



Carers WA



Carers WA Policy Submission
Statutory Review of the HaDSC Act and DS Act
October 2024

About Carers WA

Carers WA is the peak body representing the needs and interests of carers in Western Australia and is part of a national network of Carers Associations. Carers provide unpaid care and support to family members and friends with disability, mental health challenges, long term health conditions (including a chronic condition or terminal illness), have an alcohol or drug dependency, or who are frail aged. The person they care for may be a parent, partner, sibling, child, relative, friend or neighbour.

Caring is a significant form of unpaid work in the community and is integral to the maintenance of our aged, disability, health, mental health, and palliative care systems.

Some important facts about carers include:

- There are currently 3.04 million unpaid carers in Australia.
- There are more than 320,000 families and friends in a caring role in Western Australia.
- The replacement value of unpaid care, according to a report undertaken by Deloitte, Access Economics, "The economic value of unpaid care in Australia in 2020" is estimated at \$77.9 billion per annum.

Acknowledgement of Country

Carers WA acknowledges the Wadjuk Noongar Nation's lands, water, customs, and culture of which the Carers WA Head Office is located. Carers WA recognises our services reach beyond the Perth region, and so we also acknowledge the cultural diversity of First Nation Peoples across our state and throughout Australia.



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1.0 Recommendations

1. An ongoing awareness campaign and development of resources on HaDSCO, complaints processes and where to go for different types of complaints.
2. Ongoing informational sessions for carers on HaDSCO, complaints processes and where to go for different types of complaints.
3. The development of a resource to outline expected outcomes and limitations of HaDSCO's complaint processes.
4. Ongoing informational sessions for carers which clarify expected outcomes and limitations of HaDSCO's complaint processes.
5. Development of an alternate complaints approach for carers and consumers who have experienced extreme circumstances such as abuse from providers.
6. Feedback from carers on the discussion paper questions be considered as part of the Statutory Review of the *Health and Disability Services (Complaints) Act 1995* (WA) (HaDSC Act) and *Disability Services Act 1993* (WA).

2.0 Introduction

Carers WA (CAWA or the Association) appreciates the opportunity to provide feedback to the WA State Government and Health and Disability Services Complaints Office's (HaDSCO) Consultation Paper on the Statutory Review of the *Health and Disability Services (Complaints) Act 1995 (WA)* (HaDSC Act) and *Disability Services Act 1993 (WA)* (DS Act). CAWA welcomes the review of this important legislation in light of ongoing significant changes to disability and carers rights, legislation and policy.

CAWA endorses the United Nations Convention on the Rights of Persons with Disabilities (CRPD), of which Australia is a signatory, and believe that families and informal carers play an important role in supporting the rights of people with disability in line with the CRPD, where they have been nominated to do so.

This submission incorporates ongoing feedback and case studies from carers, the results of an online survey on their experiences and awareness of HaDSCO and complaints processes, and feedback from a carer consultation session on this submission. This feedback has revealed a widespread lack of awareness of HaDSCO and complaints processes, as well as a prevalent belief amongst carers that submitting a complaint would not achieve anything. Carers also raised concerns that if they were to submit a complaint, the quality of future healthcare for themselves and those they cared for would be impacted. These concerns and subsequent recommendations are expanded on within this submission.

3.0 General Feedback

3.1 Awareness of HaDSCO and complaints processes

CAWA conducted a carer-focused survey of carer experiences and awareness of HaDSCO and complaints processes. The survey data indicated that only 8% of respondents had made a complaint to HaDSCO. Feedback indicated that 73% of survey respondents had never heard of HaDSCO, 18% of respondents did not think making a complaint would change anything and 9% were too focused on looking after their loved one at the time to make a complaint.

Carers who had submitted a complaint to HaDSCO raised that while it was good that they had been emailed by HaDSCO to be redirected to the appropriate complaints authority, it would be preferable if they didn't need to be redirected. This indicated a need for more clarity in where to go to submit a complaint for different types of services under different jurisdictions.

Within the WA Carers Charter under the *Carers Recognition Act 2004 (WA)*, it is stated that 'Complaints made by carers in relation to services that impact on them and the role of carers must be given due attention and consideration'. However, limited clarity around complaints processes impacts the right and ability of carers to effectively make a complaint.

Carers WA recommends:

1. An ongoing awareness campaign and development of resources on HaDSCO, complaints processes and where to go for different types of complaints.
2. Ongoing informational sessions for carers on HaDSCO, complaints processes and where to go for different types of complaints.

3.2 Clarity around outcomes

Carers were unsure of what type of outcome to expect from a complaint being submitted, and raised the need for a report or guide of what an outcome would look like, as well as the limitations of complaint processes. Carers also raised concerns over first needing to try to resolve their complaint with the service, with some carers and consumers having experienced adverse experiences from this process, as demonstrated in Case Study 1 below.

Carers WA recommends:

3. The development of a resource to outline expected outcomes and limitations of HaDSCO's complaint processes.
4. Ongoing informational sessions for carers which clarify expected outcomes and limitations of HaDSCO's complaint processes.
5. Development of an alternate complaints approach for carers and consumers who have experienced extreme circumstances such as abuse from providers.

Case Study 1

A carer described how they had contacted HaDSCO three years ago to make a complaint following their daughter experiencing abuse from a support worker. The carer said that HaDSCO needed to be shut down, as there was not an adequate outcome of the complaint, with no apology or compensation.

The carer said the subject organization involved did not reprimand or sack the worker, and lied about what happened. The carer outlined that when the Minister for Disability was contacted, their office found that there had also been no serious incident report lodged internally at the organization. The carer raised that when a complaint is made to HaDSCO, there needs to be an independent investigation made, rather than an internal investigation made by the subject organization – which left no one to answer to.

3.3 Feedback regarding discussion paper questions

1. Do you think the ability to make a complaint should be open to any person in relation to health and disability services? Provide the reasons for your answer.

Carers felt that anybody should be able to make a complaint in relation to health and disability services, as long as they had the required supporting evidence to do so. This should extend to family members, friends, service providers, community members or anyone else who has the evidence to make a complaint. Examples were raised of where carers had seen cases of mistreatment in the course of caring for their loved ones, but had not been able to submit a complaint as they were not the person's representative or carer.

Carers also raised that there should also be a specified advocate role to help anyone needing assistance to make a complaint, including carers.

2. Do you support the introduction of powers that would enable HaDSCO to compel information from providers or any other person to more effectively assess complaints?

Carers were supportive of introducing powers for HaDSCO to compel information, as long as the process is open and transparent. Carers were also in favour of HaDSCO's investigative and enforcement powers being increased, raising that at the moment the powers were akin to 'slapping someone with a wet bus ticket'.

Carers also raised that there was a need for HaDSCO to have sufficient funding and ongoing budget to support these increased investigative and enforcement powers.

3. Do you support the application of a penalty for non-compliance to the request made to a person or provider for additional information during preliminary assessment of a complaint? Why or why not?

Carers strongly supported penalty enforcement where a request for further information from a person or provider is not complied with, furthermore carers believed the penalty needed to be significant financial impost. Carers were also supportive of a three strikes approach and registration/licence removal as a final action, however carers also felt that a strong educational/learning approach and opportunity for change be taken with service providers as well as penalty. Carers believed that any effective complaints mechanism should include the power to compel information and penalty for non-compliance.

4. Should there be a provision for early resolution while the complaint is in its preliminary assessment stage, prior to the complaint being placed into a formal complaint resolution process? If so, do you have any suggestions on how this should work in practice?

Carers are supportive of a provision for early resolution while the complaint is in its preliminary assessment stage, as long as the aggrieved party is happy with this outcome. Resolution of complaints at a local level, with the people directly involved in the delivery of service is an approach that carers felt is the most acceptable for all parties. A three-part staged approach for resolution of complaints was also supported by carers.

5. Do you think the negotiated settlement currently used by HaDSCO is an effective way to resolve complaints? Provide reasons for your answer.

6. Do you think the conciliation process currently used by HaDSCO is an effective way to resolve complaints? Provide reasons for your answer.

Carer feedback indicated they did not feel the negotiated settlement approach currently in use by HaDSCO was an effective one, raising that there would not be a need for this statutory review if it was working. Carers raised that at present there was not an apparent way to follow up on complaints, no clear timeframes and a lack of clarity on expected outcomes.

It was raised that HaDSCO needed to have increased investigative powers which are utilised to look deeper into issues, even where the health provider paperwork and response states an alternate story or that the issue has been dealt with. One carer described their experience in submitting a complaint to a hospital when their spouse was dropped during bed transfer, outlining that in follow-up paperwork the incident was described as a 'fall'. Following the incident the carer said they had to push quite hard to have their spouse have scans to check they were okay. Carers called for increased accountability for health service providers, and for this to be better investigated and enforced through complaints processes, with proper outcomes for service improvements.

Another carer raised a situation where they had submitted a complaint to an aged service provider regarding a nurse not wearing a mask during a COVID-19 outbreak. While the nurse faced repercussions, the outcome was the service provider changing their policy to make wearing of masks voluntary, whereas the carer had been looking for an outcome where masks were worn and the person she cared for was protected (as they had not yet had COVID-19). The carer raised that there seemed to be a lot of energy going into defensive reactions to complaints, where this could have been spent finding mutual service improvements.

Carers raised that perhaps there was a need to make the focus on both positive and negative feedback, rather than just complaints, to help achieve a culture change and focus on service improvement.

7. Do you have any suggestions to improve the way the complaints are managed by HaDSCO?

Carers raised that some improvements to HaDSCO complaint management should be:

- Clear timeframes
- Ensure timely updates and responses are provided on complaints.
- Increased investigative and enforcement power, with appropriate funding to perform this role properly.
- More accountability and investigation for service providers when a complaint is made.
- Change to a focus on feedback, both good and bad, with the aim being to improve services and change the culture and response to a complaint. i.e. Feedback being seen as an opportunity to improve outcomes for carers and consumers.

8. Do you think HaDSCO should have the power to compel parties to produce information, records or documents while the complaint is being managed through the complaint resolution processes? Should there be a penalty attached for noncompliance by the parties?

Carers were supportive of HaDSCO having the power to compel parties to produce information, records and documents, with a penalty for non-compliance. The penalty applied should be tiered based on the size of the organisation/means of the individual.

9. Should the current penalty that applies to a provider for failing to take remedial action recommended following an investigation be increased in line with the other jurisdictions? Why or why not?

Carers were in favour of penalties being increased to be consistent with other jurisdictions, and also suggested use of a star system for providers to indicate levels of complaints and feedback, and where providers have not complied with remedial action. i.e. Inclusion of a criteria showing how many complaints and how many of these have been resolved satisfactorily.

Carers also raised that penalties should go back into improving the health and disability system, and that organisations doing very well should have an awards and recognition process.

10. Should HaDSCO have the power to take compliance action against a provider following an investigation? If so, what type of compliance actions would be appropriate and how can these be applied in practice?

Carers raised that compliance actions could include:

- Penalties
- Sanctions
- Required investment in someone to help the organization address issues which resulted in the sanctions.

11. Should HaDSCO be renamed a 'commission' to better communicate the Office's role and authority to manage complaints relating to health, mental health and disability services independently? Why or why not?

Carers were supportive of HaDSCO being renamed as a 'Commission' as they felt it more clearly demonstrated the organisation's independence and power to resolve situations. However, carers also felt the 'complaints' part of the organisation's title should be amended to be more reflective of an organisation that addressed, resolved and recognised feedback – whether it be good or bad – with the aim of service improvement. i.e. The Health and Disability Services Improvements Commission.

12. Should HaDSCO manage complaints relating to health, mental health and disability services under its principal legislation, the HaDSC Act, rather than three different Acts? Why or why not?

Carers felt that there was a more immediate need to focus on system improvements and improve current practices, one which would be delayed by needing to amend three different Acts. While they were supportive of the legislation being simplified and combined further down the track, they were more concerned with making immediate improvements.

16. Do you support the application of a code of conduct to organisations offering health services, who are not currently subject to regulation under the PHHS Act? Provide reasons for your answer.

Carers were supportive of a Code of Conduct being applied to organisations not subject to the PHHS Act. They also were supportive of a Consumer/Carer Advisory Group being set up to assist in developing the Code of Conduct and advising on other matters, to ensure a human rights and person-centred approach. Carers raised that at the end, everything needed to be focused around increasing compassion in health and disability services and improving systems for patients and their carers and families.

19. Does a regulatory gap exist in terms of complaint mechanisms for community services in Western Australia? Why or why not?

20. If so, do you support the idea of expanding HaDSCO's jurisdiction to include organisations providing community services? What are the specific types of community services that HaDSCO should be able to receive complaints about?

Carers were in favour of complaint mechanisms in WA for community services also coming under HaDSCO's purview, particularly with the expansion of health services out into the community sector. This increase in community based supports leaves a gap in complaint mechanisms for WA community services.

21. Provide your thoughts on whether complaints regarding community services should be resolved using HaDSCO's existing complaint resolution processes.

Carers raised that the existing system should change to be an improvement-focused Improvement Commission, which responds to and resolves negative feedback and recognises positive feedback. This type of system should also apply to community services.

4.0 Conclusion

Should any further information be required regarding the comments included within this submission, or assistance from the perspective of WA carers, Carers WA would be delighted to assist. Please contact the Carers WA Policy Team at policy@carerswa.asn.au.