological research,*
and includes any —
- (e) ambulance service; and*
- (ea) surgical or related service; and*
- (f) welfare service that is complementary to a health service; and*
- (g) service coming within paragraph (a), (b), (ba), (bb) or (c) that is provided by a person who advertises or holds himself or herself out as a person who provides any health care or treatment; and*
- (ga) service that –*
 - (i) ancillary to any other service to which this definition applies; and*
 - (ii) affects or may affect persons who are receiving any other service to which this definition applies; and*
 - (iii) prescribed service,*
 - (iv) but does not include an excluded service.*

²⁹ Section 3(h) of the *Health and Disability Services (Complaints) Act 1995*.



Tell us what you think

11. Should HaDSCO be renamed a 'commission' to better communicate the Office's role and authority to manage complaints relating to health, mental health and disability services independently? Why or why not?
12. Should HaDSCO manage complaints relating to health, mental health and disability services under its principal legislation, the HaDSC Act, rather than three different Acts? Why or why not?
13. Do you think the current definition of 'health service' in the HaDSC Act adequately captures all types of services in the health sector? If not, how would you change or improve the definition to ensure that all types of health services are covered?

F. The functions of HaDSCO

HaDSCO's functions are set out at section 10 of the HaDSC Act. Broadly speaking, the role of the Office is to resolve complaints with an emphasis on alternative dispute resolution (conciliation), assist service providers to better resolve complaints at the service level, and to look into any systemic issues relating to health and disability services that are identified through the complaints received by the Office. The specific responsibilities of the Office under the HaDSC Act are³⁰:

The functions of the Director are as follows —

- (a) to deal with complaints in accordance with this Act;*
- (aa) to conduct investigations under this Act;*
- (b) in collaboration with groups of providers or groups of users or both, to review and identify the causes of complaints, and to suggest ways of removing and minimizing those causes and bringing them to the notice of the public;*
- (c) to take steps to bring to the notice of users and providers details of complaints procedures under this Act;*
- (d) to assist providers in developing and improving complaints procedures and the training of staff in handling complaints;*
- (e) with the approval of the Minister, to inquire into broader issues of health care arising out of complaints received;*
- (f) subject to subsection (4), to cause information about the work of the Office to be published from time to time;*
- (g) to provide advice generally on any matter relating to complaints under this Act, and in particular —*
 - (i) advice to users on the making of complaints to registration boards; and*
 - (ii) advice to users as to other avenues available for dealing with complaints; and*
 - (iii) advice about removing or minimising the causes of complaints;*
- (h) any other function conferred on the Director by this Act or another written law.*

How can this be improved?

The functions of the Office under the HaDSC Act are generally comparable to the functions of health complaint entities in other Australian jurisdictions. Input from stakeholders on the role of HaDSCO and whether the Office is effectively providing

³⁰ Section 10(1) of the *Health and Disability Services (Complaints) Act 1995*.



the functions in the HaDSC Act will help to identify both potential changes to the legislation and improvements to the way our Office operates on a day-to-day basis.

Tell us what you think

14. Do you think the functions of HaDSCO as defined above are appropriate? Are there any other functions that should be considered for inclusion in the legislation? Please provide the reasons for your answer.
15. Is HaDSCO effectively performing the functions set out in the HaDSC Act? Please provide the reasons for your answer.

G. Application of a code of conduct to organisations providing health services

On 1 December 2022, the Education and Health Standing Committee (Committee) submitted to the WA Parliament its Report on the Inquiry into the Esther Foundation and unregulated private health facilities. The Committee was of the view that the evidence highlights the need for major change in how such services are regulated in Western Australia to adequately protect vulnerable consumers. The Committee's report contained the following recommendation:

That the Minister for Health and Mental Health amends the HaDSC Act to provide HaDSCO with greater powers to handle complaints and concerns about organisations that provide health services. These powers should be comparable to the powers that HaDSCO will have in relation to individual healthcare workers through the implementation of the National Code of Conduct for health care workers (National Code) including the ability to receive complaints, initiate own-motion investigations and issue prohibition orders.

The Committee recommended consideration be given to:

- *How HaDSCO's expanded jurisdiction in relation to organisations would complement the regulation of health services captured by the Private Hospitals and Health Services Act 1927.*
- *Whether a regulatory gap exists concerning complaints mechanisms for community services in WA, and whether it would be beneficial to broaden HaDSCO's jurisdiction to include community services.*

The Government in its response to the Committee report indicated its support for the recommendation.

In New South Wales and Victoria, a comparable code of conduct is applicable to organisations (not just individuals). The complaint entities in these states can receive complaints about alleged breaches of a code of conduct by certain types of organisations providing health services. A breach of the code of conduct by an organisation may result in the organisation being prevented from continuing to provide a health service(s).

In New South Wales, the Code of conduct for health organisations includes the following clauses:

- health organisation to take reasonable steps to ensure that all employees comply with the code of conduct for health practitioners;
- health services to be provided in a safe and ethical way;
- standard precautions for infection control to be adopted;

- appropriate conduct in relation to treatment advice;
- clients not to be misinformed;
- clients not to be financially exploited;
- maintain confidentiality of client health information;
- have appropriate procedures around storage and supply of medicines and to display the code of conduct³¹.

How can this be improved?

HaDSCO is considering the application of a code of conduct to organisations providing health services who are not regulated under the *Private Hospitals and Health Services Act 1927 (PHHS Act)*.

The powers that HaDSCO currently have under the HaDSC Act to issue an interim prohibition order, prohibition order or a public health warning statement to an unregistered health care worker could be applied to organisations that provide health services. These powers would be used where the organisation has breached a code of conduct and there is appropriate level of risk to public health and safety associated with the services they provide.

Development of a code of conduct specific to certain types of organisations providing health services would require consideration of the existing regulatory arrangements in place under the PHHS Act. Further consultation would be required to identify the specific clauses of a code of conduct for organisations, as well as the organisations who would be covered by the new code of conduct.

Tell us what you think

16. Do you support the application of a code of conduct to organisations offering health services, who are not currently subject to regulation under the PHHS Act? Provide reasons for your answer.
17. Are there any specific health services that currently lack regulation or oversight and should be captured under the proposed code of conduct?
18. What powers should HaDSCO have to take appropriate action against organisations providing health services who breach the proposed code of conduct?

³¹ Schedule 4 of the *Public Health Regulation 2022* (NSW).

H. Expansion of HaDSCO's jurisdiction over community services

Community services are those that function to enable individual, family and community wellbeing. In South Australia, Northern Territory and Australian Capital Territory, the health complaint entities have jurisdiction over community services. Complaints regarding community services are managed by the health complaint entities in the same way as complaints about health services. The relevant legislation in each state defines the community services that the health complaints entities have jurisdiction over³².

Currently in Western Australia, a user of a community service can lodge a complaint with the organisation providing the community service or with the Department of Communities (for services funded by the department, such as child protection and public housing). There is no other organisation that currently provides an impartial complaint resolution service for complaints related to community services.

It should be noted that the existing definition of a health service in the HaDSC Act includes a welfare service that is complementary to a health service³³. The Office does not typically receive complaints about welfare services, as defined in the HaDSC Act.

How can this be improved?

Consultation with the community services sector is required to explore if a regulatory gap exists concerning complaint mechanisms for community services in Western Australia and whether it would be beneficial to broaden HaDSCO's jurisdiction to include community services where there are no current complaint mechanisms in place.

Tell us what you think

19. Does a regulatory gap exist in terms of complaint mechanisms for community services in Western Australia? Why or why not?
20. If so, do you support the idea of expanding HaDSCO's jurisdiction to include organisations providing community services? What are the specific types of community services that HaDSCO should be able to receive complaints about?
21. Provide your thoughts on whether complaints regarding community services should be resolved using HaDSCO's existing complaint resolution processes.

³² See section 4 of the *Health and Community Services Complaints Act 2004 (SA)*; section 4 of the *Health and Community Services Complaints Act 1998 (NT)*; and section 8, 8A and 9 of the *Human Rights Commission Act 2005 (ACT)*.

³³ Section 3(1)(f) of the *Health and Disability Services (Complaints) Act 1995*.

I. Guiding Principles

To provide guidance to health service providers, section 4 of the HaDSC Act lists the following guiding principles for the provision of health services:

Health services should be provided so as to promote –

- (a) quality health care, given as promptly as circumstances permit; and*
- (b) respect for the privacy and dignity of persons receiving health care; and*
- (c) the provision of adequate information on services provided or treatment available and the effects and costs of treatment available and the effects and costs of treatment, in terms that are understandable; and*
- (d) participation in decision-making affecting individual health care; and*
- (e) informed choice in the acceptance or refusal of treatment or participation in education or research programmes; and*
- (f) reasonable access to information in records relating to personal use of the health care system, except information that is expressly prohibited by law from being disclosed or information contained in personal notes by a person giving health care; and*
- (g) the protection of personal health records and personal information from disclosure except for proper purposes.*

These principles are applied when a complaint is assessed by HaDSCO and when making decisions on whether unreasonable conduct has occurred following an investigation.

How can this be improved?

The above principles are closely aligned with the Australian Charter of Healthcare Rights developed by the Australian Commission on Safety and Quality in Health Care. HaDSCO's guiding principles are very similar to the principles listed in the Victorian³⁴ and South Australian³⁵ legislation.

HaDSCO is considering updating the principles to include the right of a user of a health service to make a complaint to the health service provider³⁶. In line with the current practice across many organisations, HaDSCO is also considering whether

³⁴ Section 4 of the *Health Complaints Act 2016* (Vic).

³⁵ Charter of Health and Community Services Rights.

³⁶ Section 4(h) of the *Health Complaints Act 2016* (Vic).



guiding principles specific to the Aboriginal and Torres Strait Islander and CaLD communities is required.

Tell us what you think

22. Do you think these guiding principles are still relevant and meet the needs of the evolving health sector? If not, what changes would you make to the guiding principles?



Next Steps

Information gathered from this stage of the statutory review will assist in identifying ways to improve the operation and effectiveness of the HaDSC Act and Part 6 of the DS Act.

A report summarising the findings from this consultation process and making recommendations to improve the effectiveness of the legislation will be prepared for consideration by the Minister for Health.



Appendix A: Consultation Questions

Consolidated list of consultation questions

1. Do you think the ability to make a complaint should be open to any person in relation to health and disability services? Provide the reasons for your answer.
2. Do you support the introduction of powers that would enable HaDSCO to obtain information from providers or any other person to more effectively assess complaints?
3. Do you support the application of a penalty for non-compliance to the request made to a person or provider for additional information during preliminary assessment of a complaint? Why or why not?
4. Should there be a provision for early resolution while the complaint is in its preliminary assessment stage, prior to the complaint being placed into a formal complaint resolution process? If so, do you have any suggestions on how this should work in practice?
5. Do you think the negotiated settlement currently used by HaDSCO is an effective way to resolve complaints? Provide reasons for your answer.
6. Do you think the conciliation process currently used by HaDSCO is an effective way to resolve complaints? Provide reasons for your answer.
7. Do you have any suggestions to improve the way the complaints are managed by HaDSCO?
8. Do you think HaDSCO should have the power to compel parties to produce information, records or documents while the complaint is being managed through the complaint resolution processes? Should there be a penalty attached for non-compliance by the parties?
9. Should the current penalty that applies to a provider for failing to take remedial action recommended following an investigation be increased in line with the other jurisdictions? Why or why not?
10. Should HaDSCO have the power to take compliance action against a provider following an investigation? If so, what type of compliance actions would be appropriate and how can these be applied in practice?
11. Should HaDSCO be renamed a 'commission' to better communicate the Office's role and authority to manage complaints relating to health, mental health and disability services independently? Why or why not?
12. Should HaDSCO manage complaints relating to health, mental health and disability services under its principal legislation, the HaDSC Act, rather than three different Acts? Why or why not?
13. Do you think the current definition of 'health service' in the HaDSC Act adequately captures all types of services in the health sector? If not, how would you change or improve the definition to ensure that all types of health services are covered?

14. Do you think the functions of HaDSCO as defined above are appropriate? Are there any other functions that should be considered for inclusion in the legislation? Please provide the reasons for your answer.

15. Is HaDSCO effectively performing the functions set out in the HaDSC Act? Please provide the reasons for your answer.

16. Do you support the application of a code of conduct to organisations offering health services, who are not currently subject to regulation under the PHS Act? Provide reasons for your answer.

17. Are there any specific health services that currently lack regulation or oversight and should be captured under the proposed code of conduct?

18. What powers should HaDSCO have to take appropriate action against organisations providing health services who breach the proposed code of conduct?

19. Does a regulatory gap exist in terms of complaint mechanisms for community services in Western Australia? Why or why not?

20. If so, do you support the idea of expanding HaDSCO's jurisdiction to include organisations providing community services? What are the specific types of community services that HaDSCO should be able to receive complaints about?

21. Provide your thoughts on whether complaints regarding community services should be resolved using HaDSCO's existing complaint resolution processes.

22. Do you think these guiding principles are still relevant and meet the needs of the evolving health sector? If not, what changes would you make to the guiding principles?