



Health and Community Services
Complaints Commissioner

Public Summary:
Investigation into the provision of
health services to people with a
disability by SA Health in acute care
settings.

July 2020

Introduction

This public summary has been created following my investigation into whether the provision of health services to people with disabilities in acute public hospital settings and care facilities by SA Health meets generally acceptable standards.

In accordance with the [Health and Community Services Complaints Act 2004 \(SA\)](#) (the Act) SA Health were provided with opportunities to make representations on the draft report and this public summary.

This is a summary of the final report into the matter. The summary details my final findings, conclusions and recommendations, while protecting sensitive and private information of the complainants.

There are reports the previous Health and Community Services Complaints Commissioner said he would fully release parts of the report and specifically, the expert opinion. I am also aware of public calls for the release of the expert opinion.

In my view, this is a mistake. I can think of no situation in my career as a complaints resolution practitioner where the release of an expert opinion was appropriate or warranted. The process of investigation gathers information from various sources to inform the office's findings and recommendations. I would not release the transcript of a witness to an investigation publicly and will not release expert opinions for the same reason. The benefit of an office like the HCSCC is that consumers, complainants, service providers, witnesses and experts offer their information in the knowledge it will not be shared more broadly. To do so would fundamentally damage the integrity of the office.

In addition, apart from it being contrary to our legislation, the nature of some of the matters raised here is distressing.

I do not want the complainants having to relive these experiences through a public examination of their complaints or make a public spectacle of their experiences.

Background

Between 2015 and 2017, the Office of the Health and Community Services Complaints Commissioner (HCSCC) received numerous complaints about the provision of health services to people with disabilities in acute public hospital settings and care facilities.

Seven complainants and eight complaints were chosen to form part of the investigation.

The consumers varied in age and gender and all had a variety of different disabilities.

The Investigation

Having determined to investigate the matter the former Commissioner, Mr Steve Tully, commissioned an independent expert opinion to help him in the investigation.

Separate to the Act which clearly outlines how the HCSCC must protect privacy, consumers and service providers must have confidence the HCSCC manages their complaints without fear of the information they provide ending up in the public domain.

The expert was requested to provide a response to the following:

In those particular cases and at a systemic level could the services provided by the Hospitals and the Care providers be considered to have breached the generally accepted standards for the provision of services in these circumstances. If so:

What was the breach?

How might this breach have been prevented?

How might this breach be remedied?

How might this breach be prevented from recurring?

Were there any systemic issues or concerns identified? If so:

What were the systemic issues/concerns identified?

What recommendations would you make to address these identified systemic issues/concerns?

Have any of the HCSCC Charter of Rights been infringed in these particular cases and at a systemic level?

What was the infringement?

How might this infringement have been prevented?

How might this infringement be remedied?

On 12 June 2018, my office received a copy of the independent expert opinion.

On 22 August 2018, I wrote to Dr Christopher McGowan, the newly appointed Chief Executive of SA Health and provided him with a copy of the expert opinion and an executive summary of the investigation.

In that letter, I requested Dr McGowan to consider the information provided and inform me of the steps being undertaken to prevent and or minimise similar incidents within the health system.

Issues under Investigation

Whether the systemic delivery of services to patients with disabilities in acute settings breached the generally accepted standards

The opinion addressed breaches of generally accepted standards for each complaint.

The expert considered the information provided to her by my office and discussions with the complainant and family members of the relevant patients.

The opinion highlighted a number of issues arising from the seven complaints, the themes of which are:

- Attitude and Values of Hospital Personnel;
- Inadequate Recognition of and Attention to Special Needs;
- Ineffectiveness of Internal Resolution Processes;
- Hospital Provision of Support Workers;
- Consent issues;
- Guardianship issues;
- Dual diagnosis issues; and
- Communication with people with disabilities, guardian and carers.

The expert found that the complaints highlighted multiple breaches of the HCSCC Charter, while many raise questions of clinicians' compliance with the *Consent to Medical Treatment and Palliative Care Act 1995* (SA).

The opinion then systematically and logically explained how each of the issues was identified. I agree with those findings.

Whether any of the Health and Community Services Complaints Commissioner Charter of Rights were breached in these particular cases and at a systemic level

The Act allows me to consider the principles outlined in the *Health and Community Services Charter of Health and Community Service Rights* (HCSCC Charter) to determine whether the systemic delivery of services to patients with disabilities by SA Health in acute settings breached the generally accepted standards

The expert found that on a systemic level all rights of the HCSCC Charter and three of the guiding principles, namely diversity, decision making capacity and genuine partnership were breached or likely breached. I agree with this.

The public can find out about the Charter, its guiding principles and their rights on our [website](#).

The Act allows me to consider if a health service provider has acted in any other manner that did not conform with the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates.

The expert also found a systemic breach of the *Consent to Medical Treatment and Palliative Care Act 1995*. I agree with this.

Recommendations to address the identified systemic issues and concerns

The expert made the following recommendations:

Recommendation 1

That the HCSCC request a meeting with the Minister for Health and Wellbeing (the Minister).

Recommendation 2

That the meeting has two parts

- 1. In the first part of the meeting, four or five of the complainants identified in this systemic review have an opportunity to present their experience and concerns to the Minister.*
- 2. After the complainants have left the meeting, that a proposal, in accord with recommendations 3 to 12 that follow, be put to the Minister for his consideration.*

Recommendation 3

That a Disability Health Plan (DHP) be developed.

Recommendation 4

That the DHP be launched and auspiced by the Minister.

Recommendation 5

That a senior person with experience in the disability sector be appointed to coordinate the development of the DHP.

Recommendation 6

That the coordinator report to the Minister.

Recommendation 7

That all major public sector hospitals be involved in a DHP Development Committee (DHPDC).

Recommendation 8

That members of the DHPDC hold senior positions within their hospital (e.g. Director or Nursing or Acting Director of Nursing) and be accountable for ensuring DHP implementation.

Recommendation 9

That the DHPDC members be a point of resolution, on a day-to-day basis, where there are access issues and/or adverse events within their hospital.

Recommendation 10

That consideration be given to the establishment of a Communication Partners Service (to assist, for example, with consent issues) within the health system. Note that, given a service is funded to provide volunteer Communication Partners within the justice system, it may be possible to build on that service cost-effectively.

Recommendation 11

That consideration be given, in the development of DHPs, for initiation of a 'passport' for people with disabilities that may identify, inter alia, communication and other assistance needs, details of formal and informal guardians, and consent arrangements.

Recommendation 12

That a policy specifying the role and responsibilities of public mental health practitioners regarding people with dual diagnosis be developed, and its implementation be actively monitored to ensure practice consistent with the policy.

I note the recommendations made and agree with the essence of recommendations three to eleven.

However, in my discretion under section 54(3) of the Act to make comments and opinions and recommendations for any action considered appropriate, I am not bound by those recommendations.

I believe a state based Disability Health Plan (herein referred to as a SA Health Disability Access and Inclusion Plan) is a required framework to ensure people with disabilities receive access and appropriate support and care in acute hospital settings.

Response from SA Health

I received a number of responses from the Chief Executive of SA Health during the course of the investigation.

To their credit, SA Health does not dispute the expert's findings and acknowledge the issues raised in this investigation are:

concerning and the importance of the supports on offer to patients with disabilities during admission is paramount.

SA Health's correspondence expresses a commitment:

to ensure that all people with a disability have full and equitable access to health services, resources, decision making, information and facilities within the public health system.

In particular, SA Health indicate they agree with the recommendations that the development of a state SA Health Disability Access and Inclusion Plan is a pivotal initiative to drive the changes required to improve the delivery of health services in acute settings for people with disabilities and their families and carers.

SA Health indicate they are in the process of developing a SA Health Disability Access and Inclusion Plan and wrote:

The development of both a SA Health and Local Health Network Disability Access and Inclusion Plans provide a systemic approach to identifying barriers to inclusion and the actions required to overcome and the opportunities for best practices and participation. This approach also provides a framework to support the current disability reforms which focus on supporting individual choice and control.

SA Health advise they have been working closely with the National Disability Insurance Agency (NDIA) to implement the National Disability Insurance Scheme (NDIS) in South Australia.

As part of that process, SA Health have:

- Made changes at a state level to the SA Health system roles and governance. The governance changes have included the establishment of Boards at the Local Health Network level.
- Worked with the NDIA to "implement a SA Hospital Discharge Project which aims to streamline discharge processes and linkages between acute and community services". As a result SA Health:
 - Has worked with the NDIA through the pilot project to develop and implement NDIA's National Disability Insurance Scheme (NDIS) Health Liaison Officer positions. These roles are now being implemented across Australia by the NDIA.
 - Has worked with the NDIA to pilot and develop a *Hospital Discharge Framework and a Patient Journey map* to assist Health and NDIS staff.

- ...and DHS [Department of Human Services] continue to advocate and participate in a range of national forums to reduce hospital discharge delays related to the NDIS.
- Advised:

that as at 1 October 2019, the NDIS commenced approvals for a range of Disability Related Health supports to be included into NDIS participant's plans. SA Health has worked closely with ...NDIA and the NDIS Quality and Safeguards Commission to introduce these changes in South Australia. Information sessions for community service providers and for Local Health Networks have been held to assist in the smooth implementation of Disability Related Health Supports with funding for nursing and health care included into NDIS plans where needed.

- Advised that:

arising from the NDIS and Public Health National Working Group, SA Health is drafting a national statement of intent on 'Concurrent Supports during Hospitalisation', which aims to provide clarity about the responsibilities of NDIS providers in public hospital. This is in recognition of the importance of continuity of NDIS provided supports while the person with a disability is in hospital. The draft...statement is currently being considered as part of national discussions regarding the health and disability interface issues.

SA Health has informed me the following are currently in place:

- SA Government Disability Action and Inclusion Plan Strategy;
- Disability Access and Inclusion Plans (DAIPs) for each Local Health Network.

The Local Health Network Disability Access and Inclusion Plans:

... identify actions required to meet the SA Government Disability Action and Inclusion Plan Strategy. The plans are a focus on strategies across the health system and are reported on centrally. SA Health is also a member of an across Government Disability Access and Inclusion Plan Committee which supports the further development of DAIPs.

SA Health has said they aim to implement and publish the state based SA Disability Access and Inclusion Plan – Inclusive SA by 31 October 2020 following consultation with state authorities.

They also state the South Australian State Disability Inclusion Plan – Inclusive SA provides:

... a clear vision for promoting accessible, inclusive and respectful treatment for people living with a disability has been articulated.

They further state the existing Local Health Network Disability and Inclusion Plans need to be reviewed and aligned:

... with the four priority themes and associated actions of the new State Disability Inclusion Plan and will comply with the SA Disability

Inclusion Act (2018) requirements for State authorities to consult, develop and publish a Disability Access and Inclusion Plan by 31 October 2020.

Information received from the Central Adelaide Local Health Network (CALHN) indicates CALHN has reviewed and implemented their Disability Access and Inclusion Plan 2019-2023.

I have reviewed the CALHN Disability Access and Inclusion Plan 2019-2023 and am satisfied it appropriately addresses the systemic concerns identified in the investigation.

CALHN also advised they are:

... undertaking various means to make this plan more widely available internally, and to the broader public as outlined in the DHS Disability Access and Inclusion Plan Tool Kit and Guidelines document.

I consider it appropriate that CALHN are taking further action to ensure the plan is accessible internally and to members of the public.

At the time of writing this summary, I am not aware of the progress made by other Local Health Networks to implement and/or review their respective Disability Access and Inclusion Plans. I note they do not appear on the SA Health website.

I acknowledge this review process is a lengthy and detailed process and may take some time to complete. I will actively monitor the progress of SA Health in achieving these undertakings.

Additional action taken by SA Health to address the systemic concerns identified in the investigation include:

- implementing a Centre for Disability Health Project;
- implementing a Borderline Personality Disorder Collaborative (1 July 2019);
- implementing an Equity and Access in Health Care Policy Directive; and
- implementing an End of Life Care for South Australians (Strategic Plan) April 2018.

I note these outcomes arise out of a complaint that informed my investigation report as part of the Southern Adelaide Local Health Network (SALHN) review of their palliative care policies and practices. This included implementation of an "Information for Service Providers SA Community Care End of Life Care Services" brochure.

SA Health's action plan is consistent and reflective of the nature and essence of the expert's recommendations.

SA Health acknowledge the systemic concerns identified in the report and assure me they are continuing to progress the actions outlined in the report that I deemed were reasonable and would adequately resolve this issue.

Findings

I find the claims raised in the complaints from 2015 to 2017 which form the basis for the systemic investigation are substantiated.

I find the systemic delivery of acute services by SA Health hospitals to people with disabilities to be in breach of the HCSCC Charter's five guiding principles and three of the rights, namely Diversity, Decision making capacity and Genuine Partnership.

I am satisfied, based on the historical evidence before me, the systemic delivery of acute services by SA Health hospitals at that time, posed an unacceptable risk to the health or safety of members of the public with disabilities and their family and carers.

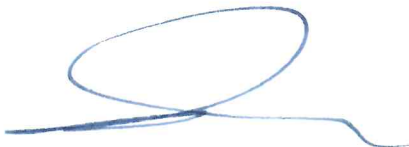
However, I consider the various initiatives and actions taken by SA Health as outlined in this report are reasonable and will adequately resolve the systemic concerns identified in the investigation.

I acknowledge a great deal of work is being carried out by SA Health, in partnership with various other agencies, such as the NDIA, to establish the necessary framework for a state based SA Health Disability Access and Inclusion Plan, and implement the necessary changes required to ensure people with disabilities access and receive quality care when hospitalised. Furthermore, I acknowledge these changes are currently underway and will take some time to complete.

In their written submissions, SA Health acknowledge my findings and agree to my recommendations and state that, once completed, they will provide the HCSCC with confirmation and a copy of the requested documents.

Pursuant to section 54(3) of the Act, I recommend SA Health confirm completion of all action plans and provide me with the following by Friday 4 December 2020:

- a copy of the implemented state based SA Health Disability Access and Inclusion Plan
- revised Local Health Network's Disability Access and Inclusion Plans
- actions taken to make the above plans accessible internally and to members of the public.



Associate Professor Grant Davies
Health and Community Services Complaints Commissioner

30 July 2020