

# Review of the Health Services (Conciliation and Review) Act 1987

## Response form

Written submissions are invited addressing the questions raised in the discussion paper:

### **General (page 26 of discussion paper)**

- Q1. What should be the key features of Victoria's future health complaints system?
- Q2. What features of the current system should be kept or enhanced?

### **Improving every Victorian's healthcare experience (pages 26–31 of discussion paper)**

- Q3. How can the Act better protect healthcare users?
- Q4. What controls should be placed on the powers of the Commissioner to protect healthcare users?

### **Making the complaints process more responsive to people's needs (pages 31–35 of discussion paper)**

- Q5. How can the Act provide a more accessible, efficient and effective complaints handling process?

### **Assisting people to better manage their own health needs (pages 35–36 of discussion paper)**

- Q6. How can the Act best support healthcare users and providers to understand and navigate the health complaints system?

### **Continuous quality improvement (pages 37–38 of discussion paper)**

- Q7. How can the Act best support continuous quality improvement across the health system?

### **Increasing accountability and transparency (pages 38–40 of discussion paper)**

- Q8. What are the most appropriate governance and accountability arrangements for the Commissioner?

### **Other issues (page 40 of discussion paper)**

- Q9. Are there issues not covered in the discussion paper which should be addressed?

## How to make a submission

Copies of the discussion paper and this optional response form can be downloaded from the Department of Health's website at <[www.health.vic.gov.au/hscrareview](http://www.health.vic.gov.au/hscrareview)>. This form can be completed and submitted in either electronic or hard copy.

**The closing date for submissions is Friday 3 August 2012.** To make a submission, please email or send your submission to:

Expert Review Panel  
Review of the Health Services (Conciliation and Review) Act  
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Website: [www.health.vic.gov.au/hscrareview](http://www.health.vic.gov.au/hscrareview)

If you have any questions regarding the review or require assistance in making your submission, please contact us.

**Instructions for completing this form: click in the grey-shaded area to start typing**

**Your details**

Name / principal contact: John Arranga	
Position (if applicable): Head of Claims (Vic & Tas)	
Organisation (if applicable): Avant Mutual Group	
Are you submitting a response on behalf of this organisation? (Please select) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
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Have you ever participated in the Health Services Commissioner complaints process? (Please select)	
<input checked="" type="checkbox"/> Yes	
<input type="checkbox"/> As a complainant	
<input checked="" type="checkbox"/> Other (please specify): Representative of a participant	
<input type="checkbox"/> No	

**Submissions will be treated as public documents and placed on the Department of Health’s website:**  
[www.health.vic.gov.au/hscrareview](http://www.health.vic.gov.au/hscrareview)

For submissions received from individuals, all your personal details other than your name (such as address, phone and fax number) will be removed before it is published on the website, to protect your privacy.

If you do not want your submission to appear on the website, or if you want to remain anonymous, please indicate below.

- Please do **not** publish any part of my submission on the website
- Please publish my submission on the website anonymously
- Sections of my submission are confidential and clearly marked as such. Please do **not** publish these sections on the website.

Please note: notwithstanding this, your correspondence and submission may be the subject of a request for access under the *Freedom of Information Act 1982*. The Department of Health will notify you if a request is made and if it may be required to disclose your submission.

**Instructions: click in the grey-shaded area to start typing your response to each question**

**Q1. What should be the key features of Victoria's future health complaints system?**

Avant submits that registered health practitioners are subject to extensive regulation and review through multiple bodies at a state and federal level (see Fig 1 page10 of the discussion paper). As a consequence complaints made by patients or their representatives can result in a practitioner being required to respond to more than one investigation for the same event. These investigations may occur concurrently or can occur sequentially meaning that a practitioner may respond to a complaint multiple times and over a prolonged period of time.

Avant accepts that a robust and responsive complaints system is necessary. Any complaints system that is to be respected by the parties in the process needs to balance the interests of the complainant and the registered practitioner and in the case of registered practitioners recognise the presence of those other investigating agencies.

The current provisions that apply between the Office of the Health Services Commissioner (OHSC) and AHPRA in relation to registered practitioners where the body who proposes the most serious action assumes jurisdiction should be reviewed. Avant's position is that the body that has the capacity to most appropriately resolve the complaint of the patient should be the body that has the jurisdiction.

Further the system should have the capacity to filter out and where appropriate dismiss complaints that are frivolous or vexatious or that have been dealt with by other agencies.

Where complaints are investigated and are then subject to alternative dispute resolution (ADR) processes such as conciliation the current provisions that ensure the confidentiality of the conciliation process and the material provided in the process must be maintained. In the absence of the confidentiality provisions of the ADR process being maintained there may be an apprehension about participation by registered practitioners.

Involvement in any ADR process should be voluntary on the part of all the parties.

Investigation and resolution of matters should occur in a timely manner .

## Q2. What features of the current system should be kept or enhanced?

Avant submits that from the perspective of registered health practitioner the current system including the conciliation processes function well to resolve matters where there are combined complaints about the quality of service and where the complainant seeks some payment of money to resolve a complaint.

The capacity of the OHSC to investigate issues by obtaining independent opinion and assessments is a useful process in resolving matters and in our view is a cost effective way of resolving matters that might otherwise result in litigation.

The capacity of the process to ensure confidentiality enhances its effectiveness as a dispute resolution process, that capacity should be retained.

## Q3. How can the Act better protect healthcare users?

Registered practitioners are subject to regulation by AHPRA.

AHPRA is responsible for and has extensive powers that deal with the conduct and behaviour of registered practitioners.

To the extent that the discussion paper highlights issues that might arise from complaints that result from services supplied by registered practitioners those issues would fall under the jurisdiction of AHPRA. The current OHSC legislation requires consultation between the Commissioner and AHPRA as such we see no need for any further or broader powers to be given to the Commissioner in relation to disclosure about or the capacity to take action in relation to registered practitioners.

#### Q4. What controls should be placed on the powers of the Commissioner to protect healthcare users?

Given that AHPRA has the responsibility for regulating the conduct of registered practitioners the capacity for the Commissioner to exercise naming or other coercive powers should be limited to non-registered practitioners or services.

#### Q5. How can the Act provide a more accessible, efficient and effective complaints handling process?

Avant supports the concept of improved access for patients or their representatives to the complaint resolution process.

Avant is also supportive of the concept of an assisted early resolution process provided such a process attracts the same degree of confidentiality as the more formal ADR process.

Avant's position is that complaints should be resolved in a timely manner and that while time frames for the process are appropriate those time frames should be sufficiently flexible to allow for the matter to be effectively resolved. Therefore Avant supports a process where the resolution of the complaint is the primary goal and where timeframes are able to be flexibly applied to assist in the outcome.

Avant does not support the introduction of compulsory requirement to provide information in conciliation. Compulsion is not consistent with a voluntary ADR process. If there were to be compulsion to produce information then the parties should be provided with an absolute protection against the use of that information in any other forum.

We note the discussion paper refers to s 60 of the Health Records Act 2001 (HRA) in support of the concept of mandatory disclosure, however we note that any disclosure made under that provision is protected as set out in s 62 of the HRA:

s 62 Conciliation statements, acts and documents inadmissible:

(1) Subject to subsection (2), evidence of anything said or done in the course of a conciliation is not admissible in proceedings before the Tribunal or any other legal proceedings or proceedings before a registration board relating to the subject-matter of the health information or the complaint, unless all parties to the conciliation otherwise agree.

(2) A document prepared by a party for the purpose of, or in connection with, a conciliation (or a copy of such a document), whether or not produced or used in the course of the conciliation, is not admissible in proceedings before the Tribunal or any other legal proceedings or proceedings before a registration board relating to the subject-matter of the health information or the complaint, unless all parties to the conciliation otherwise agree.

Making participation in ADR a compulsory step again runs counter to the spirit of ADR. To further impose on the parties by requiring compulsory disclosure may reduce the usefulness of the ADR process in resolving disputes.

Where ADR processes are mandatory such as Court ordered mediation there is no compulsion to provide documents or information except in accordance with the court rules and the rules of evidence. Unrestricted mandatory provision of material in relation to an ADR process under the OHSC legislation would impact on the rights of the parties in relation to documents or information that might be subject to these restrictions such as documents that are subject to qualified privilege or legal professional privilege. If such a requirement is imposed on the parties it must be accompanied by the strongest possible confidentiality provisions.

In relation to the issue of options following unsuccessful ADR, Avant endorses the commentary contained in section 4.2.4 of the discussion paper, but repeats its position as set out in response to question 3 in relation to registered practitioners and any coercive powers that the Commissioner might have.

**Q6. How can the Act best support healthcare users and providers to understand and navigate the health complaints system?**

Avant supports patients being given clear descriptions of the options available to them in making a complaint about a registered practitioner as well as a discussion about the range of outcomes that could be realistically expected. This may assist in correcting the perceived mismatch between expectation and outcome that the OHSC survey data reveals and improve the rate of resolution of complaints.

**Q7. How can the Act best support continuous quality improvement across the health system?**

Avant has no submission on this question

Q8. What are the most appropriate governance and accountability arrangements for the Commissioner?

Avant has no submission on this question

Q9. Are there issues not covered in the discussion paper which should be addressed?

Avant has no submission on this question



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