

Submission

No 45

## INQUIRY INTO THE OPERATION OF THE HEALTH CARE COMPLAINTS ACT 1993

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NGO in Special Consultative Status with the  
Economic and Social Council of the United Nations

30 October 2009

The Hon Helen Westwood MLC,  
Chair, Committee on the Health Care Complaints Commission  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Ms Westwood,

**Re: Operation of the Health Care Complaints Act 1993: Discussion Paper**

I appreciate the opportunity to respond to this report. People with Disability Australia Inc. (PWD) is a member-based organisation that responds to issues of importance to people with disability across Australia. Its cross-disability focus means that issues such as health care, and the capacity to effectively complain about healthcare related issues, have great impact upon our members and upon the constituency of people with disability in NSW. This perspective guides our response to the report.

PWD's response is further informed by our experience of having operated the National Disability Abuse and Neglect Hotline (the Hotline) since 2001, and the Complaints Resolution and Referral Service (CRRS) since 2002. Both of these services are impacted by the extent of powers available to investigate and resolve complaints, and by the growing expectations of all stakeholders in terms of timeliness of responses, and the effectiveness of the complaint resolutions that are achieved.

I hope that our comments are useful and constructive, and we look forward to seeing the issues outlined in the report implemented as quickly as possible.

Yours faithfully,

Michael Bleasdale  
Director, CRRS and Hotline  
Executive Director, Leadership Team (PWD)

# Submission

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## Committee on the Health Care Complaints Commission Inquiry into the Operation of the Health Care Complaints Act 1993

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30 October 2009

**People with Disability Australia Incorporated**



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## **1. About People with Disability Australia (PWD)**

People with Disability Australia (PWD) is a national disability rights and advocacy organisation that was formed over 25 years ago.

Individuals with disability and organisations of people with disability are our primary voting membership. We also have a large associate membership of people and organisations committed to the disability rights movement. We have a cross-disability focus – membership is open to people with all types of disability. Our services are also available to people with all types of disability and their associates.

We are governed by a Board of Directors, drawn from across Australia, all of whom are people with disability. We employ a professional staff to manage the organisation and operate our various projects. A majority of our staff are also people with disability.

PWD provides representation and systemic advocacy for people with disability at the New South Wales, national and international levels. We provide an individual advocacy service for people with disability throughout New South Wales and regional Queensland.

PWD is contracted by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to operate the National Disability Abuse and Neglect Hotline (the Hotline), and the Complaints Resolution and Referral Service (CRRS). It has operated these services since 2001 and 2002 respectively. Whilst the Hotline refers allegations of abuse and neglect against people with disability to formal complaints handling bodies such as the NSW Health Care Complaints Commission for investigation (assuming the allegation falls within its jurisdiction), the CRRS is complaints handling body itself, and continually addresses issues of quality, jurisdiction and powers.

PWD also works in partnership with people with disability who are particularly marginalised in order to build their capacity for self-representation and advocacy. Our current key partners are the Aboriginal Disability Network (ADN) and the Pacific Disability Forum (PDF).

This submission addresses the issues raised in the report of the Committee on the Health Care Complaints Commission dated September 2009, titled *Operation of the Health Care Complaints Act 1993: Discussion Paper* (Report No. 5/54), from the point of view of PWD as a cross-disability peak body which considers the operations of the Health Care Complaints Commission as of public interest and concern; and as a provider of complaints-handling services under contract to FaHCSIA. The structure of the submission reflects these two aspects. In addition, not all the issues raised in the report will be addressed, rather only those that have particular significance either for people with disability, or bear comment from our experience in operating the Hotline and CRRS.

## 2. Responses from PWD

- 2.1 The submission of Positive Life NSW to the report explicitly mentions the support for its position by PWD, and addresses each of the report's chapters. PWD's own submission will be limited to specific issues and parts of the various chapters. Comments about specific parts of the report will be included in this and the following sections of our response.
- 2.2. PWD's initial view is that the issues identified, which are expressed as recommendations, primarily for amendments to the Health Care Complaints Act 1993, are positive and would address some of the problems that have been identified in the submissions provided by groups and individuals to the Committee. PWD believe that the issues as stated (notwithstanding the specific comments made about them below), if applied, would result in a fairer, more robust complaints handling system, which would also handle complaints more efficiently and with greater accountability to complainants, to those complained about, and to the general public. Whilst we recognise that the Committee is not advocating that the recommended changes to the Act be implemented at this time, we would strongly advocate that these changes are needed, sooner rather than later, to address the problems that complainants and those complained against have experienced up until now.
- 2.3. PWD is supportive of the proposed additions to the Health Care Complaints Act 1993, which reference the Australian Charter of Healthcare Rights, and make these rights the benchmark for assessing and dealing with complaints in NSW.
- 2.4. PWD endorses the consumer focus that is expressed in the response by Positive Life, and would like to extend this focus to a significant proportion of people with disability in NSW, for whom dealing with the healthcare system, as well as being enabled to effectively make complaints about that healthcare system, continues to be problematic. There needs to be a stronger focus on clarifying what "best endeavours" means, with the intent of ensuring that people with disability, and in some instances a requirement for individualised communication methods, is addressed by the guidelines or criteria recommended in Issue 6. In addition this issue should be regarded as separate from that of assessment of capacity, the latter of which needs to take account of contemporary discussions and potential reforms of legislation as a result of Australian jurisdictions' requirement to conform to the United Nations Convention on the Rights of Persons with Disabilities, in particular Article 12.
- 2.5. In Chapter 3, we note and are very supportive of Issue 11, by which the HCCC can conduct investigations of its own motion. Should the other issues contained in the report be acted upon, a greater focus on

managing individual complaints within services and within registration boards overseeing services should allow the HCCC to take on a stronger coordinating role in terms of recognising and reacting to systemic trends and issues. Having this capability also necessitates additional powers for the HCCC to initiate reports based on what it has good reason to believe are systemic problems.

- 2.6. With regard to Issue 13, PWD is aware of the need for complaints handling bodies to take some responsibility for diverting malicious and vexatious complaints away from the system, as these have the capacity to use up scarce resources and to increase in their complexity as they develop. However, PWD is concerned that adequate safeguards, and stringent assessment processes are applied to ensure that a complaint is only regarded as either malicious or vexatious if it meets very specific criteria, and that explicit avenues for appeal, that again do not interfere with the regular work of HCCC, be established to quickly assess whether such a determination is correct, and, if not, to reapply the complaint for investigation and resolution with the HCCC.

### **3. Responses from CRRS and the Hotline**

- 3.1. The Hotline and the CRRS, as complaints handling services for people with disability, is pleased to make comments about those aspects of the report which have an operational focus, with a view to improving the experience of complaints handling for complainants and those complained about, and in regard to ensuring that the operations of the HCCC instil greater confidence in the NSW public through the setting and achieving of performance benchmarks as well as through greater transparency and accountability.
- 3.2. In relation to complainants with special needs, the Hotline and CRRS management have provided input to the HCCC's community awareness products and strategies, particularly those which target people with cognitive impairment, and commends the agency for these initiatives. Our services are similarly involved in developing resources that promote our existence and how to access us, in a variety of formats, and recognise how important it is to continually renew and refresh these initiatives. However, as 2.15 of the report alludes to, making complaint handling processes truly flexible to people who have a range of communication needs based on their individual conditions and circumstances requires more effort to adapt the formal processes involved in taking, assessing and resolving a complaint. The report does not set out any specific issue with recommendations on what needs to be done to drive the kind of innovation required in complaints handling that will render the process truly accessible to people with disability who have a range of different and individual needs. We believe that there needs to be a direction for the HCCC to innovate in terms of its complaints assessment and handling processes that fulfils its formal requirements and ensures procedural fairness and natural justice, whilst at the same time enabling people with disability to be engaged with the complaint in ways that suit their individual need. Again, the Hotline and CRRS would be very happy to assist in the implementation of such a direction.
- 3.3. In relation to Issue 8, the Hotline and CRRS welcome the recommendation to establish an overarching office to assist the various medical registration boards to deal effectively and efficiently with complaints, and to do so in a uniform manner. We would just want assurances, however, that the addition of a further body, on top of existing registration boards and hierarchies within individual health services, would not negatively impinge on timeframes for assessment and resolution of complaints.
- 3.4. The issue of timeliness is addressed in Chapter 3, specifically 3.13 to 3.15, and in Issues 16 and 17. The experience of the Hotline and CRRS is that failure to bring about a result to a complaint within a reasonable timeframe is the most likely issue to draw complaints to the complaints handling service itself. It may be appropriate to require very specific timeframes to be set for each of the processes that are



undertaken to receive, assess, investigate and resolve a complaint, that need to be followed or would require an exception report should they not be followed. The requirement to have such timeframes would, in our opinion, address the various complaints about these issues that the Committee has reported on, and should be expressed as part of either Issue 16 or Issue 17.

- 3.5 In conclusion, PWD once more urges the adoption of the issues detailed in the report, and the proposed amendments to the Health Care Complaints Act 1993, as these will make very positive contributions toward improving the overall system of healthcare complaints across Australia.