



SUBMISSION

ACT Health Directorate
Consultation:
**Regulation of Health
Care Facilities**

September 2020

Health Care Consumers' Association

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Background

The **Health Care Consumers' Association (HCCA)** is a health promotion agency and the peak consumer advocacy organisation in the Canberra region. HCCA provides a voice for consumers on local health issues and provides opportunities for health care consumers to participate in all levels of health service planning, policy development and decision making.

HCCA involves consumers through:

- consumer representation and consumer and community consultations;
- training in health rights and navigating the health system;
- community forums and information sessions about health services; and
- research into consumer experience of human services.

ACT Health has put out a consultation document entitled *Health Facilities Regulation Consultation – Discussion Paper* (HCF Discussion Paper). This looks at the licensing of Health Care Facilities (HCF) in the ACT. The licensing regime has not been updated for almost 2 decades.

We shared the HCF Discussion Paper with our members and networks including a number of ACT based consumer organisations and HCCA consumer reference groups. We have drawn on this input in preparing our response.

1. Executive Summary

This review is long overdue. Since 2001 and the introduction of the *ACT Health Care Facilities Code of Practice 2001* (the Code), significant developments have taken place in improving the standards for quality and safety in health care, and broader regulatory systems. We are disappointed with the current review as illustrated in the HCF Discussion Paper and believe that the review of the Code should go further in recognising this changed landscape.

We want to see the Code revised to include that, as a condition of their license, each facility is required to:

- Engage with the National Accreditation Scheme and Australian Commission on Safety and Quality in Health Care to maintain accreditation against the highest possible relevant standards.
- Ensure all practicing health professionals within their facility appropriately certified and registered under the Australian Health Practitioner Regulation Agency (AHPRA), or in professions not covered under AHPRA, under their own recognised certifying body.

- Notify ACT Health of significant incidents, adverse events and near misses.
- Comply with the same quality and safety reporting required of public facilities.
- Comply with an agreed methodology and timeframe for investigating the Root Cause of patient harm in serious incidents.
- Include a requirement for informed consent and supported decision-making processes.
- Improve public reporting on the performance of health services across facilities and comply with the same quality and safety reporting standards required of public facilities.
- Provide ACT Health with data on the outcomes of the accreditation processes.
- Have systems in place to view and use information in My Health Record, as well as to upload event summaries and discharge summaries.

We recommend that before finalising any reforms of the Code, further consultation is required. This round of consultation should be used as a foundation for the next round allowing for the development of the Code in a way that best supports the safety and health of consumers receiving care in the ACT.

2. General comments

In the ACT the operator of a health care facility is required to hold a Health Care Facility Activity Licence in order to conduct the business of that facility. ACT Health is responsible “for the local licencing and regulation of public and private Health Care Facilities (HCF)—such as hospitals, cosmetic and day surgery centres and medical clinics—under the *Public Health Act 1997*”.ⁱ The Health Protection Service is responsible for the licensing and monitoring of private hospitals in the ACT.

Licenses are issued under Code, which is an enforceable Code of Practice under the *Public Health Act 1997*. The Code is an important document as it ensures processes are in place to protect the community from the public health risks associated with the operation and management of health care facilities. The Code has not been updated for almost two decades.

In general, we are disappointed with the approach to governance and accreditation standards in this consultation paper. We wrote to the Health Minister on 23 February 2018 (See appendix A) regarding the need for a comprehensive review of the Code. We note that the concerns raised by HCCA around the application of quality and safety standards, accreditation, patient centred care, digital health records and improved reporting have not been included within this consultation document. Work done in both Western Australiaⁱⁱ (WA) and Victoria have raised the bar on the licencing and regulation of health care facilities. Our view is that WA’s comprehensive review has set the gold standard. This is what we are aspiring to.

The HCF Discussion Paper focuses on the prescribed medical and dental procedures covered by the Code with little done to address the dramatic changes in ACT and national health policy and standards that have taken place over the past 19 years.

While we recognise that this is possibly out of scope for this process, we believe it is essential to recognise the important place private hospitals and HCF have in providing care to patients within the ACT. The ACT is a relatively small jurisdiction meaning that in some cases services provided within the private sector may be the only local option. Given this context we believe it is vital to involve the private hospitals and HCF within the service planning for the territory. This will help ensure that choices made within the private facilities do not adversely affect the provision of health care services within the ACT, place additional stress on the public sector or negatively impact on access to care for consumers.

The following two sections of our submission focus on:

- What has changed in the sector since the original creation of the Code and needs to be taken into account in this review; and
- Addressing a selection of the prescribed medical and dental procedure questions raised in the HCF Discussion Paper.

3. What has changed in healthcare since 2001

Many things have changed since 2001. Most importantly there has been a general increased commitment to consumer participation in the design, delivery, monitoring and evaluation of health services. This can be seen in the *ACT Health Quality Strategy 2018-2028: Person-centredⁱⁱⁱ, Safe and Effective Care* and the ACT's *Digital Health Strategy 2019–2029: Enabling exemplary person-centred care through digital innovation^{iv}* as well as many of the programs and policies listed below. While the discussion paper raises the need of health care facilities to meet the National Safety and Quality Health Service Standards (NSQHS Standards), which we heartily agree with, there are a number of other improvements in reporting and other standards that also need to be included.

Most of these issues were raised in our 2018 letter (Appendix A). However, since then there have been further developments which should also be highlighted. These include advances in consumer rights, digital technology, data reporting and national safety standards all have an impact on healthcare facility regulation and licencing. A baseline principle for HCCA is that for consumers to be able to make informed choices about where they choose to undertake our health care, we need to have access to information and data that is comparable across both the public and private sectors. Without equivalent information, it is impossible for consumers to make fully informed decisions.

3.1 Introduction of the National Scheme for the Regulation of the Health workforce

The National Registration and Accreditation Scheme (the National Scheme) was established in 2010. The National Scheme was established to ensure that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered. AHPRA is the national organisation responsible for implementing the National Scheme across Australia^v. To help keep consumers safe it is vital that all practicing health practitioners in disciplines covered by AHPRA within a HCF are appropriately certified and registered. For practitioners in disciplines not covered under AHPRA, they should be registered under their own recognised certifying body.

3.2 Improvement in public reporting on the performance of health services

Since the Code was last reviewed there has been a marked improvement in the requirement for public reporting on the performance of health services and an expectation from consumers that there is transparency in data. In 2010 the Federal Government introduced the MyHospitals website (<https://www.myhospitals.gov.au/>) with the intention to provide the public, clinicians, hospital managers, funders, researchers and policy-makers greater access to Australian hospital performance information. This is in line with the changes to the reforms to the Freedom of Information Act in 2010 which explicitly recognises that “information gathered by government at public expense is a national resource and should be available more widely to the public”^{vi}.

Being able to make informed choices about health care options is important for consumers for this to be supported consumers need easy access to comparable data. MyHospitals was an attempt to provide that. However, private health facilities are not required to report all the same metrics as public hospitals, so consumers cannot make informed choices between comparable information. Adding this requirement in the Code will ensure that consumers have access to information to make a properly informed choice when looking at our health care options.

3.3 ACT Government’s commitment to the proactive release of public interest data

In 2012 the ACT launched one of Australia’s first Open Data Portals (<https://www.data.act.gov.au/>), aimed at improving transparency and public confidence in government. In 2015 they released the Proactive Release of Data (Open Data) policy to support their data release on ‘disclosure by default’ philosophy. Both these developments highlight the ACT Government’s commitment to the proactive release of data as an aid to public awareness, transparency and accountability.

Requiring the reporting of and public release of health care facility quality and safety data is vital to ensuring transparency and accountability within the private sector. This can also assist facilities in highlighting the outcomes of the investments made towards continuous quality improvement. This is particularly important with regard to the practice of private health facilities treating public patients as part of efforts by government to help reduce hospital waiting times for public patients.

3.4 Performance and Accountability Framework and the National Health Information Agreement

In 2012 the Performance and Accountability Framework (PAF) was released. The Framework identifies 48 indicators against which performance will be measured under the domains of equity, effectiveness and efficiency. There are 17 hospitals indicators and 31 indicators for primary health care organisations.

The PAF integrates closely with the National Health Information Agreement which is an agreement between federal and state governments created to coordinate the development, collection and dissemination of health information in Australia, including the development, endorsement and maintenance of national data standards. The latest version of this agreement, signed on behalf of the ACT by the Director General of the ACT Health Directorate, commenced in October 2013^{vii}.

The ACT Government also introduced quarterly performance reports in 2009 as well as detailed reports on elective surgery waiting times by specialty, campus and surgeon.

3.5 Root Cause Analysis Processes

In NSW the Private Health Facilities Act 2007 No 9 (Part 4) requires the private health facility to undertake a Root Cause Analysis (RCA) when a reportable incident has been reported to the licensee of the facility. The RCA team is to be formed within 30 days after that incident. NSW Health has a particular commitment to the RCA methodology. From our perspective it is important to have an agreed methodology for investigating the Root Cause of patient harm in serious incidents, wherever they occur and to have consistent timeframes in the revised Code for the ACT.

Reporting of, and response to, hospital acquired infections is a priority area of focus for consumers. We are very keen to see a requirement in the Code for private hospitals in the ACT to report hospital acquired infections. Currently private hospitals are required to report compliance with hand hygiene standards, which is positive. However private hospitals are not required to supply data to the National Staphylococcus Aureus Bacteraemia Data Collection (NSABDC). This is voluntary. In 2016-7 no private hospital in the ACT reported data^{viii}, this is the case even when private institutions were collocated with public health services. We would like to see this addressed.

3.6 The Australian Charter of Healthcare Rights

In 2009 the first *Australian Charter of Healthcare Rights* was introduced, with the second edition being released in May 2020^{ix}. This saw the formal, national endorsement of a document which specifies the key rights of patients and consumers when seeking or receiving health care services.

3.7 Informed consent

The importance of informed consent is highlighted by the ACT Government's online resources^x, the *Australian Charter of Health Care Rights* and through the work of the Australian Commission on Safety and Quality in Health Care who released the *Informed Consent in Health Care Fact Sheet for Clinicians* in 2020^{xi}. This concept covers a broad range of information that consumers need to be able to make informed decisions about our health care. This includes access to facility quality and safety data, data around waiting list times, procedure costs and co-payment information and any conflict of interest information (for example any financial or other interests the referring physician has in the referred to facility or service).

3.8 Supported decision making

Supported decision making processes are vital for a range of health consumers, including the elderly, and people living with disability or mental illness. With the inclusion of mental health services within the prescribed acts list, it is important to include a requirement for appropriate supported decision-making processes within the Code. This will ensure that ensure that facilities are aligned with the ACT *Mental Health Act 2015* and consumers preferences for treatment, care and support are respected. The processes should include, but not be limited to, those defined in the Act like advance agreements, advance consent directions and nominated persons. Programs like *My Rights, My Decisions*^{xii} help consumers express themselves while they have decision-making capacity, to ensure that our views are respected if they have reduced decision-making capacity in the future and can be leveraged as part of this requirement.

3.9 Digital Health and My Health Record

The introduction of the Personally Controlled Electronic Health Record in 2012, more recently known as My Health Record, was a significant development. This is important in health care as it gives consumers access to important information about our own health care including medicines, results from pathology and diagnostic imaging.

Digital health records management and service delivery has becoming more and more prevalent, this can be seen in the ACT's Digital Health Strategy 2019-2029 and the increased utilisation of telehealth and other digital health provision during the COVID-19 crisis. The Code needs to recognise the importance of this shift in

improving patient care while highlighting the need for secure and confidential digital service provision and record keeping. Consumers want Health Care Facilities to have systems in place to be able to view and use information in My Health Record, as well as to upload event summaries and discharge summaries as part of these records.

4. Consultation Review Questions

While we generally agree with the recommended changes in the discussion paper, there are a couple of areas of concern that we have raised below.

4.1 Comments regarding Table 1, Prescribed Health Services

The prescribed health services list detailed in Table 1 (that is, those that require a licence to be carried out), is generally an improvement on the list currently in the Code. There are a couple of areas that may require further clarification to ensure that the changes do not reduce the range of models of care available to the Canberran community. In the case of obstetric services, it is important to ensure that midwifery and home birthing options are not adversely affected by these changes, particularly with the work the ACT has done with its Home Birth trials^{xiii}.

The addition of mental health also needs to be considered carefully, especially the possible effect the changes could have on the range services available consumers e.g. community residential services. It is currently our understanding that services like mental health community residential facilities should not be affected by these changes however it is still important to reach out to and listen to consumers, community groups and service providers in these areas, to ensure that the range of services available are not negatively impacted.

4.2 Anaesthesia and Anaesthesia in Dentistry

The consultation document discussed the possibility of mobile anaesthesia and anaesthesia use in dentistry, given the importance of mobile health service provision through mobile dentistry and other similar services. We want to highlight the need for the government to consult with these services and service users directly about these changes to ensure that they are not adversely affected. These services provide vital gap coverage for some of Canberra's most vulnerable populations that would otherwise not have easy access to health services.

4.3 Cosmetic Surgery

In this area we look to the *Health Services (Health Service Establishments) Regulations 2013*^{xiv} from Victoria where all facilities that provide liposuction procedures need to be appropriately licenced as a health care facility. In the interest of the safety of ACT residents and given the invasiveness of liposuction procedures it is recommended that the ACT follow the same standard as Victoria in this case.

4.4 Liposuction and fat transfer volume limits

Regarding the 500ml fat transfer limit we also recommend following the example provided by Victoria, with a limit of 200ml^{xv}. This allows for minor adjustments while ensuring that more major modifications are carried out in appropriately licenced facilities.

4.5 Accreditation and Governance

HCCA strongly supports the requirement that licensed health care facilities maintain accreditation with the applicable NSQHS Standards and other work of the Australian Commission on Safety and Quality in Health Care (The Commission). Currently The Commission has a number of other relevant standards that are either released or under development such as the National Safety and Quality Primary Health Care (NSQPHC) Standards^{xvi}, the Clinical Care Standards^{xvii} and the National Safety and Quality Digital Mental Health (NSQDMH) Standards^{xviii}.

We also support bolstering the governance and reporting requirements. We believe they should go further than what is detailed in the HCF Discussion Paper. Currently the Paper only requires the reporting of serious adverse events e.g. incidents under the Australian sentinel events list. It is important to note that there are other areas such as the National Staphylococcus Aureus Bacteraemia Data Collection or Hand Hygiene that are also important measures of quality and safety. It is also important to report on other adverse events, such as near misses, as without transparency in these areas issues within a facility can go undetected and uncorrected putting ACT residents at risk of further harm. Reporting standards for both and private health care facilities need to take account of the various developments listed above, to ensure that a new Code uses a gold standard transparent public reporting approach for consumers and the public.

Consumer representation is also a vital part of modern health care governance. To ensure the consumer voice is heard, healthcare facilities need to include consumer representatives as an integral part of their governance structures and processes. Including a requirement to include independent, community supported (by an established consumer advocacy organisation), consumer representatives within the Code will help to move health care facilities within the ACT further along the path to a fully patient centred model of care.

There are other important accreditation requirements that any licenced health care facility should be required to have, such as accessible, transparent and operational complaints processes and clearly articulated privacy policies. These requirements should be clearly articulated within the Code.

5. Concluding Remarks

We thank you for the opportunity to provide feedback on the Discussion Paper on Health Care Facility Licensing and Regulation. We have a keen interest in ensuring high standards of safety and quality for consumers in relation to health care facilities in the ACT.

HCCA is happy to be contacted to clarify any issues we have raised in our submission and looks forward to continuing to be involved in the ACT's development of more comprehensive licensing and regulation processes for health care facilities.

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ⁱ <https://health.act.gov.au/about-our-health-system/consumer-involvement/community-consultation/consultation-regulation-health>

ⁱⁱ See the Western Australia's Department of Health, *Licensing standards and guidelines to obtain a licence for a private healthcare facility*: https://ww2.health.wa.gov.au/Articles/J_M/Licensing-standards-and-guidelines-to-obtain-a-licence-for-a-private-healthcare-facility (Accessed 10 September 2020)

ⁱⁱⁱ See <https://www.health.act.gov.au/sites/default/files/2018-10/Quality%20Strategy%20Booklet.pdf> (Accessed 10 September 2020)

^{iv} See <https://www.health.act.gov.au/sites/default/files/2019-05/Digital%20Health%20Strategy%202019-2029.pdf> (Accessed 10 September 2020) and <https://www.health.act.gov.au/digital/strategy> (Accessed 10 September 2020)

^v <https://www.ahpra.gov.au/>

^{vi} See <https://www.oaic.gov.au/freedom-of-information/rights-and-responsibilities> (Accessed 17 September 2020)

^{vii} See <https://meteor.aihw.gov.au/content/index.phtml/itemId/182135>, download a copy of the agreement here https://meteor.aihw.gov.au/content/item.phtml?itemId=583436&nodeId=file53be175f402ec&fn=NHIA_2013.pdf (Accessed 18 September 2020)

^{viii} AIHW (2017) *Staphylococcus aureus bacteraemia in Australian hospitals 2016–17: Australian hospital statistics* <https://www.aihw.gov.au/getmedia/a06ffeb9-b18b-407d-a3ba-db0fdb492daa/aihw-hse-198.pdf.aspx?inline=true> Table 5, p.12 (Accessed 10 September 2020)

^{ix} See the *Australian Charter of Healthcare Rights (second edition)* and the *Australian Charter of Healthcare Rights (first edition)* <https://www.safetyandquality.gov.au/australian-charter-healthcare-rights> (Accessed 10 September 2020)

- ^x Informed consent, <https://health.act.gov.au/about-our-health-system/consumer-involvement/informed-consent> (Accessed 10 September 2020)
- ^{xi} <https://www.safetyandquality.gov.au/publications-and-resources/resource-library/informed-consent-fact-sheet-clinicians>
- ^{xii} <https://www.actmhc.org.au/mrmd/>
- ^{xiii} <https://www.health.act.gov.au/hospitals-and-health-centres/centenary-hospital-women-and-children/maternity-services-chwc-1>
- ^{xiv} *Health Services (Health Service Establishments) Regulations 2013* <https://www2.health.vic.gov.au/Api/downloadmedia/%7BE800D67A-57DC-4E37-9D8B-EA940EA6589D%7D> (Accessed 10 September 2020)
- ^{xv} See the Victorian Government fact sheet *Cosmetic Surgery How cosmetic surgery is affected by changes to legislation* <https://www2.health.vic.gov.au/Api/downloadmedia/%7B9662F3E5-B684-407F-89FC-10A6B8DBF28A%7D> (Accessed 10 September 2020) and the *Health Services (Health Service Establishments) Regulations 2013* <https://www2.health.vic.gov.au/Api/downloadmedia/%7BE800D67A-57DC-4E37-9D8B-EA940EA6589D%7D> (Accessed 10 September 2020)
- ^{xvi} <https://www.safetyandquality.gov.au/standards/national-safety-and-quality-primary-health-care-nsgphc-standards>
- ^{xvii} <https://www.safetyandquality.gov.au/standards/clinical-care-standards>
- ^{xviii} <https://www.safetyandquality.gov.au/standards/national-safety-and-quality-digital-mental-health-standards>



APPENDIX A:

2018 HCCA Letter to Minister on the Licensing of Private Hospitals

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