

Inquiry - Health Practitioner Regulation National Law and Other Legislation Amendment Bill 2024

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FROM NUMBERS TO NARRATIVES:

Strengthening Feedback
Mechanisms with Insights into the
Health Practitioner Regulation
Amendment Bill

*Submission to the Health Practitioner
Regulation National Law Amendment Bill
2024*

September 2024



Care Opinion Australia is committed to supporting reconciliation among Indigenous, Aboriginal and Torres Strait Islander peoples and non-Indigenous Australian people.

In keeping with the spirit of reconciliation, we acknowledge the Traditional Owners of the lands. We wish to pay respect to their Elders – past, present and emerging – and acknowledge the important role Aboriginal and Torres Strait Islander peoples continue to play with our community.



Introduction

Care Opinion Australia is a not-for-profit, public online platform that facilitates transparent, two-way feedback about personal healthcare experiences in the form of narratives. At Care Opinion, we believe that narrative feedback, initiated by patients, is a powerful tool for healthcare improvement, shifting the focus from numbers to real, lived experiences.

In our response to the Parliamentary Inquiry into the *Health Practitioner Regulation National Law Amendment Bill 2024*, we are deeply concerned about the alarming 223% increase in sexual assault complaints against practitioners in Queensland. This surge highlights the critical need for reform, and Care Opinion has valuable insights to contribute. Our platform offers a unique perspective on the growing need for transparency and the shifting expectations of consumers in a digitalised world.

As seasoned stakeholders in patient experience, Care Opinion Australia has collected over 16,000 patient stories in the 12 years we have been operating. In addition, our parent platform, Care Opinion UK, has received over 676,632 stories since its establishment in 2005. Our extensive database of feedback reveals key insights into how patients and their families perceive healthcare services and engage with the system. This feedback is not simply about airing grievances - it is a tangible expression of patients 'caring for care' (Mazanderani et al, 2021). Patients share their stories in an attempt to ensure that negative experiences are not repeated, actively participating in the improvement of healthcare.

In this sense, patients are the lens through which we have approached this inquiry. Care Opinion brings **extensive expertise in transparency, anonymity, and patient-centred feedback processes**. Our response to the inquiry addresses key areas within the amendment:

1. Increased transparency for sexual misconduct cases
2. Stronger protections for notifiers (anonymity)
3. The need for user-friendly, patient-centred processes (*not addressed in the amendments*)

At Care Opinion, we have spent over 12 years listening to patients and their families, and it is through this wealth of knowledge that we present our response to the inquiry. Our findings reflect the voices of the people we serve.

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1. Increased Transparency on Sexual Misconduct

The shift in medicine's 'gaze'

The shift towards digital media has profoundly altered the traditional medical gaze. Historically, healthcare took place behind closed doors, where practitioners observed patients with limited transparency. Now, in a world driven by digital platforms, that gaze has shifted to a space where patients are now increasingly observing practitioners. This new "gaze" reflects the transparency that comes with digital tools, exposing more of what happens inside the surgical room to public scrutiny¹. However, while transparency in healthcare has long been discussed, its actual implications are only beginning to be fully explored.

The panoptic fallacy

When digital feedback mechanisms, such as online reviews, entered healthcare settings, reactions from practitioners were mixed. Transparency has often been perceived as a form of surveillance, as suggested by Nguyen, leading some to believe it may erode public trust by forcing an over-explanation of complex processes, encouraging concealment, and creating what some theorise as a "panoptic" healthcare system². This perspective assumes that transparency leads to more oversight and control, potentially hindering authentic interactions.

However, this view is a fallacy. Research indicates that transparency, when approached not as surveillance but as a tool for patient empowerment, does indeed foster trust between the public and healthcare systems. Our experience at Care Opinion shows that when patients are given the space to share their experiences transparently, it fosters accountability and a sense of shared responsibility in healthcare delivery. Ramsey et al.'s analysis on digital patient feedback reinforces that transparency doesn't merely surveil, but it also shifts the locus of power, enabling patients to actively contribute to the quality of care they receive³.

Transparency in action

But what does this transparency look like in practice? Consider the story shared on Care Opinion titled "[System error - I felt the doctor blamed me](#)" by user [REDACTED]. The author wrote about their obstetrician suggesting Care Opinion as a way to share their negative experience, stating:

*"I consulted with my obstetrician who informed me of the care opinion option, and I feel it is important to share my story because it's not okay for anyone to have this experience."*⁴

This story exemplifies how transparency allows patients to actively prevent future harm. The author used Care Opinion as a platform to resist the reoccurrence of similar mistakes, showing how transparency can be harnessed for real change.

This mirrors the potential of transparency in sexual misconduct cases. While the specifics of the cases may remain confidential, the publication of the tribunal's decisions - whether it involves disqualification or restrictions - should serve as a permanent record of the practitioner's actions. This not only ensures accountability but also gives patients the power to make informed choices, knowing that past misconduct won't be hidden or erased.

¹ Montgomery, Powell, Mahtani,, & Boylan, 2022

² Nguyen, 2022

³ Ramsey, O'Hara, Lawton, & Shead, 2023

⁴ Care Opinion Australia, 2022

The real strength of transparency lies in making tribunal decisions visible, offering patients reassurance that their experiences lead to systemic changes with long-lasting effects. This not only benefits patients who have experienced sexual misconduct, but also enables future patients to make an informed choice of service provider. By ensuring these decisions are public, patients become active contributors to a healthcare environment that prioritises their safety and dignity. This approach empowers patients to trust the system, knowing their concerns are, and will be taken seriously, fostering a more responsive healthcare landscape focused on lasting improvements and patient safety

2. Stronger Protections for Notifiers (Anonymity)

The ‘anonymity paradox’

Stronger protections for individuals making complaints about practitioners are essential yet often undervalued. Anonymity for the complainant, where they remain unknown to the practitioner but identifiable to the national board, is crucial for ensuring a safe and constructive resolution. Care Opinion frequently encounters the ‘anonymity paradox’, where clinicians view anonymity as a barrier to action, while patients see it as a necessary prerequisite. This paradox can be felt as a prevention for services from acting on feedback unless they know exactly who the author is. For example, in 2017, a Clinical Practice Manager at an NHS hospital in Scotland expressed:

“They want to get their views across, but they don’t want to be named or singled out. And they said, as they usually do, ‘We need to know who that was. We can’t do anything unless you tell us which patient it is.’ We said that’s not really how it works, we’d like to think you’d make a change for all your patients, not one individual.”⁵

This highlights the real power of anonymous feedback - it addresses systemic issues rather than focusing on individual blame. The anonymity paradox, often cited as a reason for inaction, has no real basis in reality; services can and should act on anonymous feedback, understanding that if one patient experienced the issue, others likely have as well. Anonymous feedback often allows systems to improve broadly, and ignoring it diminishes opportunities for meaningful change.

Navigating anonymity in sexual misconduct cases

In cases of sexual misconduct, the situation requires careful handling. While it is essential for the practitioner to be identified by the patient, maintaining the patient's anonymity to the practitioner is equally important for their safety and comfort, at least initially. The national board, however, must still be able to identify both parties to ensure a thorough investigation and proper accountability. Care Opinion’s process mirrors this balance: while authors are initially identifiable to us, they remain anonymous to the service they are discussing until they choose to make direct contact.

⁵ Locock, et al., 2020

This model is one we recommend the Amendment Bill takes into consideration. By allowing patients to remain anonymous to the service while still ensuring that feedback leads to actionable insights, this approach offers protection without compromising patient safety. In one recent Care Opinion story titled [“Emergency Admission”](#), the patient highlighted their concerns about the lack of anonymity, stating:

“My final grievance is that the hospital is seemingly not well set up to receive consumer feedback and in fact seems to discourage it with its processes. Written feedback can only be sent to the hospital via identifiable email or through a phone call. I have sent a similar response to this story via email, but am concerned that someone could link my name to the review despite me requesting for the feedback to not be identified.”⁶

This exemplifies how patients need anonymity to feel secure in sharing feedback. By maintaining anonymity, patients are encouraged to speak freely about their experiences, and this helps address systemic or very serious, sensitive issues that may otherwise go unreported. It reinforces the idea that protecting patient identity is key to fostering open, honest dialogue in healthcare.

Rural communities

In rural and country settings, anonymity takes on an even more critical role. Patients in these areas often know their healthcare providers personally, which makes providing feedback without anonymity risky⁷. In smaller, tight-knit communities, reporting concerns can have significant social ramifications. Ensuring that patients in rural areas have safe, anonymous avenues for feedback is essential, as their concerns may involve practitioners who are also community members, neighbours, or even family friends.

Stronger protections for notifiers must ensure that individuals can make complaints anonymously to the service while remaining identifiable to the national board. Only through such measures can we create a safe, supportive, and patient-centred feedback system.

The need for a ‘middle ground’

Another crucial aspect of protecting victims of sexual misconduct is the presence of a middle ground - a mediator between the individual and the health service or practitioner involved. This intermediary role, currently undertaken by the national board, is essential in safeguarding victims while ensuring that complaints are addressed thoroughly and appropriately. By maintaining this structure, where the national board can identify the practitioner but the patient remains protected, victims are shielded from direct confrontation with the service or individual they are reporting. This layer of protection encourages victims to come forward without fear of retribution or further distress, while still allowing the system to hold practitioners accountable. Maintaining this balance of accountability and protection is key to fostering trust and transparency in sexual misconduct cases. The board’s role as mediator ensures that investigations are handled with care, and that victims can focus on their recovery rather than navigating complex or intimidating reporting processes.

⁶ Care Opinion Australia, 2024

⁷ Garside, Ayres, Owen, Pearson, & Roizen, 2002

3. Creating User-Friendly and Patient-Centred Processes

Ensuring clear complaints pathways

Though not directly addressed in the *Health Practitioner Regulation National Law Amendment Bill 2024*, we feel compelled to advocate the need for a complaints process that is user-friendly and patient-centred. This is crucial for receiving valuable feedback about sensitive matters like sexual misconduct, where many patients may not fully understand their experience.

In the case of *2021 Medical Board of Australia v Gopal*, it was noted that the patient, referred to as Patient C, felt confused and uncomfortable following the consultation. The board reported that:

“She said that she felt confused because the consultation made her feel odd and awkward. She said she should have questioned Dr Gopal’s conduct at the time but she ‘talked myself out of it and told herself it was probably nothing.’”⁸

This is a common theme among victims of sexual misconduct, who often do not know where to turn or who will listen. Having a user-friendly, patient-centred process can help alleviate this confusion, making it easier for victims to find the right information, seek support, and understand the steps involved. This type of system, as proposed by the amendment, must be robust but also accessible to the very people it seeks to protect. Awareness is as critical as the process itself; victims need to know the system exists, how it works, and that it is safe and supportive.

Leveraging phone support

Another critical element of a patient-centred feedback process is the accessibility of responsive phone support. Often, victims of sexual misconduct, or any patient navigating the complexities of healthcare systems, may be uncertain about whether they are in the right place or how to proceed. At Care Opinion, allowing feedback to be told via phone has proven to be invaluable in guiding consumers through their journey, compassionately answering questions in real-time, and reassuring concerned people who are fearful and unsure of whether to give feedback.

A responsive phone system not only provides reassurance but can also direct patients to the appropriate services more quickly and efficiently. It offers a more immediate form of communication that empowers individuals, helping them feel supported from the first point of contact. Having someone available to explain the process or confirm whether they’re in the right place can alleviate confusion and ensure that patients feel confident moving forward. Integrating this element into the feedback and reporting mechanisms for sexual misconduct cases is vital to making the process truly patient-centred and accessible.

Utilising online trends

Patients are also increasingly in control of their care and tend to report their experiences in ways that are familiar and accessible to them. In an age of growing technology and social media use, it’s crucial to integrate themes of ease of access and readily available reporting systems⁹. Online feedback has become a vital complement to traditional reporting mechanisms, and the *Health*

⁸ Medical Board of Australia v Gopal (Review and Regulation), 2024

⁹ Ramsey, Sheard, Lawton, & O’Hara, 2023

Practitioner Regulation National Law Amendment Bill 2024 should consider enhancing systems to align with the needs of our modern, tech-savvy society.

Online feedback is not only valuable for its ease of access, but it also plays a critical role in patient safety. It allows patients to report safety incidents in real-time, capturing concerns that may otherwise go unnoticed by staff. A recent study, *Online Patient Feedback as a Safety Valve*, conducted by Alex Gillespie and Tom W. Reader, found that online feedback often highlights unnoticed or unresolved safety incidents, serving as an independent “safety valve.”¹⁰

The immediacy of online feedback gives it a distinct advantage. Patients can report concerns as they occur, from a place they feel safe, leading to real-time safety responses. This allows services to address issues before they escalate. At Care Opinion, we see this in practice regularly. The right feedback process ensures that patients are not only heard but that services can take timely, effective action, driving meaningful change.

Strengthening the process itself

In one story titled *“My paraplegic partner at multiple hospitals,”*¹¹ the author described their frustration with a system that appeared to fail their partner, who was paraplegic and facing significant medical challenges. The care they needed was delayed, and there was confusion about which hospital should take responsibility, leaving the patient in an emergency department without adequate treatment. Transferring between hospitals became a complicated, drawn-out process, compounding the difficulties.

What this case highlights is the importance of a structured and responsive feedback system. Although Care Opinion cannot be used for sexual misconduct cases, the way we handle patient narratives provides a clear framework for how patient-centred feedback mechanisms should work. In this particular case, hospitals were able to engage in one comprehensive thread, allowing them to read and respond in a cohesive way. This transformed what began as a negative experience into one where the patient’s voice was heard, and the healthcare providers were able to address the concerns effectively.

This approach underscores the kind of patient-centred system that is crucial for sexual assault reporting mechanisms. Strengthening feedback processes to be not only accessible in form and function but also designed to meet patients where they are, is key. It ensures the process is approachable and not overly bureaucratic, allowing patients to engage on their terms. Crucially, this system must be accessible to all individuals, regardless of culture, creed, education level, or language. It should be inclusive, ensuring that no patient is excluded from being able to navigate or understand the process. The goal is to create a system that is supportive, clear, and empowers victims to report their experiences without feeling overwhelmed by complexity. While the contexts may differ, this emphasis on accessibility and responsiveness offers a valuable framework for developing more effective sexual assault feedback systems.

It is thus essential that any patient-centred process for complaints is just as robust as the amendments themselves. There is no benefit to having well-structured legislation if the process for patients to file complaints is flawed or inaccessible. Ensuring that the initial point of contact for patients is as user-friendly and supportive as possible is vital for the effectiveness of any legislative changes.

¹⁰ Gillespie & Reader, 2023

¹¹ Care Opinion Australia, 2023

Care Opinion Australia's Working Group

As part of our commitment to evolving healthcare feedback, Care Opinion has established a Working Group to create a Governance Framework for Person-Centred Feedback. This framework will be designed to enhance the management and integration of relational feedback within healthcare settings. By prioritising tailored, meaningful responses and consumer involvement in feedback processes, this initiative will drive continuous improvement in healthcare systems, ensuring feedback is a key driver for change.

Concluding remarks

Care Opinion Australia strongly supports the *Health Practitioner Regulation National Law Amendment Bill 2024* and calls for an additional layer to ensure legislative systems are developed with the patient centred at their foundations. While we understand that sexual misconduct investigations cannot be handled or conducted via a public platform, **Care Opinion's expertise is in shaping transparent, anonymous, user-friendly, and patient-centred feedback mechanisms.** The *Health Practitioner Regulation National Law Amendment Bill 2024* presents an invaluable opportunity to reshape how healthcare handles sexual misconduct cases, strengthens protections for complainants, and ensures that feedback systems are accessible and supportive.

Transparency, consumer protections such as anonymity, and patient-centred feedback mechanisms are essential tools for improving trust and accountability. These mechanisms do more than just address systemic issues - they empower patients to play an active role in shaping a safer, more responsive healthcare system.

Now is the time to embrace these values in the amendment, ensuring that patients have clear, protective pathways for raising their voices. Care Opinion remains committed to championing these principles and ensuring that patients continue to drive meaningful change in healthcare.

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