

Health Insights

Regulation of unregistered health practitioners in WA – is the current system adequate?

The mechanisms for complaints and statutory protections available for health care consumers, vary across Australia.

In order to better protect the public and to set standards of conduct and practice for all unregistered health service providers, the Council of Australian Government (**COAG**) Health Council Final Report (**COAG Final Report**) recommended that every state implement the National Code of Conduct for Health Care Workers (**National Code**).¹ The National Code sets minimum standards for all private and public health service providers who are not registered by the Australian Health Practitioner Regulation Agency (**AHPRA**), and for registered health practitioners providing services unrelated to their registration, students or volunteer health workers.

To date, New South Wales, Queensland, South Australia and Victoria have implemented the National Code, enacting legislation that increases the powers of health complaints entities (**HCEs**) in those states, to protect the public from harmful or unsafe practice by unregistered health service providers. An HCE is an entity whose functions include conciliating, investigating and resolving complaints made against health service providers and investigating failures in the health system.²

In states that have adopted the National Code, standards are set against which HCEs can take disciplinary action against unregistered providers for non-compliance, including powers to place conditions on practice, impose fines and ban unregistered health providers practicing in circumstances where a continued practice presents a serious risk to public health and safety.

While a Western Australian Consultation paper on the National Code was issued in 2017, the National Code has not yet been implemented in Western Australia.³

¹ COAG Health Council Final Report 'A National Code of Conduct for health care workers' accessed September 2019 at <http://www.coaghealthcouncil.gov.au/NationalCodeOfConductForHealthCareWorkers>

² Section 3, *Health Practitioner Regulation National Law (WA) Act 2010*- Schedule.

³ HaDSCO, 'National Code of Conduct for Health Care Workers in Western Australia, Consultation Paper', December 2017, accessed September 2019 at <https://www.hadsco.wa.gov.au/codeofconduct/>

Western Australia | Current System and Limitations

In Western Australia, the Health and Disability Services Complaints Office (**HaDSCO**) is an ‘impartial resolution service’ for complaints about health, disability and mental health services in Western Australia.⁴ HaDSCO is established under the *Health and Disability Services (Complaints) Act 1995 (WA)* (**HaDSC Act**).⁵

‘Health service’ encompasses complaints about health services provided by medical and dental practices, hospitals, nurses or midwives, pharmacies, disability and mental health service providers, allied health, ambulance service providers, medical or epidemiological research, screening and immunisation services and social workers in a health setting.⁶

The types of complaints that can be received by HaDSCO include allegations of service providers having 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 Charter⁷ or not taking effective action on a complaint.

HaDSCO can also receive complaints about Western Australian providers who are registered pursuant to the *Health Practitioner Regulation National Law 2010 (WA)*. When a complaint is received relating to a registered health practitioner, HaDSCO must initially talk to AHPRA and the relevant National Board about the complaint, to decide which body should manage the complaint.⁸

Following an investigation carried out by AHPRA, the National Boards have wide powers to take disciplinary action against registered health practitioners.

By contrast, the outcomes available via HaDSCO, are limited to resolution by negotiation, conciliation or investigation resulting in an apology, explanation or refund. While HaDSCO can make recommendations to the service provider to improve policies, procedures or practice, these are not enforceable.

Advantages of the National Code

Implementation of the National Code in Western Australia would provide the public with a complaints mechanism for which alleged breaches of the National Code can be investigated. HaDSCO would be the complaints entity in Western Australia responsible for receiving complaints relating to health care workers covered by the National Code. As is currently in place in Victoria, the National Code is incorporated into the complaints legislation providing the Victorian Health Complaints Commissioner with powers to take action to protect the public, to issue bans on health providers whose continued practice presents a serious risk to public health and safety, to monitor compliance with any orders and to take further action if bans on practice are not complied with.

⁴ Ibid, 9.

⁵ And Part 6 of the *Disability Services Act 1993* and Part 19 of the *Mental Health Act 2014 (WA)*.

⁶ Section 3, *HaDSC Act 1995 (WA)*.

⁷ *Carer’s Charter, Carers Recognition Act 2004 (WA)*.

⁸ Section 149 and 150, the *Health Practitioner Regulation National Law (WA) Act 2010- Schedule*.

Implementation of the National Code in Western Australia, using the recommended approach consistent with that in Victoria would provide HaDSCO with greater powers, including 'own motion' powers.

Professions that could be captured by the National Code in Western Australia include, but are not limited to, massage therapists, dieticians, speech pathologists, counsellors and other types of allied, alternative and community health services.

Conclusion

The AHPRA website includes Guides and Factsheets regarding how to make a complaint about a health, disability or aged care service, or a health practitioner in each state.⁹ Complaints about unregistered Western Australian health practitioners are dealt with solely by HaDSCO. However, with respect to registered Western Australian health practitioners, the system can be confusing and difficult for consumers to navigate in that a complaint about a registered health practitioner can be made to either HaDSCO or AHPRA. If a complaint about a registered Western Australian health practitioner is lodged with HaDSCO, it is then for HaDSCO and AHPRA to communicate and to decide which body should manage the complaint.

Implementation of the National Code in Western Australia would provide the public with an improved and more streamlined complaints process. It would also provide greater powers to HaDSCO when dealing with complaints made about unregistered Western Australian health practitioners.

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



Shannon Mony

Principal

+61 8 6319 0475

smony@meridianlawyers.com.au



Rosemary Blanden

Lawyer

rblanden@meridianlawyers.com.au

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⁹ Ibid.