

**Briefing Note: A Complaints System for Medical Consumers**

**Purpose of this Note:** To inform members of a proposal put forward by MCA to the federal Professional Indemnity Review (PIR) in response to their interim report.

**Background Notes:**

In a 79 page report MCA outlined a system that would introduce a 'level playing field' in disputes over substandard medical care. The way that doctors insure themselves turns out to largely determine the way that complaints end up being managed. In this note defects in the present system are listed and the new system proposed by MCA outlined.

**The Present System of 'Health Care':**

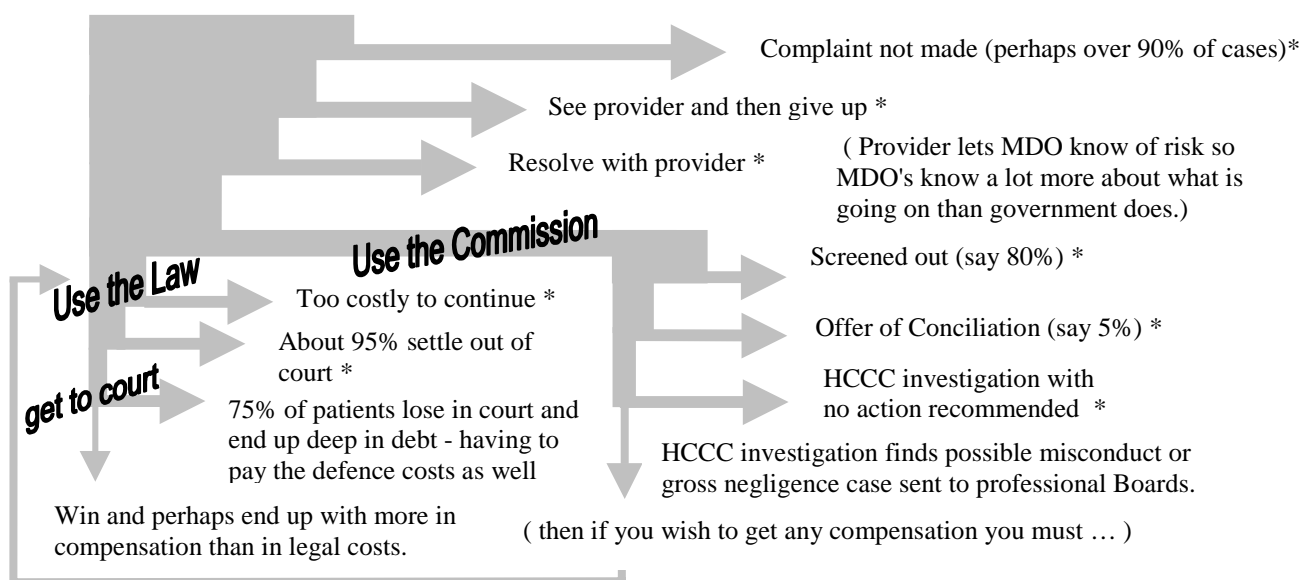
A global medical industry today is more and more about making money for a few. This drives today's so called 'health care' industry in the following directions; keep the consumer ignorant of the risks and choices; work to maintain the economic value of a patient's life as close to zero as possible; discourage complaints and administratively absorb as many complaints as possible; prevent if possible (or at least limit) injured patients access to the common law; work to limit deregistration of medical professionals. Even the judicial system often fails to bring charges against medical providers seeing prosecution not in the public interest in the most outrageous cases. (For example in the case of the Chelmsford narcosis doctors even after a Royal Commission exposed criminality, perjury, 24 deaths and 18 falsified death certificates no doctor was ever prosecuted or struck off. The book *Remission Impossible* (Ron Williams, 1992, Jacaranda Press) explains how big business is defining the path the industry is now taking.)

Both medical industry and government view complaints as causing added expense, respectively cutting into profits or causing a need to raise extra taxation. These two forces are thus found to be in effective coalition in opposing measures that would favour compensation for a medical consumer who has been negligently injured. Informed review of the NSW Statute Book shows that the legal industry has adapted to this environment and have self optimised so as to allow such consumers to spend their last cent on legal services often to no net effect. Thus unlike the US situation where legal fees applicable to running a case on a contingent fee basis are limited to 33% here legal costs can financially wipe out a consumer who wins a medical negligence case .

Today's government sanctioned regulation is only industry self regulation behind the closed doors of exemption from FOI (Freedom of Information) and absolute privilege. Action is focused on what are said to be systemic improvements over decades not on rapid response to individual problems of iatrogenic death and injury. Systemic reform causes many reports to be written but actual prosecution of individuals is defined as being counter productive. The medical industry is thus able to use a sham type of quality control that breaks the proven quality assurance rules used in other industries, and thus fails to stop the death and injury rates. The New HCC Act in NSW fits neatly into this system and actually may extend the problems faced for injured consumers by acting as a mere camouflage measure, tricking the public into thinking that something substantive has been done to address malpractice. The effect is to conceal the true cost of medical services by cost shifting. Victims of medical negligence end up on minimal social security pensions paid for by the tax payer. This is seen by government as the cheapest way of managing medical services. (Of course those running the system understand these risks produced and so avoid the average standard of care the system produces.)

**If you have reason to complain ... what is currently on offer:**

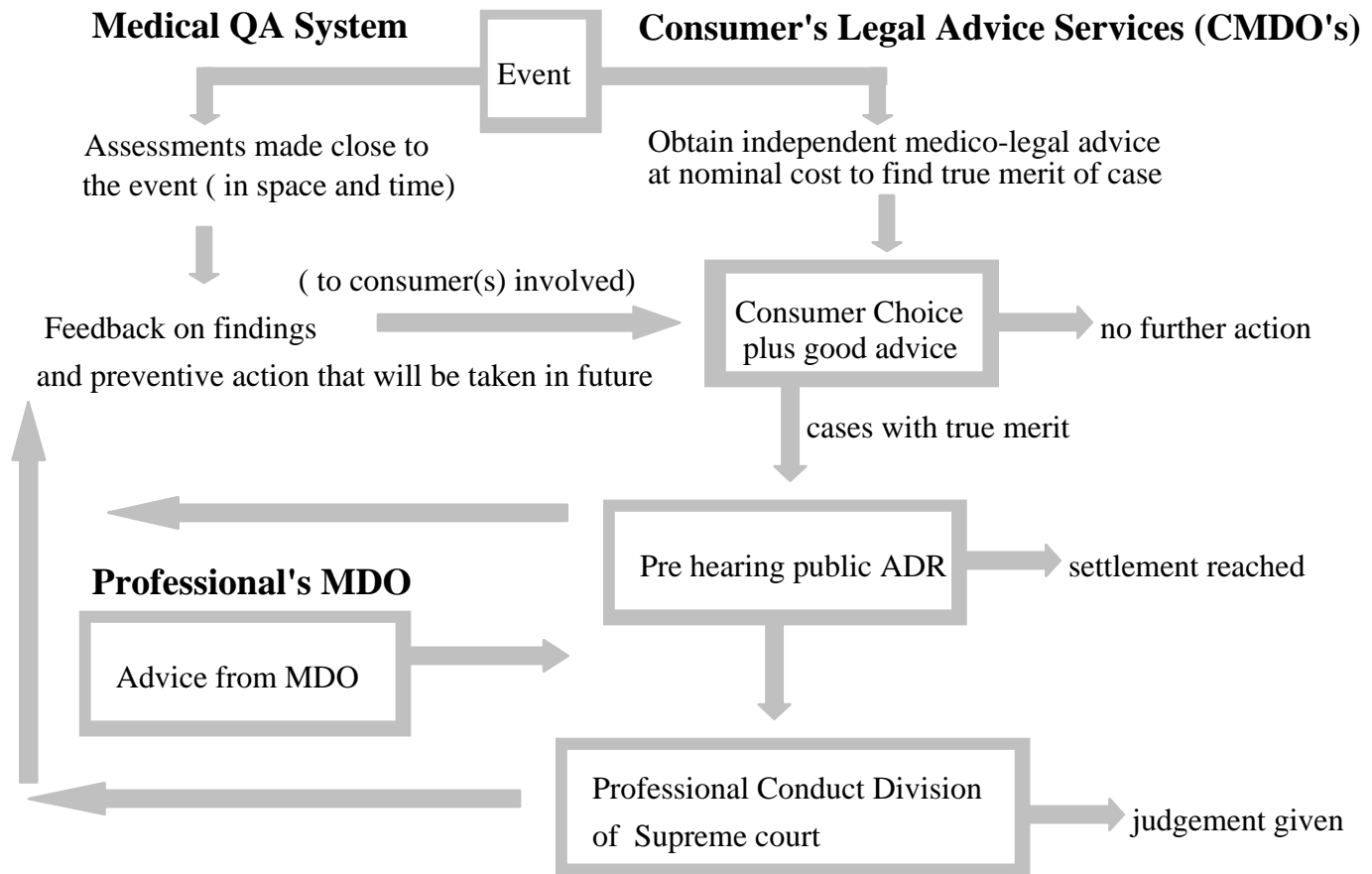
Context: 36% chance of iatrogenic injury, and 12% chance of being injured due to negligence, Rosenthal 1988, 1995 QAHS study 18,000 Australians killed and 50,000 injured each year by adverse events i.e. four times the risk of the US health care system . Note that most outcomes below marked \* are secret or do not get recorded. The MDO's end up knowing much more than the HCCC is likely to ever know and the HCCC statistics are useless as they cover only a few percent of the total possible consumer complaints.



## MCA's Reformed System

Based on meaningful, accessible QA, plus all providers have meaningful indemnity insurance, plus making the tort system work by:

- Following the recommendations of the Royal Commission into Deep Sleep Therapy by the introduction of a professional conduct division of the Supreme Court. (Evidence standards for use in court are assisted by establishing a medical evidence institute along the lines of the German model. 'The German Institute for Expert Examination of Doctors Errors')
- Adding ADR mediation allowing public settlement of many (probably 95% or more) of cases prior to full court action.
- Levelling the playing field financially by setting up a Patient's Justice Organisation to balance MDO defence fund.
- Levelling the playing field by organising legal resources for patients so expertise for plaintiffs will exist for the first time.



For the first time consumers have directly available expert legal and medical advice available via a private system similar to the doctor's MDOs. Access is funded partly via medicare levy and partly from professional indemnity cover fees. All MDOs are required to account separately their defence fund and their compensation fund. A balance is achieved. It is 'medicine in the sunshine' as much data is now in the public domain and the hidden costs of today's secret medicine are exposed for the first time. The system operates much faster, often in months not years. The critical QA corrective feedback loop operates in well under a year. Consumers do not need to go 'cap in hand' to official bureaucracies such as registration boards, and government bodies such as the HCCC and HCR. Instances of use of the full legal path actually reduce in number as good advice and reason replaces today's fear driven situation.

### Bibliography and notes

Slattery, J.P., (1990) The Report of the Royal Commission into Deep Sleep Therapy, Sydney. (This is the \$15,000,000 investigation into the Chelmsford deaths. It proposed a professional conduct division of the supreme court be set up. It has since been ignored by government and the Health Care Commission Act just ignores its recommendations !)

Dugdale, Tony (1989) "Restructuring legal and health services: the challenge to the professions", Professional Negligence, May/June 1989. ( p97-102 'However, another approach to professionalism is to see professional status as resting not on market control but on quality control. This functionalist approach sees professions as receiving their status, privileges and autonomy from society in return for using their expertise in society's interests, promoting high ethical standards and ensuring quality of service with rigorous disciplinary procedures .... On this approach the reform proposals ... call on the professions to deliver their side of the bargain by taking quality seriously. ... operate audits, codes of conduct and effective complaints procedures ... ( in the context of the UK situation and the government's White Paper 'Working for Patients'.)

Schroder, Jack (1990) Identifying Medical Malpractice, The Michie Company, Charlottesville, Virginia. (Jack Schroder writes: "Plaintiff verdicts in medical malpractice cases are the principal impetus to change and improvement in the medical care delivery system. Plaintiff verdicts have done more to improve medical care, to correct abuses in hospitals, and to stop adverse drug effects, than any other force in this country. Medical licensing boards, the U.S. Food and Drug Administration, State Health Departments, and all the forces of Health and Human Services are nothing compared to the impact of the plaintiff verdict. Where social pressures fail, money does not." ( MCA notes that NSW government policy is quite the opposite.)