

## Health Insights

# What happens to healthcare complaints in Western Australia?

The Health and Disability Services Complaints Office (**HaDSCO**) handles complaints about health, disability and mental health services in Western Australia.

Consumers of health services in Western Australia can make complaints about individuals or organisations that provide health, disability or mental health services.<sup>1</sup>

‘Health services’ encompasses complaints about health services provided by:

- Medical practices, medical practitioners
- Dental, chiropractor practices
- Hospitals
- Nurses or midwives
- Screening and immunization services
- Pharmacies, pharmacists
- Psychologists
- Occupational therapists, physiotherapists
- Social workers in a health setting and
- Ambulance services, paramedics.

Mental Health services include complaints about:

- Allied health professionals
- Community mental health services
- Mental health nurses

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<sup>1</sup> *Health and Disability Services (Complaints) Act 1995 (WA) (HaDSC Act); Part 6 of the Disability Services Act 1993 (WA); Part 19 of the Mental Health Act 2014 (WA).*

- Non-governmental organisations that are publicly funded
- Private hospitals
- Private psychiatric hostels
- Psychiatrists
- Psychologists and
- Public hospitals.

Disability services complaints include those concerning:

- Accommodation and Carer's respite services
- Disability Services Commission
- Advocacy services
- Day activities, recreation and leisure services and
- In-home support and Therapy services.

### Who can complain?

It is not necessary for the person who received the service to make the complaint. A relative, carer or representative can make a complaint.<sup>2</sup> A representative can complain to HaDSCO on behalf of a service user or someone who has died. A provider can complain on behalf of a person who received a service from another provider.<sup>3</sup>

### Types of complaints

Complaints that can be received by HaDSCO include where service providers are alleged to have acted unreasonably such as refusing to provide a service, providing a service in an unacceptable manner or provided a service that was unnecessary, refusing or restricting access to a patient's medical record, breaching confidentiality, charging excessive fees, failing to comply with the Carer's Charter<sup>4</sup> or not taking effective action on a complaint.

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<sup>2</sup> Section 19 of the *HaDSC Act*.

<sup>3</sup> Authorising the HaDSCO Director to access information related to the complaint, to share a copy of the complaint with the service provider and/or any relevant organisation.

<sup>4</sup> *Carer's Charter, Carers Recognition Act 2004 (WA)*.

HaDSCO is responsible for receiving and resolving complaints about disability.<sup>5</sup> Disability services are any services provided specifically for people with disabilities. Complaints can include allegations that a disability service provider has acted unreasonably such as, failing to comply with the Disability Service Standards or failing to ensure that the standards were met by service providers.<sup>6</sup>

Mental health service providers are required under the *Mental Health Act 2014 (WA)* to implement their own complaints process for investigating any complaint made about the provision of a mental health service. HaDSCO has developed guidelines for handling complaints about mental health services<sup>7</sup> for service providers to use as a reference tool and develop complaint handling systems appropriate to the needs of their organisation.

HaDSCO is generally unable to deal with complaints which are more than two years old or have already been determined by a court, registration board or tribunal. However, the Director of HaDSCO has discretion to accept a complaint outside this timeframe, if a good reason is provided.

### Complaints involving registered health professionals

If the complaint is about a registered health practitioner, HaDSCO must initially talk to the Australian Health Practitioner Regulation Agency (**AHPRA**) about the complaint, to decide which body ought to take responsibility for managing the complaint.<sup>8</sup>

The AHPRA website provides Guides and Factsheets detailing how to make a complaint about a health, disability or aged care service, or a health practitioner in each state.<sup>9</sup>

In 2017-18, HaDSCO referred 205 complaints about Medical Practitioners (representing 13% of the National total) in Western Australia to AHPRA. Of those notifications, 144 assessments by AHPRA were completed, and 13 were completed by HaDSCO.<sup>10</sup>

Where the National Board and HaDSCO are unable to reach agreement on how to deal with the notification or complaint, the most serious action proposed by either must be taken.<sup>11</sup>

### Possible outcomes of complaint to HaDSCO

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<sup>5</sup> HaDSCO, Disability Service Complaints, From 2020, the NDIS Quality and Safeguards Commission will be responsible for dealing with complaints about complaints about service providers under the NDIS in WA accessed at <https://www.hadsco.wa.gov.au/complaints/disability.cfm#about>

<sup>6</sup> Ibid

<sup>7</sup> HaDSCO, Mental Health Complaints Guidelines.  
[https://www.hadsco.wa.gov.au/providers/mental\\_health\\_complaints\\_guidelines.cfm](https://www.hadsco.wa.gov.au/providers/mental_health_complaints_guidelines.cfm)

<sup>8</sup> Sections 149 and 150, *Health Practitioner Regulation National Law Act 2009 (WA) Act*

<sup>9</sup> <https://www.ahpra.gov.au/Notifications/Further-information/Guides-and-fact-sheets.aspx#brochure>

<sup>10</sup> AHPRA Performance Report: WA June 2019, 13, Table 13 and Table 15, accessed September 2019 at <https://www.ahpra.gov.au/About-AHPRA/What-We-Do/Statistics.aspx>

<sup>11</sup> Section 150 (4), National Law (WA).

HaDSCO encourages complaints to be raised at the first instance, with the service provider, to offer the provider a chance to address the issues giving rise to the complaint.<sup>12</sup>

HaDSCO works with the complainant and the service provider to resolve the complaint, using conciliation. The possible outcomes are limited to an explanation, apology, acknowledgement of concerns, cost reduced or refund. HaDSCO can make recommendations to the service provider to improve policies, procedures or practice, but has no power to sanction or ensure recommendations are followed. Compensation was paid in less than 1% of cases for the period 2015-2018.<sup>13</sup> Less than 1% of complaints in the same period resulted in a change in policy, and only 2% of cases yielded a change in procedure or practice.<sup>14</sup>

After the conciliation process, a report is prepared and provided to both parties, highlighting important aspects of the complaint and any agreed outcomes.

In the next part of this series, the current system for complaint resolution and the scope for satisfactory outcomes in Western Australia will be discussed.

**This article was written by Principal Shannon Mony and Lawyer Rosemary Blanden. Please contact us if you have any questions or would like more information.**



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<sup>12</sup> What should be done before contacting HaDSCO? Accessed September 2019 at <https://www.hadsco.wa.gov.au/faqs/before.cfm>

<sup>13</sup> HaDSCO, Health Complaints Trends Report 2015-2018, Figure 12, 23, accessed September 2019 at <https://www.hadsco.wa.gov.au/publications/reports.cfm>

<sup>14</sup> Ibid.