

South Australian Health Complaint System

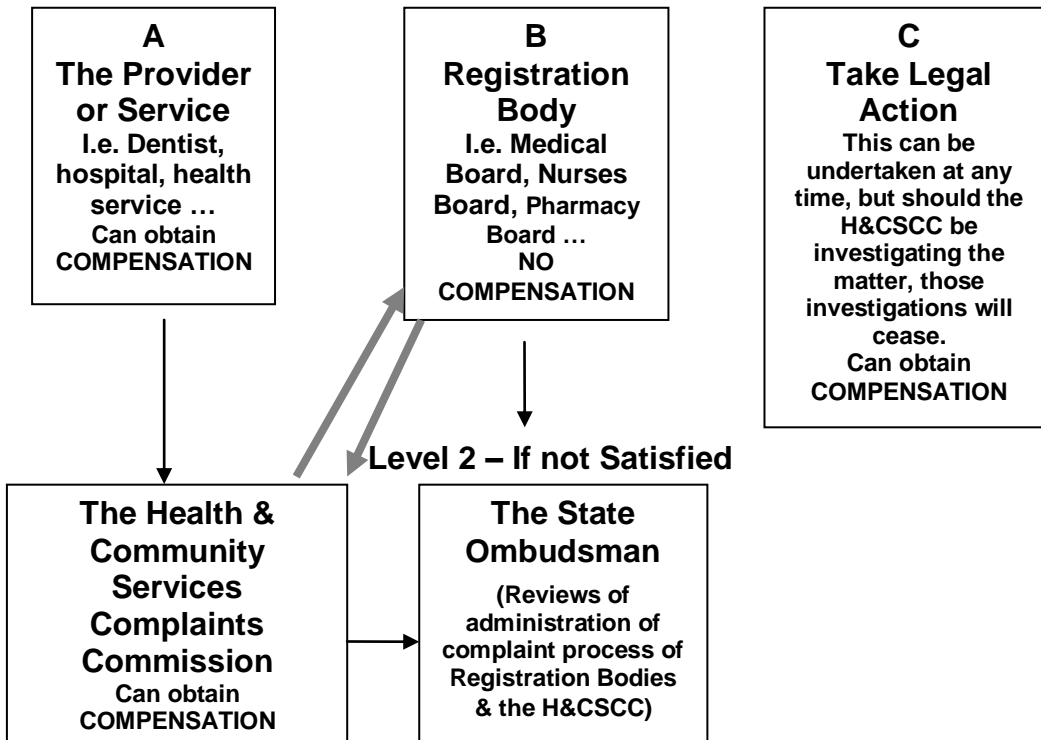
Your Complaint - Deciding where to Go First

If the subject of the complaint resulted in a disability, death &/or financial loss, we suggest you seek legal advice prior to deciding what action to take.

Before you decide which action to take, ask yourself what you want to achieve from your complaint?

Do you want?

- Changes to occur to stop the same thing happening again, i.e. systemic change
- Compensation
- Those who were responsible held to account
- An apology
- Other



(The light 2 way arrows between Registration Bodies and the H&CSCC mean the 2 bodies refer complaints to each other as they feel appropriate.)

Please read this whole document before deciding what option / action to take.

If however you don't know where else to go, or you don't feel able to talk to the agency or provider where an incident occurred, contact us healthrights@chariot.net.au or the Office of the Health & Community Services Complaints Commissioner (H&CSCC) on the Complaint Line: 8226 8666 10am to 4pm Monday to Thursday.

PO Box 199 Rundle Mall, Adelaide SA 5000

Fax: 08 8226 8620 Web: www.hcsc.sa.gov.au

(Matters are usually only taken on by the H&CSCC after reasonable steps have been taken to resolve the complaint directly with the agency or person concerned.)

NB. The AMA is not a body to investigate complaints; it is an association for doctors.

Whilst Health Rights & Community Action Inc (HR&CA) has used its best endeavours in publishing this information, HR&CA does not warrant the accuracy of the information, nor does it accept any responsibility for the advice contained herein. The advice and information is provided in good faith, as guidance to consumers only and is not and should not be regarded as definitive. Consumers are encouraged to seek their own independent advice, including legal advice, before embarking on any course of action.

Copyright (c) HR&CA Inc 2009

The **State Ombudsman** still handles complaints of an administrative nature about public hospitals.
 Phone 8226 8699 or Toll Free 1800 182 150 or email ombuds@adelaide.on.net

Steps to follow when making a health complaint

1 - Do your research

- **Obtain all factual information about your complaint where possible by requesting**
 - a) **access to or copies of hospital records – [Link to FOI page](#)**
 - b) **access to or copies of treating Medical Practitioners records – [Link to Privacy Principles Page](#)**
- Find out what was expected / acceptable to happen, and what was unexpected/unacceptable to happen under the circumstances.
- Find out if the service has any guidelines for the procedure or problem that occurred, and establish to what extent they were adhered to. Suggested links: Royal Australian College of Surgeons' (ASERNIP-S). <http://www.surgeons.org/Content/NavigationMenu/Research/ASERNIPS/default.htm>
- Public health services are subject to Freedom of Information Legislation 1991 - FOI. [Click here http://www.archives.sa.gov.au/foi/index.html](#) to access our FOI page. **Obtaining records is dependent on the urgency of the matter.** This can either be done at the same time or before you lodge your complaint.
- Private services may be subject to the **Federal Privacy Principles Legislation** that was introduced in 2001. This now makes it possible to obtain records in the **private** system. The Privacy Commissioner phone 1300 363992 web www.privacy.gov.au
- Who are you going to complain to? Find out the service complaint procedure.

2 - Keep a diary

- Jot down in point form, as soon as possible, as much as you can remember about what occurred, including dates, times, place, names and what was said.
- **Record all communication, both face to face and phone calls, throughout the process, including phone numbers & names of people you spoke to, dates and times**

3 - A procedure for writing a complaint

In our experience, writing a complaint letter or filling in a complaints form, while in an emotional state produces a complaint more about the venting of feelings rather than focussing on the problem that occurred. To avoid this, the following method may help.

Basic letter style – Start with an opening comment, then write what happened in a diary version, using numbers or letters of the alphabet for each point, with dates. Pull out of this the main problems referring back to point a. b. c. or 1. 2. 3. Then what you want, in dot form if possible.

Link draft letter I don't think this link will help. your views please?

Link to template HR&CA.

- Include all your feelings in the first draft. (This helps clarify the issues from the emotions).
- It may be helpful to then write down a list of your grievances before you begin writing the next draft.
- In the second draft remove all personal feelings and **leave factual information**. This can result in the issues being clearer.
- Before writing your **final draft**, **add what you hope to achieve by this complaint**. We believe its better to leave out emotive comments.
- Finally, ask a friend to check it for you. An outside perspective can check that your complaint is clear, as well as pick up any errors & checking for clarity.

If there is more than one area of complaint, have headings of what you hope to achieve for each area.

Whilst Health Rights & Community Action Inc (HR&CA) has used its best endeavours in publishing this information, HR&CA does not warrant the accuracy of the information, nor does it accept any responsibility for the advice contained herein. The advice and information is provided in good faith, as guidance to consumers only and is not and should not be regarded as definitive. Consumers are encouraged to seek their own independent advice, including legal advice, before embarking on any course of action.

Copyright (c) HR&CA Inc 2009

Be careful in all your dealings regarding the making and lodging of a complaint, so as not to offend against the law of defamation. Defamation is very tricky area and it is always best to stick to the facts, as you know them, and not to embellish the story with adjectives, descriptions, comments and interpretations that might be interpreted as defamation. If in doubt, you should seek legal advice.

Submit your complaint, with copies of any evidence or documentation that you may have, to the agency you are lodging your complaint with. **Keep all the original documents.**

Whenever attending a meeting regarding the complaint, take a friend with you, preferably someone who is removed from the complaint. This person can back up what has been said, be there for moral support and will often remember things that you might not remember. The other side will have more than one person there; you being accompanied will help create a balance in power.

Initially, only send the complaint to the agency concerned. If the response or outcome is not adequate, then send it to the next avenue, outlined below. We have found that it is not useful to send your complaint to all and sundry in the first instance. Eventually it may be necessary to send your complaint to the Minister for Human Services.

4 - Find out the Complaints Procedure

- Find out their complaint procedures by phoning the patient adviser/ patient liaison officer, registration body, or H&CSCC and ask them to post you a copy of their complaints procedure or check their web page.
- Many organisation have complaints forms which can be used to format a complaint. Write the complaint letter as shown at point 3 – **A suggested procedure for writing your complaint.**
- We do not recommend lodging a complaint over the phone. It is easily misconstrued.
- **If attending a meeting with the agency concerned to lodge a complaint, take a person (preferably not a family member) to take notes and assist you as needed. This is good to help create a power balance.**
- **Before you proceed in any way with a serious complaint, we recommend you obtain legal advice.**

5 – Unhappy with Complaint Outcome

If lodged with Service or Provider, it can next be lodged with H&CSCC.

If lodged with a **registration body or H&CSCC** it can next be lodged with the State Ombudsman who will **review the administrative process** only.

OPTIONS

A - Option

The Service/Provider Where the Incident Occurred

- **For a Service** - Patient Advisors, Patient Liaison Officers, or Complaints Officer are **employed by the service** to assist deal with complaints.
- **For a Provider** i.e. Doctor's surgery, dentist other small services, usually have a practice manager whom you could take your complaint to if you don't feel able to talk to the provider.
- Complaints can be verbal or in writing; however **we recommend you put your complaint in writing, as conversations can be misunderstood.**
- Always have an independent person (preferably not a family member) attend any meetings with you regarding your complaint. Ensure that accurate records are kept of any meetings.
- If a public service, the complaint documents are also subject to FOI.

Whilst Health Rights & Community Action Inc (HR&CA) has used its best endeavours in publishing this information, HR&CA does not warrant the accuracy of the information, nor does it accept any responsibility for the advice contained herein. The advice and information is provided in good faith, as guidance to consumers only and is not and should not be regarded as definitive. Consumers are encouraged to seek their own independent advice, including legal advice, before embarking on any course of action.

Copyright (c) HR&CA Inc 2009

Option – B

The Registration Body

Example used: The Medical Board of SA, under the Medical Practice Act 2004
<http://www.parliament.sa.gov.au/Catalog/legislation/Acts/m/2004.53.un.htm>

For more info on registration bodies, we provide a list of all bodies on our web page.

The complaint can be lodged under either section 51. 1 (a), (b), (c) or (d). (a) Where the Registrar is the most common way. Registration Bodies have forms quick may be used to lodge a complaint this way. Link. <http://www.medicalboardsa.asn.au/media/files/26965.pdf>

Or here is a link to a draft letter to a Registration Body..

MEDICAL PRACTICE ACT 2004 - SECT 51

51—Inquiries by Board as to matters constituting grounds for disciplinary action

(1) *A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Board (in a manner and form approved by the **Board** by—*

- (a) *the Registrar; or (The most common way)*
- (b) *the Minister; or (The Minister has never done so)*
- (c) *a representative body; or (In theory the AMA or Health Consumers Alliance of SA, (HCA). HCA do not have the resources to lodge complaints on behalf of others.)*
- (d) *a person who is aggrieved by the conduct of the person or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on his or her behalf.*

- If you lodge the complaint under 51 d) the process can cost you money – legal and other costs).
- Writing to the Registrar and asking him to lodge it on your behalf is the most often used way.
- **The Complaint must be in writing.**
- The purpose of the Board is to protect the public by ensuring that medical practitioners are of the highest standard of competence and conduct.
- You will not receive any compensation though this process.
- **Registration Bodies are subject to Freedom of Information (FOI).** This can help you to find out how the matter is being dealt with. (Go to our FOI page for more detail.)
- You have a right **to attend the hearing about a matter you asked the Registrar to lay on your behalf .**
- If you have a complaint about the Board's complaints process, you can lodge a complaint about the Board with **The State Ombudsman – Phone 8226 8699**. This complaint must be laid within 12 months of the Board's process for investigating the complaint. The Ombudsman only has the powers to investigate the administrative process of the complaint; not review the determination.

The Medical Board of SA has 2 publications titled: *“Requirements & Procedures for dealing with Matters of Complaints Concerning Registered Medical Practitioners”* & *“Professional Conduct and Discipline: Fitness to Practice.”* These can be obtained from the Medical Board of SA and will assist you in making a complaint.

Throughout the investigation, check that their procedure is being followed.

Option C: Litigation.

Take legal action against the service providers or agencies concerned.

Whilst Health Rights & Community Action Inc (HR&CA) has used its best endeavours in publishing this information, HR&CA does not warrant the accuracy of the information, nor does it accept any responsibility for the advice contained herein. The advice and information is provided in good faith, as guidance to consumers only and is not and should not be regarded as definitive. Consumers are encouraged to seek their own independent advice, including legal advice, before embarking on any course of action.

Copyright (c) HR&CA Inc 2009

If this is undertaken, the Health and Community Services Complaints Commissioner can not investigate the complaints.

Litigation can result in monetary compensation, but has financial risks, should the matter not be proved.

If compensation occurs, this often results in changes to procedures/systemic changes as any future financial losses are tried to be minimised.

An apology may occur in any conciliation that occurs.

Option D: The Health & Community Services Complaints Commissioner

- Matters are usually only taken on by the Commissioner after reasonable steps have been taken to resolve the complaint directly with the agency or person concerned.
- Has the power to open doors, initiate both formal and informal investigations.
- Conciliation can be used by bringing the parties concerned together to resolve the issue.
- **Complaints can be lodged verbally or in writing.**
- A complaint must be laid within 2 years of the incident occurring/ or when you become aware of the incident.
- A result from conciliation with the H&CSCC can result in an apology, systemic change, and /or monetary compensation.
- As the H&CSCC refers complaints to Registration Bodies if she feels it is appropriate, it can result in accountability.
- The H&CSCC is not subject to FOI – I.e. documents cannot be obtained from the H&CSCC

Contact Details Health & Community Services Complaints Commissioner (H&CSCC) on the Complaint Line: 8226 8666 10am to 4pm Monday to Thursday.

PO Box 199 Rundle Mall, Adelaide SA 5000

Fax: 08 8226 8620 Web: www.hcscclsa.gov.au

Option E - State Coroner

- The role of the Coroner's Court is to enquire into the cause and circumstances of a death
- Can make recommendations that may prevent similar deaths occurring in the future.
- An inquest is not a trial. It is an investigative process to shed light on the cause and circumstances of a death.
- The Coroner is not subject to FOI, however when legally able provides information to Next of Kin.
- The Coroner's Office employs qualified social workers who are trained in grief & trauma counseling. They provide the bereaved with information, support, counseling and referral to appropriate agencies for ongoing support.

Contact Details 302 King William Street, Adelaide SA 5000

Telephone: 8 8204 0600 Email: coroner@courts.sa.gov.au

Web <http://www.courts.sa.gov.au/courts/coroner/index.html>

Option F:- State Ombudsman

- Will review the administrative process of the complaint – however does not have the powers to investigate what happened in the circumstances.
- Is not subject to FOI.
- Has the power of a Royal Commission.

Contact Details: The State Ombudsman: Level 5 East Wing, 50 Grenfell St, Adelaide 5000

Ph 08 8226 8699 Toll Free 1800 182 150

Web <http://www.ombudsman.sa.gov.au/>

Whilst Health Rights & Community Action Inc (HR&CA) has used its best endeavours in publishing this information, HR&CA does not warrant the accuracy of the information, nor does it accept any responsibility for the advice contained herein. The advice and information is provided in good faith, as guidance to consumers only and is not and should not be regarded as definitive. Consumers are encouraged to seek their own independent advice, including legal advice, before embarking on any course of action.

Copyright (c) HR&CA Inc 2009

Approaching Politicians

Consumers often write to or approach politicians. This sometimes helps. A few cautionary suggestions:

1. Don't take this action before you try to resolve the matter yourself.
2. Don't write to all politicians at once. This often results in none assisting you.
3. It often helps when writing to the Minister to cc the opposition or an independent member – one other politician only.
4. If no satisfactory response is received from the Minister contact the other politician who you sent a copy to.

The Media

Use with caution, as this may not necessarily assist with your complaint, as others may become defensive.

Finally remember this process can be difficult & you need to ensure the process does not cause you excessive harm or stress.