LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES
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Submission Cover Sheet

Inquiry into Maternity Services in the ACT

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The Committee Secretary
Standing Committee on Health, Ageing and Community Services
Act Legislative Assembly
By email: lacommitteehacs@parliament.act.gov.au

Submission - ACT Health Services Commissioner

Thank you for the opportunity to provide a submission to the Committee inquiry into Maternity Services in the ACT. We have endeavoured to address a number of the terms of reference in the context of the information and feedback I receive through the complaint handling process I administer under the ACT *Human Rights Commission Act 2005* (HRCA).

The ACT Human Rights Commission (HRC) is an independent agency established by the HRCA. The HRC includes the President and Human Rights Commissioner, the Public Advocate and Children and Young People Commissioner, the Disability and Community Services Commissioner, the Discrimination Commissioner, the Health Services Commissioner, and the Victims of Crime Commissioner.

Under the HRCA I can accept complaints about any health service provided in the ACT and any registered health practitioner. This includes but is not limited to hospitals, private health and medical services, individual doctors, midwifes, nurses etc. This information informs my submission below.

I acknowledge that by the nature of my role in considering complaints about health services in the ACT much of the contact I have regarding maternity services relates to issues of concern brought to my attention by patients or family members who have not had a positive experience. I recognise this represents a small number of the people who access ACT maternity services and the majority of people have a positive experience and are very satisfied with the treatment they receive from the caring and professional staff who provide these services.

I have outlined below the types of issues raised in complaints made to us and issues identified through our process that affect the quality of services provided in the ACT. I also offer some improvements that could be made with complaint handling processes which would improve customer satisfaction with services provided in the ACT.

Types of issues raised in complaints

Communication and Record Keeping

- Women have advised the Commission that they do not feel listened to during their pregnancy, birth and postnatal experience. Examples include:
    - contractions dismissed as 'prostin pain' or Braxton Hicks, resulting in women being left to labour without pain relief or support
    - complaints of feeling unwell or of poor wound healing prior to discharge ignored, resulting in readmission or GP review and intervention in the days immediately following discharge
    - not offered extended stay in hospital although new mother expressed concern about her ability to parent at home without support.
- Women reported that after experiencing a complication during the birthing process, they are not adequately debriefed. They also reported that if the complication results in referral to another service, such as urology, there is a lack of communication between the treating teams.
- Women have complained that the details of their childbirth admission are not accurately reported in the discharge summary, resulting in a lack of appropriate follow-up at specialist clinics or by their GP.

Staffing

- Women have advised the Commission that they do not feel appropriately supported in the postpartum period, particularly in relation to assistance with breast feeding.
- Women report delays in service provision, including for: induction of labour; suturing post-delivery; provision of analgesia and discharge checks. The delays are attributed to 'high unit activity' and 'competing priorities'.
- Women also report long wait-times for booked clinic appointments which also caused difficulties with absence from employment, child care, parking fines and other commitments.

Beds

- Women have reported inductions being cancelled due to a 'lack of beds'.
- They also report bed reallocation during the postpartum period, as someone else has a higher priority for the bed (such as a double bed, or a room near the nurses' station).
- Some women report being asked to wait in the waiting room with a newborn infant for several hours while a bed is located. Similar reports are heard from women who are being discharged, when their bed is required before their transport home has been arranged.

Customer satisfaction

The Health Services Commissioner (HSC) receives over 500 complaints per year about health services in the ACT. Only a small number of these relate to maternity services but they can be complex due to a range of factors such as complex birth circumstances, adverse outcomes for mother or child arising from the birth, concerns about poor communication in circumstances where a mother and family feel particularly vulnerable and at risk.

As a complaint handling body with a statutory conciliation function the HRC endeavours to use early conciliation as a means to resolve matters informally and quickly where possible. ACT Health is generally very responsive when the HSC approaches it to try and resolve matters either prior to a formal complaint being made or where a complaint has been made about issues that can be quickly and informally resolved such as communication issues, poor service delivery issues or concerns about the manner of particular practitioners.

However in circumstances where a formal complaint is made and the matter investigated under our powers to require the production of information and documents it can at times be difficult to get providers of maternity services to participate in the conciliation process. This means that the person who has made a complaint can become frustrated and disappointed with what appears to be unnecessary delay or a response perceived as defensive.

I understand a reluctance to participate in conciliation can be because of several reasons including because individual practitioners refuse to participate, the health provider is reluctant to discuss details of a matter for fear of disclosure of information that could suggest negligence or conduct that does not meet the expected professional standard, or a concern about potential litigation. This means more complex matters can take longer to resolve or finalise which generally has the effect of exacerbating a poor experience for the complainant and reducing community faith in the complaint handling process.

We understand that ACT Directorates, including ACT Health, are required to obtain advice from the Government Solicitor in cases where the complainant seeks financial compensation. Consequently, in some of these matters, the HSC is advised that the complainant should take the matter to court or initiate legal action if they are seeking a financial component as part of a resolution of their complaint.

These are sometimes matters that in our experience would resolve for relatively low amounts, such as compensating for a poor patient experience or minor injury or costs for additional medical expenses, and are not the types of matters that would warrant court action. This approach is disappointing for complainants who have legitimate claims at the low end of the financial compensation scale and do not have the capacity or resources to pursue matters to court. I note also that the ACT civil law wrongs legislation specifically acknowledges that claims can be conciliated under the HRCA, recognising the value of matters being resolved outside the formal court processes.

Court processes can be a complex and expensive process for complainants and ultimately a more expensive approach for the ACT if the complainant pursues that course of action. This approach can cause additional distress for people particularly given the limited maternity services in the ACT and the associated lack of choice.

I note we have been advised that medical negligence claims generally involve large financial claims due to significant, catastrophic or long term injuries or outcomes and the costs associated with pursuing a legal claim in the court. We understand that people seeking to make a claim for lower end matters find it difficult to obtain legal representation. These are

matters that potentially could be resolved through our complaint handling process if ACT Health had some more flexibility.

Transparency and quality & safety

The ACT provides legislative privilege for internal investigation and review reports such as Root Cause Analysis (RCA) reviews. While these reports can be provided to AHPRA in some circumstances, AHPRA only handles complaints about individual practitioners. In a number of matters it is apparent that these reviews had the potential to identify systemic procedural issues and would have been helpful in our handling of complaints about a health service rather than an individual practitioner. In some jurisdictions such as Queensland these reports are more readily available to the Health Complaints Entity (HCE). While there are historical reasons for privilege of these reviews the Committee may wish to consider whether a comparative review of jurisdictions' approaches to disclosing or producing quality assurance reports and RCA reviews would be appropriate to assist with transparency and accountability of ACT health services.

We note that the smallest area of reporting to AHPRA is by employers and colleagues. We know that recently the level of reporting is 12.6% other practitioner; 8.1% employer 54. 5% patient or friend/relative (2017/18 AHPRA Annual Report). We are also aware of matters settling on a confidential basis with no reporting to AHPRA or the ACT HCE thus potentially contributing to ongoing poor practice.

In a number of complaints we have received, key policies and procedures have not been adhered to and there appears to have been no follow-up to address those concerns. For example we are aware of matters where stage two of a birth went beyond the maximum of four hours provided for by policy but we are not aware of any strategy that has been put in place to identify whether those instances are a systemic issue or are an exception. We understand the policy exists to minimise risk to mother and child but policies are of limited value if no action is taken to ensure compliance, or to take remedial steps where non-compliance is demonstrated.

We note the helpful comprehensive information on open disclosure available from the Victorian Department of Health and Human Services.

Calvary Public Hospital

Concerns have been raised with me about the limitations on information provided to women about contraception, abortion and other related services from Calvary Public Hospital. With limited availability of maternity services in the ACT and the need for Calvary facilities to be effectively utilised I encourage the Committee to consider those limitations as part of this inquiry. I have been advised some women are reluctant to use Calvary services for these reasons or where they may be in a same sex relationship or marriage. As a publicly funded health service it may be appropriate for the inquiry to consider this issue further.

Maternity services and child protection

I have had matters brought to my attention where women have been reluctant to access ACT maternity services because of concerns about child concern reports made by staff about women and mothers with a disability and Aboriginal and Torres Strait Islander women. While this information is largely anecdotal we have dealt with a number of enquiries and complaints from Aboriginal and Torres Strait Islander women who believe a child concern report was raised because of race and from women with a disability who have been reported to child protection services because they have a disability and concern. It is a distressing experience for new parents to have to respond to child concern reports in their first days and weeks of parenting a new child.

We would suggest that a review of the processes by which these reports occur be undertaken to ensure public confidence in these processes and to ensure parents are provided with referrals, advocacy, support and information appropriate to their circumstances.

Interpreters

I have had raised with me a number of concerns about the inconsistent use of interpreters in maternity and other health services. Where a person accessing these services requires an interpreter it is essential that one be provided rather than relying on family members or in some cases staff who have a language skill but are not a trained interpreter. In circumstances where medical information is being conveyed or decisions being made about consent to treatment it is essential a person accessing health services has appropriate access to language interpreters including Auslan interpreters. Consideration should also be given to the source of the interpreting services. Patients often do not wish to discuss sensitive health information with members of their local community, and may prefer a telephone interpreter from another area.

I appreciate the opportunity to provide this short submission. I note again that the issues outlined above are matters that have been brought to our attention through our enquiries and complaints but want to acknowledge again that many patients have a very positive experience of maternity services in the ACT, and recognise the care and professionalism of the many staff providing those services across the ACT.

I would be pleased to discuss this submission with the Committee at a convenient opportunity.

Regards

Karen Toohey

Health Services Commissioner
ACT Human Rights Commission