

# Conciliation as Healing:

Applying Restorative  
Practices to Conciliate  
Health Care Complaints

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The logo for the ACT Human Rights Commission is displayed on a black rectangular background. The word "ACT" is written vertically in a teal color on the left side. To its right, the words "HUMAN RIGHTS" are stacked in large, bold, white capital letters. Below "HUMAN RIGHTS", the word "COMMISSION" is written in teal capital letters.

**ACT HUMAN  
RIGHTS  
COMMISSION**

# Acknowledgement

We acknowledge the traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

*Artwork by Lynnice Church*



# Overview

- § Restorative Justice (RJ) as a 'justice mechanism': diverse practices in a range of contexts
- § Outline
  - § How the ACT HRC's conciliation model contributes to RJ practices in the health care setting
  - § Benefits of conciliation
  - § Potential conciliation outcomes
  - § Risks and challenges of conciliation
  - § Case studies of conciliation as an RJ practice in health care complaints

# Restorative Justice in Health Care

Both RJ and conciliation can:

- § Provide redress for complainants
- § Give a voice for patients and their families
- § Acknowledge wider range of harmful or negative impacts
- § Acknowledge errors without the need for liability to be established
- § Create a more accessible pathway to justice by reducing the threshold of evidence
- § Acknowledge the vital and difficult role health care workers play in our community
- § Promote healing and rebuilding relationships

# What does the ACT HRC do?

The ACT Human Rights Commission can investigate and conciliate complaints across many jurisdictions, including healthcare.

The Commission's complaint process aims to:

- § support improvements in the provision of health services
- § promote awareness of the rights of users of health services, and
- § raise awareness of the responsibilities of providers of health services

# Potential Conciliation Outcomes

- § Apology, statement of regret or acknowledgement
- § Policy/process changes
- § Improved communication pathways
- § Staff training
- § Access to services
- § Reinstatement of services or changes to how services provided and by whom
- § Financial compensation

# Complaints 2022-23

- § We received 1,147 complaints and 2362 enquiries
- § Of the complaints received, 756 were health complaints (including 276 complaints notified by AHPRA)
- § 85% of parties said the complaint process was fair
- § 77% said the process was accessible

# What types of health care complaints does the Commission receive?

- § The most frequent health complaint issues include:
  - § Treatment and diagnosis
  - § Professional conduct
  - § Medication
  - § Communication
  - § Access
  - § Fees and costs



# Benefits of Conciliation

- § Alternative to litigation and often less adversarial
- § Collaborative and future-focussed
- § Direct and open communication
- § Neutral and impartial process
- § Confidential
- § Reduce power imbalances
- § Flexible and can be tailored to suit the parties
- § Addressing underlying issues that may not be considered in traditional litigation processes
- § Provide an opportunity for respondents to learn and improve practices
- § Broader systemic improvements
- § Setting the parties up for better dispute resolution in the future

## Case Study 1

### **Insufficient support for early miscarriage:**

A woman raised concerns about the management of her early miscarriage whilst in an emergency department at a hospital. She said she was not provided with emotional or practical support, or sufficient pain relief. The hospital participated in conciliation with the woman and her husband and acknowledged that the care could have been improved. It was agreed that the woman would share her story to contribute to education for hospital staff, and a financial outcome was agreed to.

## Case Study 2

### **Inappropriate comments by clinician**

A woman said that when attending a dermatologist for a skin cancer check the doctor provided unsolicited advice and comments about her appearance, including options for cosmetic procedures. The doctor provided a written response, and both parties agreed to participate in a conciliation discussion. During the conciliation discussion the doctor acknowledged that the client had not requested any advice regarding cosmetic procedures and provided a verbal apology for the comments.

# Challenges and Risks

- § Lack of binding authority
- § No oversight of outcomes
- § Voluntary participation
- § Imbalance of power
- § Confidentiality – both a benefit and a challenge

# Want to find out more?

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# QUESTIONS

