

## Question 3234 TABLED PAPER

### (1)(a)

The Health and Disability Services Complaints Office (HaDSCO), formally the Office of Health Review, aims to make its services accessible to all members of the West Australian Community. The Office operates under the *Health and Disability Services (Complaints) Act 1995* {prior to 30<sup>th</sup> November 2010 this Act was known as the *Health Services (Conciliation and Review) Act 1995*} and Part 6 of the *Disability Services Act 1993* in conjunction with the *Carers Recognition Act 2004*. Its governing legislation prescribes certain criteria that a complaint must meet before it can be accepted by that office. These include but are not limited to:

- That the consumer should have attempted to resolve the matter directly with the service provider (health service complaints only).
- That the complaint must relate to an incident that occurred within a specified timeframe (now 24 months).
- That a complaint must be confirmed in writing and signed by the complainant.
- That a complaint must relate to a health or disability service.
- That the person who received the service must consent, where possible, to the complaint being made.

It is acknowledged that some members of the community may have difficulty in meeting some of the legislative requirements for making a complaint. In order to assist these community members, as well as the general community, HaDSCO implements the following:

- Providing complainants access to the Office via telephone, fax, e-mail or face-to-face between 8.30 and 4.30 Monday to Friday.
- Training staff to ensure they give clear, concise, accurate and consistent information about the role of HaDSCO and how to make a complaint to the Office.
- Providing a free-call phone number for complainants to use and having a direct line for prisoners to use.
- The allocation of a specific Assessment Officer to ensure complainants are provided with staff continuity when making a complaint.
- A roster system for staff answering telephone calls between 8.30am and 4.30pm so all calls are dealt with in a timely and efficient manner.
- The provision of information to assist complainants to make a direct approach to a service provider.
- The provision of contact details for advocacy services who can provide additional assistance to complainants during all stages of their complaint. If requested by the complainant HaDSCO staff will contact an advocacy agency on behalf of the consumer and will provide copies of all relevant information.
- Allowing third parties to complain as a recognised representative for a consumer when the consumer is unable to pursue their own complaint for whatever reason.
- Use of “plain English” on all forms, letters and brochures.
- The option to request a male or female staff member to discuss their complaint with (when appropriate and available).

- Exercising appropriate discretion regarding the need for the consumer to make a complaint directly to the provider.
- Working with the consumer to agree the timeframes in which a formal complaint is required to be lodged with the Office
- Reviewing the information that the Office provides based on written and verbal feedback received from users of its service and stakeholders.

For the groups specifically mentioned HaDSCO offers the following additional services:

(i)

- Timely access to a telephone interpreter for the language of the complainant's choice, free of charge to the caller.
- Access to brochures and information in common community languages, free of charge upon request.
- Option of asking a HaDSCO staff member to assist with the completion of the complaint form.
- Option of completing the complaint form at home in a language of choice and HaDSCO arranging for the form to be interpreted at no cost to the consumer.
- Use of a TTY phone facility.
- Referral to advocacy services who specialise in dealing with people from non-English speaking backgrounds.
- Option of using a nominated person to make a complaint on behalf of a person with a non-English speaking background.
- Ability to request a gender appropriate case manager for cultural or religious reasons.

(ii)

The legislation does not prescribe any age restrictions for complainants. Children are able to bring their own complaint, or they are able to request that a parent, guardian, friend or advocate act as their recognised representative.

The Office acknowledges the rights of children to complain, and have contributed to research done by the Commissioner for Children and Young People on developing child friendly complaints processes. The Office has used the "Are you listening" guidelines published by the Commissioner to try and ensure the complaints process is child-friendly.

As well as offering a responsive and respectful service, the Office has identified the following services that make the process particularly accessible to children and young people:

- Diverse choice of methods to make a complaint, including the use of electronic media - complaint forms can be downloaded on-line and complaints can be made via e-mail (not specific to children and young people but shown to be very important to them).
- Complaints can be made in person, and young people are encouraged to bring a support person with them if they would like to.

- Information about the Office and brochures provided to Princess Margaret Hospital and regional hospitals to display in public areas.
- Option of asking a HaDSCO staff member to assist with the completion of the complaint form.

(iii)

- Specific training for staff around communicating effectively with people with mental health issues.
- Option of asking a HaDSCO staff member to assist with the completion of the complaint form.
- Provision of specialised information on making a complaint to the service provider.
- Information about the Office and brochures given to major mental health facilities to display.
- HaDSCO communicates with The Council of Official Visitors, the Commissioner for Mental Health and WAMHA to identify current issues and trends in consumer complaints.

(iv)

- Option of asking a HaDSCO staff member to assist with the completion of the complaint form.
- Specially designed pictorial information brochures and material (currently available for Aboriginal and Torres Strait Islander community members, the prison population and for all people with disabilities and their carers).
- Individually tailored letters to meet the needs of clients when they advise of their needs.
- Where appropriate HaDSCO will work with Advocates or community support organisations

(b)(i) 36 of the 520 non-compliant complaints were closed as they were outside the prescribed time limit (Prior to 30<sup>th</sup> November 2010, the time limits were 12 months for complaints involving health services and 24 months for complaints involving disability services. It is now 24 months for both).

(ii)

There were 394 enquiries and complaints closed because the Office did not receive the essential information required to progress the matter:

- 381 were closed because they were not confirmed in writing under s27(2) of the *Health and Disability Services (Complaints) Act 1995* and s35(5) of the *Disability Services Act 1993*
- 13 did not give information requested by the Director under s35(4) of the *Disability Services Act 1993* and s27(6) of the *Health and Disability Services (Complaints) Act*. This information included the complainants name and/or the name of the service provider they wished to complain about.

(iii)

The remaining 90 non-compliant enquiries and complaints in 2009/10 were closed under s26(1)(c) of the *Health Services (Conciliation and Review) Act 1995* as they did not comply with the Act.

(iv)

See above.

(2)(i)

Outside time limits.

Three of the most common responses the Office receives from complainants when asked why they have not complained until a significant period of time has passed relate to awareness, grief and ongoing service provider interaction.

When a complainant is not aware of the Office, they may seek access after a protracted period contacting other agencies or organisations, or pursuing legal options. It may only be after a period of time has passed that they become aware of the Office and how assistance can be provided. Awareness is thus a key reason why a community member may initially not complain to the Office.

Behind many complaints lie issues with grief and loss. A loved one may have passed away and they are not satisfied with an aspect of the health or disability care this person received at that time. Only after a considerable period of time may they feel equipped to address a complaint against the service provider involved.

In other cases, the original complaint issue may have occurred some time ago but they have since engaged with the service provider over many years to correct or resolve the issue, or only recently became aware of what caused the ongoing treatment.

The Director has always had discretion to accept complaints outside of legislated timeframes. If a complaint is out of time and the Office cannot help, HaDSCO will always try to assist a person to find an alternative pathway to resolution.

The Office's timeframe for all complaints is now 24 months. Previously it had been 12 months for health service complaints and 24 months for disability.

(ii)

Did not receive information to progress the matter.

As the Office does not follow up on complaints closed when it has not received the information to progress the matter, it can currently only speculate as to why these complaints remain uncompliant.

Some of these complaints HaDSCO would not expect to progress. On contacting the Office, it gives information to complainants about the role of the Office and what it requires to progress their complaint. A number of people decide at this stage that they did not wish to formally progress their complaint, as it would require a time commitment from them and the voluntary participation of the service provider. They also may not wish for the service provider to know that have made a complaint.

In other circumstances, people indicate to the Office that their purpose in making contact was to lodge their concerns for use in identifying any patterns or trends involving that service provider, rather than to pursue their individual complaint.

(iii)

Other reasons for non-compliance.

The only remaining reason is s26(1)(c) of the *Health and Disability Services (Complaints) Act* which asks HaDSCO to reject complaints that do not comply with the Act.

This section of the legislation is used when an issue is outside the jurisdiction and does not require a formal referral to another agency. Whenever possible the Office provides complainants with the contact details for agencies or organisations that will be able to assist them.

Examples of complaints closed under this category include:

- A complaint about the outcome of a 'botox' procedure that was performed purely for cosmetic reasons.
- A complaint about an insurers decision not to replace a broken dental plate.
- A complaint about access to specialist medical equipment whilst in prison, where the decision not to provide the equipment was based on prison policy.
- A complaint about general provision of health services where no individual health consumer was named.

(iv)

Not applicable

(3)

HaDSCO invests significant resources in promoting the role of the agency to create community awareness of the services available. The Office has used its recent name change as an opportunity to engage with a wide range of stakeholders and the community generally. The Office ran a comprehensive series of information sessions for stakeholders; it also sent out over 700 letters informing the recipients of the changes and its role. These letters included copies of HaDSCO's new brochures and information sheets. The Office also included a publications order-form so that stakeholders can request supplies on an ongoing basis. A key aim of this promotion is to increase the number of compliant complaints that the Office receives and reduce the number of non-compliant complaints. Across Western Australia HaDSCO ran advertisements and articles in regional and community newspapers to inform communities of the name change and how to contact the office.

During the initial complaint in-take process HaDSCO staff spend considerable time with clients to understand their enquiry and/or complaint to clearly identify what they are concerned about, and the outcome they are seeking. The agency's detailed in-take process allows it to make consumers feel heard, and to provide appropriate information that will assist them. Anecdotal evidence suggests that this often meets the needs of the complainant, and they chose not to progress the matter. This intake process can be very time consuming and is not given due recognition for the outcome

it achieves. Many of these complaints will still be recorded as non-compliant, because although the matter may have been resolved for the complainant, technically, the complaint falls within HaDSCO jurisdiction and no further action has been taken because the complainant has not pursued the matter by contacting the Office in writing.

HaDSCO is planning a project to commence this year with the aim to confirm and better understand the information it has anecdotally collected on the in-take process. The project will involve contacting complainants who have been through the in-take process and have not confirmed the complaint in writing, to seek their feedback about why they choose not to pursue the matter. By confirming why the complaint was not pursued the Office will identify what options are possible for HaDSCO to assist people to continue with their complaint if this is the outcome they are seeking. The Office will then incorporate this feedback to ensure that as many people as possible are able to pursue their complaint.

The following information details what has been done to reduce the number of non-compliant complaints in the areas specifically referred to in question 1.

(i)

Outside time limits.

The recent amendments to the legislation have extended the period of time a person has to make a complaint about a health service. Community members now have up to 24 months to make a complaint about both health and disability services. This doubles the time that a person has to make a complaint about a health service.

HaDSCO staff also work with complainants to determine whether there was a good reason for any delay longer than 24 months. If a good reason can be established, the complaint will be accepted.

Recent examples of complaints accepted outside of the legislated timeframes include:

- A complaint about surgical equipment being left embedded in a patient. Although the initial surgery had taken place more than two years ago the consumer had only become aware that a piece of surgical equipment had remained in-situ when they had subsequent surgery.
- A complaint taken from the mother of a deceased child. The complainant explained that they had needed to manage their grief before they could make the complaint.

(ii)

Did not receive information to progress the matter.

As stated above HaDSCO believes that many complaints closed under this category actually reflect a positive decision by complainants not to pursue the matter. Callers indicate to staff that the opportunity to discuss a matter with someone was sufficient for them. Callers also indicate that they are likely to pursue the matter through another avenue provided by HaDSCO. For example, consumers with concerns about

dental matters will be offered information about the Australian Dental Association, and may choose to pursue their complaint through them.

The project outlined above will confirm why these complainants do not pursue the matter.

(iii)

Does not comply with Act.

As HaDSCO reserves s26(1)(c) of the *Health and Disability Services (Complaints) Act 1995* for matters which it cannot deal with under the Act, the failures of these non-compliant complaints cannot be addressed by the agency as it does not have jurisdiction to deal with them.

In these situations HaDSCO aims to ensure that the person who has brought these issues to its attention is kept informed of what other mechanisms exist that can assist them and support them with the information needed to access this.

(iv)

Not applicable.

(4)

HaDSCO has received very positive feedback from the information sessions and mail outs and is of the opinion that the awareness of the Office is increasing. This is reflected in hits on the website and in the number of brochures ordered by stakeholders.

- In November 2009 HaDSCO had 10,659 hits on the website. In November 2010 it had 18,136, this is an increase of over 70%.
- HaDSCO have had 11,796 brochures ordered from stakeholders already in the 2010/2011 financial year. This is more than 2008/2009 and 2009/2010 combined.

It is still too soon to measure the success of increasing the timeframe for health complaints from 12 months to 24 months.

(5)

HaDSCO aims to make processes as timely as possible. Legislation prescribes that the assessment phase of a complaint should be completed within 28 days, unless it is in the interest of the consumer to extend that time-period, in which case the assessment phase can be extended to 56 days. Monthly figures for December 2010 show that HaDSCO were meeting these timeframes in 100% of cases.

Prior to the legislative amendments, the legislation required health consumers to try and resolve a matter directly with a service provider before HaDSCO could become involved. For disability services complaints it was encouraged. There is now discretion available to the Director to enable HaDSCO to accept a health complaint before a complainant has attempted to resolve it, however, for reasons of natural justice and procedural fairness, HaDSCO will continue to ask complainants to contact the service provider when possible. The Office acknowledges that this can be difficult for complainants and it has a number of mechanisms in place to try and assist them.

HaDSCO provides all complainants who are asked to go back to the service provider with an information sheet offering advice about how to structure a complaint, and about the different ways they may wish to lodge their complaint. HaDSCO also refers people to advocacy agencies, who will assist them to contact the provider. In addition to this, the Office sends out a survey form and reply-paid envelope to each person who is asked to go back to the provider. They are asked to return this form to advise the Office about whether or not their issue has been satisfactorily resolved, and if not, whether they would like the Office to take any further action.

When a complaint is received HaDSCO focuses on early and appropriate resolution of the matter. The figures quoted in the question show that the assessment team was able to assist parties to resolve 415 complaints during the intake process. These complaints were generally resolved through the provision of quality information, and reflect HaDSCO's desire to assist parties to resolve matters at the earliest possible stage.

The ability to act responsively and quickly has been enhanced by the new legislation, which has introduced a third pathway for complaints resolution with the creation of a Negotiated Settlement process. Negotiated Settlement is used when a complaint is accepted that is relatively straight forward and can be resolved through the provision and exchange of factual information. Prior to the legislative changes these complaints would have to be placed into conciliation or investigation, and although they aimed to make these processes as timely as possible, conciliation is generally a more involved, and therefore time-consuming process for all parties. Negotiated Settlement commenced in December 2010 following proclamation of the *Health and Disabilities Services (Complaints) Act 1995*, there have been 5 complaints finalised using this process taking an average of 39 days to complete. The statistics for the first quarter of 2010-2011 indicate that conciliations finalised in that period took an average of 127 days to complete.

When immediate resolution of a complaint is not possible, an important way that HaDSCO keep people engaged in the complaints management process is to keep them up to date and well informed with what is happening with their matter. At all stages of the complaints management process staff are trained to maintain appropriate contact with parties to a complaint, allowing staff to be responsive to the needs and requests of parties when determining how regularly they would like contact. The Office also makes it clear that the intention of negotiated settlement and conciliation is that the resolution of a matter is facilitated by the Office, not driven by the Office. The nature of these processes requires the complainant to be engaged.

Aside from the work that the Office does to keep individuals engaged once a complaint has been made, HaDSCO also works with service providers to facilitate complaints being responded to within an appropriate time. The aim of this is to prevent people from becoming entrenched in their views and/or disengaged in the complaints resolution process. Service providers are encouraged to advise their consumers that they can contact HaDSCO if the initial response from the service provider does not resolve the matter. Providers are educated about this during outreach work, which takes place regularly both in the metro area and during regional outreach sessions.