



Strategy and Engagement Team
Health and Disability Services Complaints Office

statutoryreview@hadsco.wa.gov.au

31 October 2024

Dear Strategy and Engagement Team

Thank you for the opportunity to provide feedback on the Statutory Review of the Health and Disability Services (Complaint) Act 1995 and Part 6 of the Disability Services Act 1993 resolution process.

WANADA broadly supports many of the proposed changes that the Health and Disability Services (Complaint) Act 1995 Consultation Paper presents. Our response to the Statutory Review is focussed on service users throughout the community having their human rights upheld and ensuring their safety, health and wellbeing are prioritised while accessing health and community services, including those not funded by government.

WANADA welcomes the opportunity to contribute to the Statutory Review as needed.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Jill Rundle", is written over a light blue horizontal line.

Jill Rundle
CEO
WANADA

31 October 2024



**Response to the Health and Disability Services
Complaints Office Statutory Review of the *Health
and Disability Services (Complaints) Act 1995*
and Part 6 of the *Disability Services Act 1993***

October 2024

Acknowledgement of Country

WANADA acknowledges the traditional custodians of the Country on which WANADA's office is located, the Whadjuk people of the Noongar Nation. We acknowledge their continuing and unbroken connection to land and sea, which was never ceded. We pay our respect to Aboriginal Culture and Elders past and present, acknowledging their significant ongoing contribution to WA society and the community.

About WANADA

The Western Australian Network of Alcohol and other Drug Agencies (WANADA) is the peak body for the specialist alcohol and other drug education, prevention, treatment, harm reduction and support sector in Western Australia.

WANADA is an independent, membership-driven, not-for-profit association. Our purpose is to lead a shared voice within the specialist alcohol and other drug service sector that drives positive change needed to achieve best community outcomes.

Our membership reflects the quality and diversity of the alcohol and other drug sector in WA, comprising 96 services and additional individual members from across all regions of the state. WANADA is driven by the passion and hard work of its member organisations, which deliver a range of alcohol and other drug services, and system supports.

The development of this submission is informed by extensive sector and stakeholder consultation and feedback. This has included input from specialist alcohol and other drug service provider representatives, people with relevant personal experience and system stakeholders.

WANADA thanks all contributors and supporters to this response.

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.

WANADA believes the ability to make a complaint should be open to any person in relation to health (wellbeing/community) and disability services. WANADA's position is aligned with the views expressed in the Consultation Paper in regard to the consumer survey, and relevant legislation in other Australian jurisdictions.

While appreciating there are different levels of seriousness in regard to complaints, WANADA is concerned to ensure the HaDSC Act is responsive to service users who may have experienced disempowerment, stigmatisation and discrimination, unethical service practices, abuse and exploitation - as exposed by the *Inquiry into the Esther Foundation and unregulated private health facilities*. Service users with serious complaints need to have every opportunity to be heard and represented.

The HaDSC Act should allow family, loved ones, friends, carers, other services and organisations that the service user reaches out to, to engage the complaints mechanisms in support of a service user.

Service users may not recognise that their health rights have been impinged or appreciate their right to make a complaint. All community service users and their representatives need to be aware of individual advocacy supports available to them to discuss and progress a complaint if they choose to.

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?

Consistent with Consultation Paper, WANADA supports 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?

Consistent with the Consultation Paper, WANADA supports 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. Applying a penalty may increase the likelihood of timely compliance to assist in efficiency and earlier resolution.

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?

Consistent with the Consultation Paper, WANADA supports a provision for early resolution, where appropriate, while the complaint is in its preliminary assessment stage, prior to the complaint being placed into a formal complaint resolution process. This is not to discount the possible need for investigation for a serious complaint or repeated complaints from multiple service users against the same provider.

Complainants should be informed of their options related to early resolution, conciliation, and investigation in order for them to make an informed decision related to their case. Early resolution may expediate the process, minimise possible harms to the complainant and/or reputational damage to the health service provider. Health service providers should have internal grievance processes and documented records that support early resolution.

Early resolution at the preliminary stage would not apply in cases that are of a serious nature. Serious complaints may be similar to those heard at the *Inquiry into the Esther Foundation and unregulated private health facilities*.

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.

WANADA considers the negotiated settlement, and the conciliation process, are effective ways to resolve a complaint of a less serious nature. Both of these processes should require participation by the service. Where the negotiated settlement or conciliation identifies a need for a response and/or service improvements, these should not be voluntary unless there is an acceptable justifiable rationale provided to HaDSCO for not progressing. A record of the negotiated settlement or conciliation outcome, including any rationale for not progressing an improvement, needs to be kept, to inform any possible future repeat complaint.

WANADA is supportive of conciliation processes being used to resolve complaints should the person or service choose. Appointing conciliator(s) to facilitate informal discussions with the purpose of resolving a complaint or providing recommendations for further investigation, is more responsive to the needs and situation of vulnerable people who may be anxious about engaging in other, more formal processes particularly where there is a perceived power imbalance.

When needed, the conciliator(s) should ensure people are aware of all the options they have to resolve a complaint and these are explained in plain English, clearly represented and understood by the complainant.

7. Do you have any suggestions to improve the way the complaints are managed by HaDSCO?

WANADA suggests the HaDSC Act clearly identify what constitutes a breach of human rights. This would inform management of complaints by HaDSCO, to more consciously consider the health and wellbeing of service users, as well as any external pressures that a service user may be experiencing to not exercise their right to make a complaint as per Section 220 of the *Health Complaints Act 2016* (Victoria).¹

In managing complaints HaDSCO should ensure complainants are able to access individual advocacy and representation supports if this is their choice.

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?

WANADA supports HaDSCO having the power to compel parties to produce information, records or documents while a complaint is being managed through the complaint resolution processes. In the interests of transparency and accountability, service providers should be compelled to make those documents and records available. WANADA also supports penalties being attached when either party is non-compliant in the complaint resolution process.

¹ Victoria Government. (27 August 2020). [Health Complaints Act 2016](#)

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?

WANADA supports 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.

Increased penalties emphasise the importance of remedial action aimed at ensuring the safety and wellbeing of people accessing the services and may act as a deterrent for not implementing needed improvements.

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?

WANADA supports HaDSCO having powers to take compliance action against a provider following an investigation.

In relation to a worker (registered or otherwise) or a service, and based on the severity or harm done, compliance actions may include prohibition to prevent ongoing provision of services, and as appropriate a criminal investigation initiated.

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?

Based on the information provided in the Consultation Paper WANADA supports HaDSCO being renamed, to better communicate the Office's role and authority to manage complaints relating to health, mental health and disability services independently.

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?

Based on the information provided in the Consultation Paper WANADA supports HaDSCO managing complaints relating to health, mental health and disability services under its principal legislation, the HaDSC Act, rather than three different Acts. The principal legislation would also consider Section H of the Consultation Paper to include expansion of HaDSCO's jurisdiction over community services.

To complement its principal legislation, the HaDSC Act should also be written in more accessible language.

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?

WANADA would welcome the broadening the definition of 'health service' to include a service that targets people with health conditions, such as people impacted by alcohol or other drug use, whether they are a health provider or otherwise (e.g. a labour hire residential service, or a parole placement service, that specifically target people impacted by alcohol and other drug use).

WANADA is concerned that service providers have been known to change the definition of their service type to avoid compliance consequences.

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.

The broad functions of HaDSCO to resolve complaints are appropriate. The intent behind the functions, however, including the promotion of human rights in relation to accessing health services needs to be explicit.

Examples of comparable functions from other jurisdictions that should be considered as a function of HaDSCO, take into account more nuanced functions, as outlined in Division 3.2 Section 18 of the *Human Rights Commission Act 2005* (ACT) the President should be "*promoting community discussion, and providing community education and information*"²; Division 2 Section 118 of the *Health Complaints Act 2016* (Victoria)³ the Commissioner is "*to provide information and education to health service providers about their responsibilities in handling complaints*"; and Part 5, Section 80 of the *Health Care Complaints Act 1993 No 105* (NSW) the Commission is "*to provide information to health service providers and professional and educational bodies concerning complaints, including trends in complaints*."⁴ These need to be considered.

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

The HaDSCO *Annual Report 2023-24* demonstrates the handling of 2,892 complaints, the closure of 2,806 complaints and 367 redress actions facilitated, with 71 service improvements implemented.⁵

Despite the quantum of complaints reported, WANADA is not in a position to assess HaDSCO's effectiveness in performing the functions set out in the HaDSC Act. It is hard to reconcile the serious and long-standing complaints referred to in the *Inquiry into the Esther Foundation and unregulated private health facilities* as demonstrating effectiveness.

WANADA recognises this review and our opportunity to participate to contribute to a strengthened Act and functional efficiency and effectiveness.

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.

Based on the information provided in the Consultation Paper, WANADA strongly supports the application of a code of conduct to organisations offering health services who are not currently subject to regulation under the *Private Hospitals and Health Services Act 1927* (PHHS Act).

Safe and ethical practice by any service worker or organisation is an expectation of the community. Clearly, a formalised code of conduct for organisations providing health services is needed to support action being taken when unethical and unsafe practices occur. An organisational code of conduct is another step to ensure the rights of service users are upheld, including those that are vulnerable and disadvantaged. Such a code of conduct will inform service users what they can expect from an organisation prior to when they engage.

² Ibid

³ Victoria Government. (27 August 2020). [Health Complaints Act 2016](#)

⁴ NSW Government. (31 May 2024). [Health Care and Complaints Act 1994](#).

⁵ HaDSCO. (2024). [2023-24-Annual-Report.pdf](#)

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

Organisations that purport to provide alcohol and other drug services and that are not funded by government in the delivery of these services lack regulation, oversight and accountability. These need to be captured under the proposed code of conduct.

These services are variously promoted as ‘independent residential rehabilitation centres’, ‘health retreats’, ‘treatment centres’, ‘faith-based healing centres’ for people with alcohol and other drug and related issues. Such services have been known to take advantage of vulnerable service users through, for example, financial exploitation of the service user and/or their family, dangerous alcohol and other drug withdrawal practices, the provision of services that are not evidence-informed, overcrowded living conditions, non-adherence or denial of prescription medication, and coercive control to have service users relinquish their rights.

People who are likely to access these services include those who may have been unable to access quality, evidence-informed and accountable services due to insufficient services to meet demand. Many of the service users are amongst the most vulnerable people requiring treatment and support who may have long histories of, for example, trauma, stigma, discrimination, homelessness, justice engagement, alcohol and other drug dependence, family and domestic violence etc.

WANADA supports the need for HaDSCO to adhere to Recommendation 4 made in the *Report of the Inquiry into the Esther Foundation and unregulated private health facilities*.⁶

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

WANADA supports provision of powers for HaDSCO to take appropriate action against organisations providing health and community services who breach a code of conduct, as presented in the Consultation Paper. Proportionate penalties should apply for code of conduct breaches in the same manner they are attached to non-compliance in the HaDSC Act. Warnings should be issued when needed and follow-up monitoring undertaken by HaDSCO to ensure tangible changes are being made when there has been a breach of the code of conduct.

For more serious breaches of the code of conduct, like those that were exposed through the Inquiry into the Esther Foundation, the HaDSCO should conduct a risk assessment as part of an investigation to identify potential safety concerns related to service delivery and to protect the rights of service users and the general community. If the breach has been deemed serious enough, legal action should be progressed, as appropriate. HaDSCO should have the powers to issue an interim prohibition order or prohibition order upon a service provider/organisation to protect the public. Public statements should be issued providing details of its decision related to code of conduct breaches.

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

⁶ Education and Health Standing Committee. (2022) [Report of the Inquiry into the Esther Foundation and unregulated private health facilities](#)

WANADA believes a regulatory gap does exist in terms of complaint mechanisms for community services in Western Australia. It is a reasonable expectation that independent complaint mechanisms apply to all community services. These include service providers/organisations that are not funded by government.

Various inquiries point to a need to enhance a proactive approach to monitoring and compliance, enforcement, and action that holds services/organisations to account for quality, safety, evidence-informed practice and human rights.

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?

WANADA supports expanding HaDSCO's jurisdiction to include organisations providing community services, including those that do not receive government funding.

All community services providing a service aimed at improving the health, wellbeing and lifestyle of people should be in the jurisdiction of HaDSCO. Specifically, these include but are not limited to, services/organisations that support the reduction of harms for alcohol and other drug use, family and domestic violence services, homelessness and child protection services.

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

WANADA supports a consistent process for complaints regarding community services, that reflects strengthened complaints resolution processes for HaDSCO determined as needed through this consultation.

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?

WANADA believe the guiding principles for the provision of health services outlined in the Consultation Paper need to be reviewed to include recognition of vulnerability, human rights, non-discriminatory practices, safety, and transparent rights to make a complaint.