



Compensation and the OHR in focus

We have recently been talking to providers, insurers and consumers to improve our understanding of compensation and where it sits within complaints resolution. We are looking at this issue because many providers cannot discuss, negotiate, or agree to compensation at a conciliation meeting without their insurer's involvement.

However even if they cannot discuss compensation, the provider can still resolve other components of the consumer's complaint. They might offer an explanation or apology for what occurred without an admission of liability or fault.

We find that addressing and acknowledging the emotional aspects of a complaint is essential to both parties being able to move on with their lives. Conciliation plays an important role in this. Anything said or admitted during this time is protected and cannot be used before a court or tribunal.

It can be possible to reach a financial settlement through our conciliation process, but only if the con-

sumer and provider both agree. Otherwise the consumer would be directed to the most appropriate pathway to pursue a compensation claim against that provider. They would need to be aware that compensation is chiefly subject to whether or not medical negligence can be demonstrated. A solicitor experienced in medical negligence can give them this advice.

If a consumer thinks they have a claim, they should not delay in getting legal advice from a solicitor as strict time limits apply to medical negligence cases. These vary depending on the circumstances, such as for children, or if a person has a disability.

A compensation claim involves:

1. *A substantiated case of negligence*: If there is no negligence on the part of the provider it is unlikely that the insurer will consider the matter.
2. *Compliance with statutory requirements*: for notification of a claim and legal action must be adhered to.

Welcome to the **third edition** of the Office of Health Review's newsletter: **The Health Review**.

The theme for this issue is **compensation**.

In this issue:

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- A Deed of Release
- Learning more about our stakeholders
- Service standards
- OHR web site review
- Regional visits
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- Disability News: Health Resource and Consultancy Team, and
- Complaint statistics.

Any feedback or suggestions are welcome and can be sent to: mail@healthreview.wa.gov.au

3. *Proof of loss by way of an identifiable injury*: Once negligence has been established, proof of loss by way of an identifiable injury needs to be substantiated. If there is no clearly demonstrated set of circumstances that prove financial loss by way of an omission or negligent act on the part of the provider, a payment of 'out of pocket' expenses can be considered.

4. *The amount claimed must be quantifiable*: The general damages being sought to resolve a negligence claim- such as pain and

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A Deed of Release

If a financial settlement is reached, the complainant will be asked by the provider to sign a Deed of Release. This waives any right to take further action in return for the settlement.

The complainant should obtain legal advice regarding the amount of the settlement and the effect of signing a Deed of Release.

No one can be coerced into signing a Deed of Release.

Compensation

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suffering, loss of enjoyment of life, scarring- must be quantifiable. It must also fall within the Civil Liabilities Act threshold guidelines that apply at the time the claim is assessed.

A claim for compensation must be substantiated by documentation.

This must documentation must cover:

- *Proof of negligence:* setting out the grounds for a claim and the negligent act(s) or omission(s) through medical reports from a treating general practitioner, specialist and independent expert.
- *Proof of an identifiable injury:* A statement of the injury sustained, the treatment, the duration of the injury and assessment (physical) of permanent damage and scarring.
- *Quantifiable general damages component:* General damages are those that have no distinct value and must be estimated. This in-

cludes pain and suffering for an injury or long-term disability, and the loss of amenity when unable to retain the lifestyle enjoyed prior to the injury.

- *Proof of out-of-pocket expenses:* for example past travelling expenses would need taxi receipts (if unable to drive or find alternative transport), and medical certification stating inability to drive, petrol receipts, distance travelled and parking receipts.

We are currently drafting compensation fact sheets to give standard and accurate information about this issue to our complainants. These will provide assistance to consumers to understand the complexity of the issue and how it fits into our process. The fact sheets will not give legal advice or direction.

The Health Consumers' Council, Community Law Centres, Legal Aid, or the Law Society can give a referral for a solicitor. A solicitor can then provide any legal advice a complainant may need beyond the fact sheet.

Learning more about our stakeholders

We are aware of the need to involve our stakeholders in aspects of our work, particularly in the area of community relations.

We have learnt that by personally meeting with representatives of larger organisations we can 'spread the word' more efficiently. Through this approach we identify opportunities to collaborate and share knowledge with other groups.

Staff from the office have met and continue to meet with a large

number of consumer organisations and service providers. We do this in order to discuss our role of improving health and disability services through the impartial resolution of complaints.

We have recently consulted with a range of organisations to produce a series of publications, such as brochures and posters. Representatives were included from service providers, the Disability Services Commission, the Health Consumers' Council and the Department of

Indigenous Affairs. We thank them for their input.

These brochures are now in stock and can be ordered or downloaded from our web site.

If you would like OHR staff to visit your organisation to conduct a presentation, or if you would like to order some of our information brochures or posters, please phone the office on 9323 0600 or email: Stephen.Anderson@healthreview.wa.gov.au



Service standards make it simple

The process we follow to resolve complaints can be complicated for consumers and providers to understand. That is why we are currently drafting service standards that will clearly describe what parties in a complaint can expect from us, and what we expect from them. The service standards will be launched in March.

Our standards will attempt to get across the core message of what we do in a simple way that anyone can understand. They will focus on:

- timeliness
- impartiality
- accessibility
- confidentiality
- conciliating, and
- improving.

We would like our service standards to promote a mindset that will transparently encourage a positive outcome. They do this by outlining the expectations we have of each party, which in most complaints will involve participating in conciliation. In turn, they list the expectations that consumers and providers should have of us as well.

Conciliation is where both parties in a complaint agree on how to resolve their issues together within a framework that recognises the issues for both parties. This means that they must understand and commit themselves to an agreed outcome that each is able to follow. The standards provide information that will support both parties to work through the issues, addressing the emotions and facts.

The standards will additionally show the level of service quality we aim to meet in managing and conciliating these complaints. They will act as a yardstick to measure our performance and improve the service we provide.

This is part of our commitment to providing a high quality complaints resolution process that looks for opportunities to improve.

We are very interested to listen to any feedback on our service, and asked several key groups to share this with us while writing our standards. They included service providers, consumer groups, consumers, health department staff, and insur-

OHR web site review

The Office of Health Review's current web site is now 12-months old. We thought the new year would be an opportune time to review the site to determine its usefulness and relevance to our stakeholders.

An important part of the review will be consultation with consumer representatives and the organisations that we regularly deal with, to ensure that the right kind of information is available and easy to find.

OHR is keen to get feedback from anyone who is prepared to take the time to visit the site and comment.

Comments can be submitted on the 'Contact Us' page on our site:

www.healthreview.wa.gov.au



ers. These discussions have given us some valuable insights that will shape the way our standards are being drafted.

Our standards will describe our process, encourage settlement of complaints, and commit our staff to a consistent level of service quality. They will ensure the channels of communication and feedback are opened and remain that way.

Please contact us if you would like more information about this project or if you have feedback to share.

Regional visits

The Office of Health Review conciliators have begun planning several regional visits around Western Australia. Reaching out into regional areas is a part of our goal to increase community awareness, a strategic direction for our office this financial year.

Preparations are under way for a visit to Geraldton in February, and then on to the Cocos and Christmas Islands toward the end of May. Conciliators will seek meetings with local hospital, health and disability services in these areas.

We do not have a great profile in rural and remote areas and would like to ensure that both consumers and providers outside the metropolitan area have opportunities to be kept informed. Awareness can make the pathway to resolving complaints clearer and more achievable.

We would like to encourage the most positive means of complaints resolution possible. Not only do we look to support consumers in making a complaint, but also service providers once a complaint has been made.



Alternative conflict resolution research

The Office of Health Review will begin the year by partnering with a research project that will positively impact alternative dispute resolution in Western Australia.

Behind the research is Director Anne Donaldson. She has identified a need for more research into this field from her role overseeing the resolution of complaints at OHR.

The conciliatory framework used by OHR relies upon the willingness of both parties to reach agreement. OHR staff can see how this may become problematic where parties see each other as an adversary. Such an environment can suppress open communication and encourage suspicion and fear. This can lead to an unsatisfactory experience for both the consumer and provider.

In response to this, Anne has begun to draft a research plan around such issues that could extend across many industries involved in alternative dispute resolution. This research will seek to understand how parties can best be encouraged away from an adversarial framework. Instead it will propose how they might best move towards accepting what has happened and appropriately dealing with the issues that emerge.

This work will have an immediate impact on the way OHR staff will conciliate complaints. It will also seek to understand the issues facing the local alternative dispute resolution community and put them in context with a wider body of research.

Contemporary methods from national and international literature



OHR Director Anne Donaldson

will be used to detail pathways to dispute resolution that is ethical in approach, empathetic and respectful of both parties.

Alternative dispute resolution reaches across many academic disciplines. OHR itself has contact with many areas that include the legal, disability and prison system. This project will involve collaborating with industry partners to connect like-minded people together around these issues and build an ownership into the material produced. The research will find ways that alternative dispute resolution processes can work effectively now in a wide range of settings.

Information gathered will be drafted into a series of papers as a means of further informing the debate about dispute resolution in health care. They will be targeted toward various appropriate outlets, such as journals. This will widen the local literature available to alternative dispute resolution practitioners.

The findings from this venture will be instrumental in informing the way that OHR staff will operate and will open up a dialogue with other industry partners.



Systemic Issues Group members Jenny Langford and Pip Brennan.

New group to identify systemic issues

Our staff have established a Systemic Issues Group to identify and action issues within health and disability services. The group was founded to take proactive steps to resolve issues that had the potential to cause ongoing problems for consumers and providers.

Systemic issues are defined by this group as a procedure, rule, policy or practice that has a detrimental effect on a particular group of people; or a trend with an individual provider or provider group that is having a detrimental effect on the health or disability sectors.

The group will collect information by running reports on OHR's complaints database. Retrospective reporting is under way to set a benchmark. A register allows staff to manually lodge and identify issues they consider as potentially systemic. Other potential information sources may be identified, such as incoming information from consumers.

The group will meet regularly to analyse the reports and identify issues that either appeared to be systemic or required further research.

In the event that an issue is identified as being a systemic issue, the group will make recommendations to the Director of the OHR.

Options include:

- referral to another body
- meeting with the individual or organisation concerned to discuss the issues raised
- forming a project team or working group, or
- reporting to the Minister for Health.

The group believe their work may have beneficial flow-on effects in other work areas, particularly in the development of OHR's new complaints database.

Input from the group could help develop new parameters for the logging, capture and manipulation of data, which will in turn assist in identifying issues.

The group hopes this work will benefit health and disability services by enabling OHR to not only identify systemic issues but also to prevent their escalation.

Disability News:

Health Resource and Consultancy Team

The Office of Health Review regularly collaborates with other health or disability related agencies and organisations in order to further our understanding of each industry. Recently, our staff met with representatives from the Health Resource and Consultancy Team within the Disability Services Commission to share information.

The Health Resource and Consultancy Team encourage the wider community to understand that health is part of quality of life for people with disabilities. They support people with disabilities to access health services within the community and offer information, training and advice to health professionals and students. These activities seek to close the gaps where the health system may unknowingly disadvantage people with disabilities.

As part of their health promotion strategy, the Health Resource and Consultancy Team develop resources and publications to raise awareness of how people with disabilities can manage their health, and how health professionals can support them in this task.

Through these initiatives, the Health Resource and Consultancy Team seeks to include people with disabilities in all aspects of health care and raise the profile of people with disabilities in the health sector.

You can free call the Health Resource and Consultancy Team on 1800 004 544, and publications can be downloaded from the Disability Services Commission web site:

www.dcs.wa.gov.au

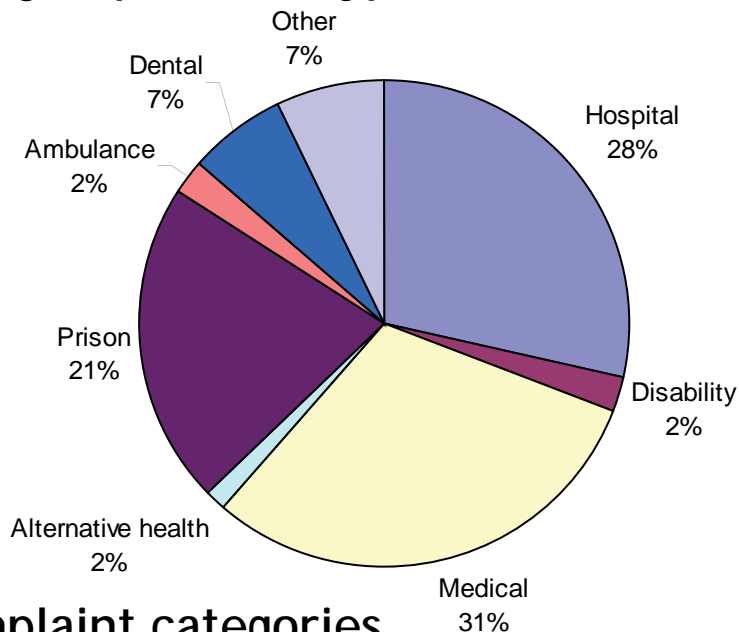
COMPLAINTS STATISTICS

We received **393** new complaints in the last quarter of 2007, from 1 October to 31 December.

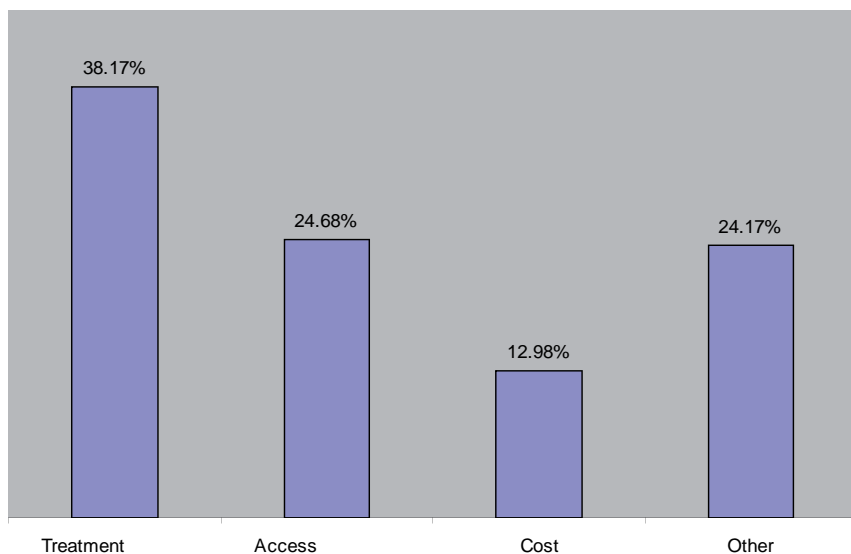
Complaints according to provider type

New complaints were made to our office about:

- public and private **hospitals** 28%
- **disability** services 2%
- **medical** practices and practitioners 31%
- **alternative health** services 2%
- **prison** health and dental services 21%
- **ambulance** services 2%
- **dental** workers, such as dentists, surgeons and technicians 7%, and
- **other** services 7%.



Most common complaint categories



Over this period, the most common complaints were about the type of treatment given by the service provider.

This category included inadequate or unskillful treatment and failure to diagnose a condition, and described 38% of new complaints.

The next most common area of complaint related to access to a health or disability service, such as delays in treatment or no treatment given at all. This covered almost 25% of new complaints.

For 13% of new complaints, the issue was the costs involved, such as not getting enough

information about pricing or inadequate billing practices. Other complaints made related to failing to pass along information, privacy concerns, and decision making.

Disability service complaints related to communication, policy, service eligibility and quality.



The **Office of Health Review** is an independent State Government agency established to deal with complaints about health and disability services.

Our mission: To make health and disability services better through the impartial resolution of complaints.

For more information about the office, please visit our web site at: www.healthreview.wa.gov.au

Office of Health Review

Post: PO Box B61 PERTH WA 6838

Ph: (08) 9323 0600

Fax: (08) 9221 3675

Country Freecall: 1800 813 583

email: mail@healthreview.wa.gov.au

web: www.healthreview.wa.gov.au