

**Submission
No 9**

THE PROMOTION OF FALSE OR MISLEADING HEALTH-RELATED INFORMATION OR PRACTICES

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The Committee on the Health Care Complaints Commission
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Our Ref : CHCCCdec13

**MCA Submission to an inquiry into
The Promotion of False or Misleading
Health-Related Information or Practices
(Closing date 13 Dec 2013)**

1. Introduction

Devised in 1977 as a research tool at UNSW into how patients interact with health services and to provide education/advocacy for those disadvantaged by service failure MCA transitioned after a few years into an independent community organisation. Unlike many health consumer groups, that seek more service coverage for specific medical conditions and so advocate for service suppliers, MCA seeks to remain independent of medical service suppliers and their bureaucracies in order to hope to be able to freely and objectively address service quality as the most effective driver for substantive system reform, rather than service shortage.

MCA's first knowledge of the 29 November Media Release came this month. On 5 December MCA obtained it and the TOR from the Parliamentary website. The webpage link "Other Documents" when clicked provided no additional documents. The closing date of 13 December about a measure so apparently vast in scope forces this submission to be incomplete and tentative.

2. The inquiry and possible related legislation

The nature of this inquiry must come as a very considerable shock for all lay citizens of NSW. If extensions to the powers of the HCCC as foreshadowed by the TOR document were to be simply translated into law within the existing HCC Act, perhaps even simply by regulations, short circuiting legislative process, the change could be seen as terminating all access to parliamentary democracy and civil rights for any Australian citizen within the borders of NSW, when a matter detected is a medical one or can be linked to medical documents or data by the HCCC Commissioner, as long as the citizen is not a medical or science professional. This would represent a dramatic and unexpected development.

3 Some Observations

- a. It is noted that the inquiry is initiated by the Committee with no context provided except for some statements made by the Hon Member for Port Macquarie via her Media Release of 29 November.
- b. In NSW the doctrine of the separation of powers has never been established with any clarity. Perhaps it is thus technically not impossible for the Committee to take up policing and judicial roles including the imposition of fines and imprisonment of lay citizens even during the inquiry phase.
- c. But should such activities be made the province of the HCCC Commissioner only as is the case for other sections of the Act then due to the very limited Parliamentary oversight (The CHCCC is stopped from investigating to the individual case activity work level of the HCCC) the HCCC commissioner would become an independent autocrat not clearly burdened by any parliamentary judicial or appeal oversight when detecting, prosecuting, or sentencing a lay member of the public

- d. Any new measures appear only targeted at lay individuals and organisations who have an interest in the medical industry and may wish to make adverse statements about it, by word or any recorded means.
- e. Should such consumers make such adverse comment measures congruent with the TOR make these lay medical consumers subject to coercive power including imprisonment in a fully extra-judicial way at the unconstrained wishes of the HCCC.
- f. The chilling effect of this could be expected to amount to the total censorship of all opinions from lay medical consumers when within NSW if connected with a medical issue.
- g. Similarly as journalists and organisations they work for are not clearly medical or scientific it would seem that within NSW a total censorship ban of all such material is also placed on the NSW media.
- h. It is not clear to MCA if this total censorship ban can constitutionally extend beyond the border of NSW or even into cyberspace within NSW.
- i. MCA held in 1992-3 that the HCC Bill would effectively end the practice of Westminster style Ministerial Accountability. This view was confirmed in 2003 when the HCCC Commissioner was dismissed as a proxy for the Health Minister over the 18 or more deaths in Campbelltown and Camden Hospitals.
- j. MCA opposed the passage of the HCC Bill having received legal advice that the Bill was anti-consumer and would bring into being a clear legal disadvantage for medical consumers.
- k. Evidence since then from medical consumers who have contacted MCA is that this has been the case and that HCCC process is capable of acting to cover-up more serious complaints where medical consumers have suffered major loss due to serious injury from substandard care.
- l. HCCC process in general has from the very start in 1994 been incapable of achieving an assessment of a complaint if that requires a fully independent current audit of a complainant's medical condition, as is normally the case with more serious cases of loss for medical consumers.
- m. When attempting to assist aggrieved consumers who have been rejected by the HCCC the HCCC's correspondence to MCA has pointed out the existence of punitive sections of the act to warn MCA and a very long reply delay (many months) to letters has also been observed.
- n. Most material and opinion produced by MCA since 1987 when the Complaints Unit was established and since 1994 when the HCCC replaced it probably has the potential to be classified as in breach of any new legislation or regulations if this was to closely follow the intent of the TOR.
- o. MCA has no choice but to be of the opinion, based on various events and material that cannot be communicated to the CHCCC because of its legislation stopping it dealing with actual complaints, that a major effect of HCCC process is the suppression of serious consumer complaints.
- p. MCA is of the opinion that it may be inadvisable for consumers to use The Conciliation Registry even if its use is offered for some types of complaint. This opinion was reinforced when under oath before an CHCCC hearing a Conciliation Registry Registrar said that there was nothing to stop a party to a conciliation 'from going to Hell in a handcart'.
- q. MCA cannot see other than the addition of powers foreshadowed by the TOR must invalidate the whole basis for the HCC Act. Once making a complaint against a medical service provider could result in the complainant facing the application of punitive reprisal (fines and imprisonment) at the extra-judicial whim of an HCCC bureaucrat who would use the HCCC ?