

PARLIAMENT OF NEW SOUTH WALES



Committee on the Health Care Complaints Commission

10TH MEETING ON THE ANNUAL REPORT OF THE
HEALTH CARE COMPLAINTS COMMISSION

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Joint Committee on the Health Care Complaints Commission. Meeting on the Annual Report of the Health Care Complaints Commission (10th : 2005)

10th Meeting on the Annual Report of the Health Care Complaints Commission / Parliament of New South Wales, Committee on the Health Care Complaints Commission. [Sydney, N.S.W.] : NSW Parliament, 2005. – 44p. ; 30 cm. (Report No. 8/53, May 2005)

Chair: Jeff Hunter.
“June 2005”.

ISBN 1 921012 13 7

1. New South Wales. Health Care Complaints Commission. Annual report.
2. Health facilities—Complaints against—New South Wales.
 - I. Title.
 - II. Hunter, Jeff.
 - III. Series: New South Wales. Parliament. Joint Committee on the Health Care Complaints Commission. Report ; no. 53/8

DDC 362.1

TABLE OF CONTENTS

MEMBERSHIP & STAFF	III
FUNCTIONS OF THE COMMITTEE.....	IV
CHAIRMAN’S FOREWORD	1
SUMMARY OF KEY ISSUES.....	3
Number of open investigations.....	3
Backlog	3
The Macarthur Inquiry.....	7
Current Investigations	7
Case Management	8
Termination of cases	8
Reporting of Performance.....	9
Planning Documentation	11
Patient Support Officers	11
The Health Conciliation Registry.....	11
Additional Information.....	12
Appendix 1 - Transcript of Proceedings	
Appendix 2 - Opening Statement by Judge Taylor	
Appendix 3 - Review of the Annual Report by Mr John Chan Sew	

MEMBERSHIP & STAFF

Chairman Jeff Hunter MP, Member for Lake Macquarie

Members Allan Shearan MP, Member for Londonderry
Tanya Gadiel MP, Member for Parramatta
Russell W Turner MP, Member for Orange
Hon Christine Robertson, MLC (Deputy Chair)
Hon Dr Peter Wong, MLC
Hon David Clarke, MLC

Staff Catherine Watson, Committee Manager
Cheryl Samuels, Senior Committee Officer
Samantha Ngui, Committee Officer
Glendora Magno, Assistant Committee Officer

Contact Details Committee on the Health Care Complaints Commission
Legislative Assembly
Parliament House
Macquarie Street
Sydney NSW 2000

Telephone 02 9230 –3011

Facsimile 02 9230 –3309

E-mail awatson@parliament.nsw.gov.au

URL www.parliament.nsw.gov.au

FUNCTIONS OF THE COMMITTEE

The Joint Committee on the Health Care Complaints Commission was appointed in 1994. Its functions under Section 65 of the *Health Care Complaints Act 1993* are:

- a. to monitor and to review the exercise by the Commission of the Commission's functions under this or any other Act;
- b. to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of the Commission's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- c. to examine each annual and other report made by the Commission, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- d. to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Commission;
- e. to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

The Joint Committee is not authorised:

- a. to re-investigate a particular complaint; or
- b. to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
- c. to reconsider the findings, recommendations, determinations or other decisions of the Commission, or of any other person, in relation to a particular investigation or complaint.

CHAIRMAN'S FOREWORD

There have been very significant changes in the Health Care Complaints Commission during the 2003-2004 financial year.

The departure of Commissioner Adrian in December 2004 resulted in the temporary appointment of Mr Bill Grant as Acting Commissioner. Mr Grant began a process of refocussing the Commission's direction and attending to the backlog of complaints at the Commission.

The Appointment of Judge Kenneth Taylor as Acting Commissioner and Mr Kieran Pehm as Deputy Commissioner has seen a continuation of the new focus of the Commission.

A budget enhancement of \$5.7million allowed for the appointment of additional investigators to concentrate on finalising the Commission's older cases. The Committee had recommended this course of action in its *Report on the inquiry into the procedures followed during investigations and prosecutions undertaken by the Health Care Complaints Commission*.

The Committee was pleased to note that at the end of the 2003 / 2004 reporting period the backlog of cases received before 1 August 2003 was 315. A very significant reduction. As at 28 February 2005 it was down to 15.

Similarly, substantial progress has been made in clearing the investigations resulting from the Inquiry into Macarthur Health Service. In July 2004 the Commission had 139 open investigations in relation to this Inquiry. Judge Taylor informed the Committee during his appearance on 3 March 2005 that that number had by then been reduced to 29.

The Committee has been pleased that both Mr Grant and Judge Taylor have adopted so many of the other recommendations of the Committee's previous reports including: refocussing of the role of the Patient Support Officers; a review of recruitment and training of peer reviewers; and increasing the numbers of internal medical advisors.

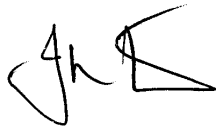
In tandem the legislative amendments made to the *Health Care Complaints Act 1993* and related health professional legislation in November 2004 saw many of the Committee's recommendations enacted. Amendments to the *Health Care Complaints Act 1993* were long overdue and should greatly facilitate the work of the Commission.

This Annual General Meeting coincided with the departure of Judge Taylor and at the time of writing a permanent Commissioner is yet to be appointed. The Committee will therefore be monitoring the Commission's performance over the forthcoming year with great interest.

I would like to thank Judge Taylor for his impressive efforts as Acting Commissioner. I believe that he has made significant improvements at the Commission during his tenure. Further, he has always been very frank and co-operative in his dealings with the Committee and it has been greatly appreciated. I would also like to thank the Deputy Commissioner Kieran Pehm for his assistance.

In addition I wish to thank Mr Bill Grant for all his efforts in assessing and reforming the performance of the Commission. It has largely been his framework, which has been adopted by incoming senior management. His vast managerial and legal expertise has been evident in the changes we have seen made at the Commission during the 2003 / 2004 financial year.

Lastly I would like to thank my fellow Committee members for their work on the Committee. I would also like to thank the Committee secretariat for their assistance in the preparation of this report.

A handwritten signature in black ink, appearing to be 'JH', written in a cursive style.

Mr Jeff Hunter MP
Chairman

SUMMARY OF KEY ISSUES

The Committee on the Health Care Complaints Commission met with the Acting Commissioner, Judge Kenneth Taylor, and the Deputy Commissioner, Mr Kieran Pehm on Thursday 3 March 2005. The purpose of this meeting was to discuss the Commission's 2003-2004 annual report and to provide the Committee with an update on the Commission's activities since publication of that report.

In his opening statement, Judge Taylor noted that, during the past 12 months there has been a sense of urgency in implementing reforms. Processes have needed to be developed and new structures established within the organisation to ensure that the Commission functions effectively and fulfils its statutory obligations. His primary concern as Acting Commissioner had been on rebuilding the Commission as an effective complaints handling body and restoring the integrity of the complaints' handling process in a practical and immediate way. Judge Taylor believes that the results speak for themselves. Examples of the reforms can be found in Appendix Two.

The Committee acknowledges that the annual report for 2003-2004 was prepared during a period of considerable upheaval and refocussing of priorities by the Commission. Both the circumstances in which the Commission was operating during the reporting period and the fact that the period covers only three months of Judge Taylor's appointment as Acting Commissioner have to be acknowledged.

The Committee congratulates Judge Taylor for his stewardship of the Commission during this tumultuous period. The Committee read the Annual Report with interest and commends the Commission on its coverage of past operational problems and the specific actions that have been or are planned to be taken to improve performance.

The Committee also appreciates the open and frank relationship that has been fostered between the Committee and the Commission by Judge Taylor, his predecessor Mr Bill Grant.

NUMBER OF OPEN INVESTIGATIONS

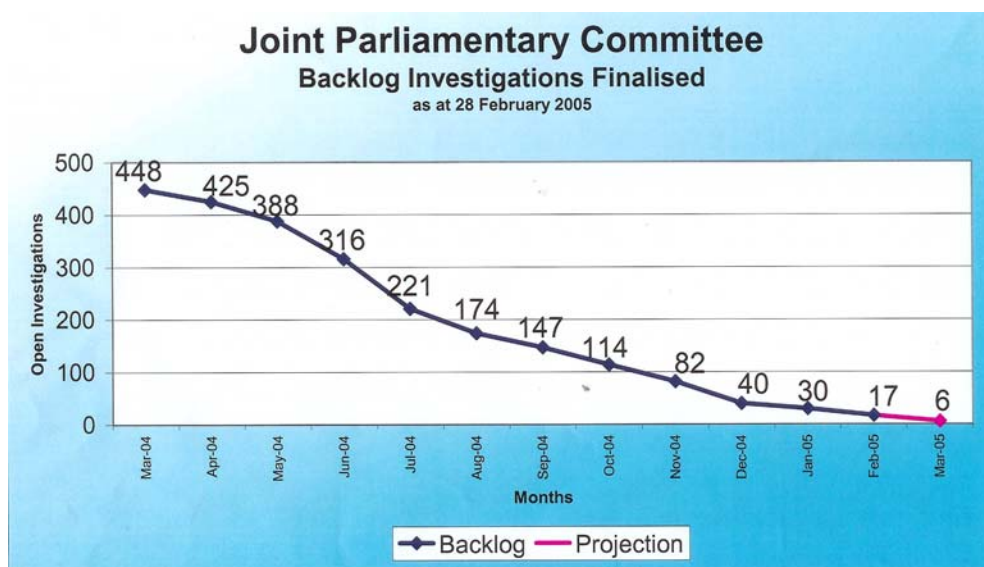
Backlog

The high number of investigations that were open prior to 1 August 2003 has long been of concern to the Committee and Judge Taylor commented that he had made it a priority to finalise complaints identified in the backlog. A budget enhancement of \$5.7 million had allowed the appointment of additional investigators to concentrate on processing and finalising the backlog of investigations. The budget enhancement also enabled the establishment of a special and discrete team of investigators, lawyers and

counsel to deal with those matters arising from complaints against Camden and Campbelltown Hospitals.

Judge Taylor advised the Committee that the special investigation team was funded until the end of the 2004/2005 financial year and that, once the remaining Macarthur matters were closed, the team would be available to work on other investigations.

At the meeting on 3 March 2005, Judge Taylor provided the Committee with a series of graphs to demonstrate the progress made by the Commission in finalising the backlog of investigations. The first of these, **'Backlog Investigations Finalised as at 28 February 2005'** indicated that by March 2005, only 6 remained open.



BACKLOG STRATEGY: In February last the Backlog was defined as all open investigations with a Statutory Declaration dated prior to 1 August 2003. This was to facilitate management of the Backlog. As at 22 March 2003, commencement of the present Acting Commissioner, the Backlog was 437 open investigations. The Backlog was increased to 448 after checking the data as not all investigations where a Statutory Declaration had been received had been entered on the system.

Judge Taylor made the following comments:

If I can take the members to the first graph in the group, that is the backlog in investigations, the backlog is defined there as being open investigations prior to 1 August 2003. I have chosen to start with that because that was the largest problem for the Commission on my arrival. There were 448 open investigations in the backlog and there was a room in which there were dozens and dozens of files that had not been attended to and not assigned to any officer. It was a very serious problem and one that no doubt was causing a great sense of grievance in relation to the Commission's complainants and respondents.

I developed from that the notion that I should realign the Commission's processes with the legislative guidance and that involved two things, internal change and where the procedures of the Commission were effective, to actively participate in the legislative reform. I will give you an example - that the power to produce documents during the assessment phase was very limited. This was

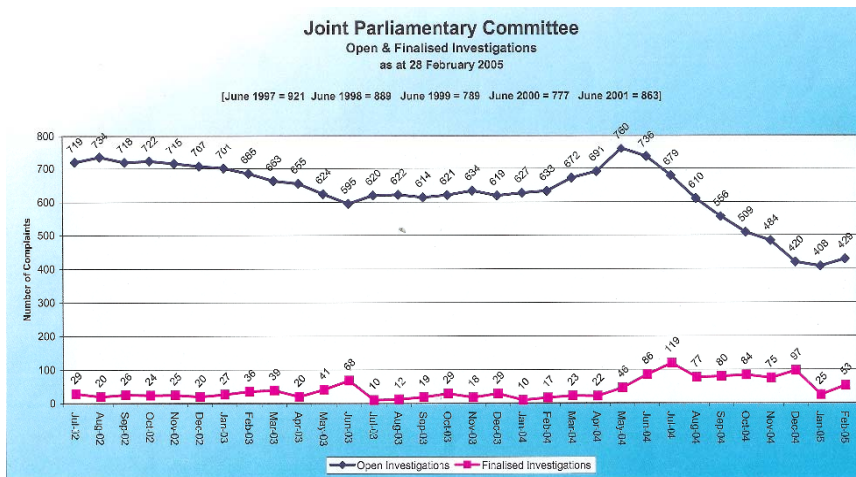
an impediment so far as the Commission was concerned. There was no power. It was not a question of realigning the internal processes, but seeking the necessary change.

Second, it was very important to return the Commission to a normal tempo of operations, that is to have on hand open investigations, that being the core business, that were capable of being completed in a timely way by the staff within the establishment and within budget.

Obviously with 448 in the backlog it would be extremely difficult to reduce that and maintain the current operations of the Commission, so the backlog was the most important matter for me to deal with. As at the end of February it was reduced to 17 and at the end of March it should be six, so that, by the end of March, 99 per cent of the backlog would have gone

The Committee had previously complained that it had been very difficult to gain a true and clear, accurate, up-to-date picture of the internal operations of the Commission. In response, Judge Taylor provided a graph entitled 'Open and Finalised Investigations' as at 28 February 2005.

The purpose of this graph was to provide the Committee with an overview of the tempo of the Commission's operations that showed whether or not the Commission's workload was consistent with its establishment.

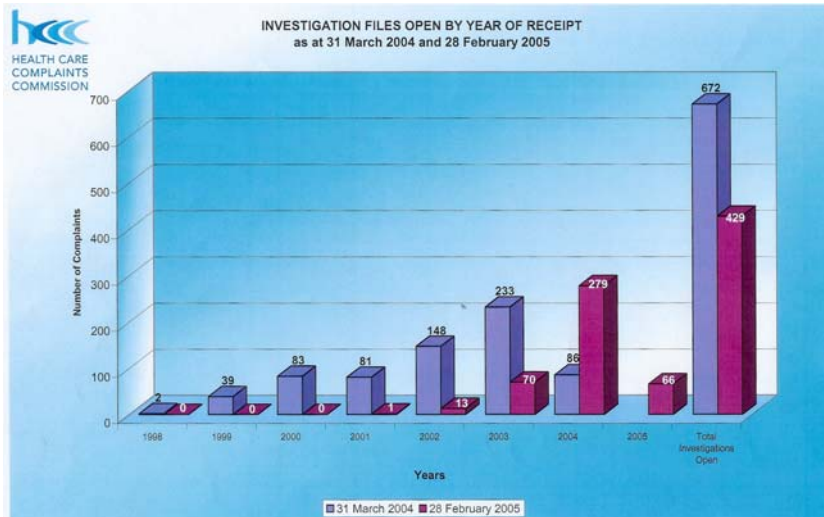


* This estimate is taking into consideration current investigations, the projected investigation closures and new investigations received at the HCCC.

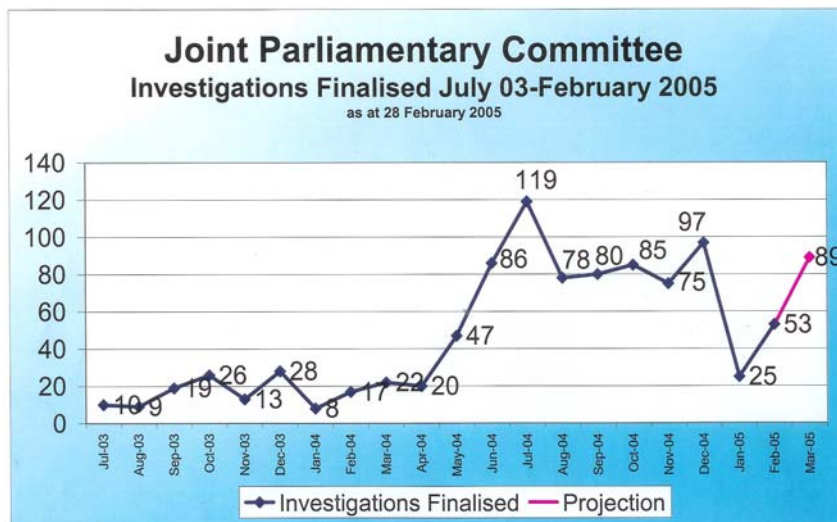
Judge Taylor explained,

You can see in 1997 it was 920. It was very, very high. During my period, as you can see in the middle of May 2004 it got back up to 760 and that was because the Macarthur investigations had been treated as one complaint, that is Ms Kruk's complaint, and what I did of course was to turn that into individual complaints using the ordinary tests and that has produced 139 or thereabouts, and so, although we were reducing the figures, the net figure increased. As at the end of January we were down to 408.

The third graph, **'Investigation Files Open by Year of Receipt as at 31 March 2004 and February 2005'** conveys similar information, in that outstanding matters from 1998 to 2000 were now finalised and that 2001 had been reduced from 81 to one.



The next graph **'Investigations Finalised July 2003 – February 2005'** shows the number of investigations concluded each month.

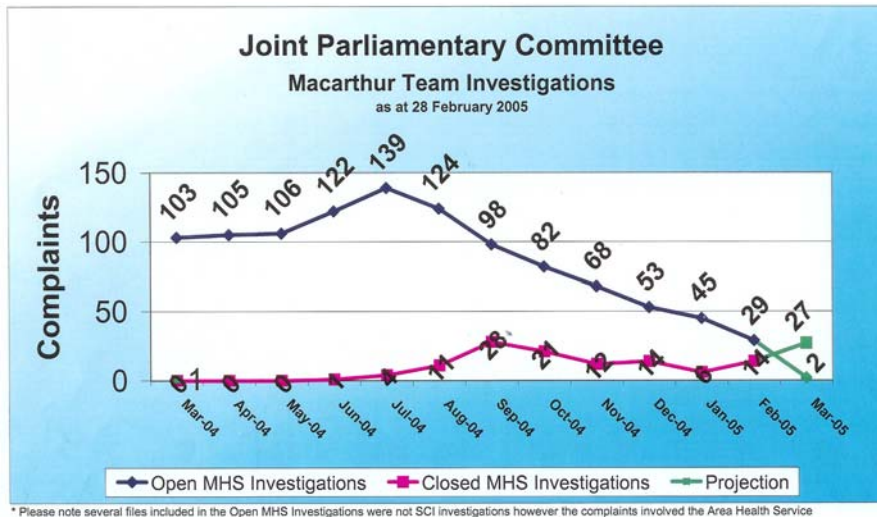


Judge Taylor noted,

I said in the opening statement, and I should highlight it here, that between July and December 2003 the average number of investigations completed per month in the Commission was 19 and a half, just under 20, and between July and December last year, in the equivalent period, it was 89. So it was over four times the productivity. I note in our annual report there are some comments about effectiveness and efficiency. Quite frankly, that demonstrates the effectiveness of our policies and the fact that we do not appear to be receiving any more requests for review proportionally than before. The result seems to be the same sort of spread between comments and prosecution and termination. That is how we have demonstrated our effectiveness, but, again, perhaps not in a way that a management purist would wish.

The Macarthur Inquiry

In March 2004 there were 103 open investigations. This figure peaked at 139 in July 2004 following a number of referrals from the Special Commission of Inquiry. At the time of the Committee's meeting with Judge Taylor on 3 March 2005, there were 29 open investigations and he was confident that the Commission would close most of those matters by the end of the month.



Current Investigations

Judge Taylor believes that between 350 and 400 open investigations on the current establishment represents the normal level and tempo of operations.

In terms of benchmarking the Commission's performance, Judge Taylor also stated that the Commission has resolved to use its best endeavours to finalise 80 per cent of current complaints (after 1 August 2003) within twelve months.

At his meeting with the Committee, he clarified this statement, saying,

I have stated it in the annual report as 80 per cent, because you can see, having regard to those figures, notwithstanding the Government's injection of very significant funds and the ability to recruit investigators and train them and deal with all these matters that they have been unassigned, it is unrealistic to develop a plan that will look good on paper but may or may not be achievable. I think I said right from the start when I came to this Committee that I was going to approach it from a common sense point of view, deal with the obvious, and I think I said at the time that it may not appeal to the management purist, but it was perfectly obvious what needed to be done straight away to return the Commission to a normal level of operations.

Judge Taylor added that the Commission was now focussing more on dealing with matters during the first couple of months of the assessment period rather than by investigation. Alternative dispute resolution mechanisms would also be better employed by the Commission, with investigation as a matter of last resort.

As an indicator of the Commission's future performance, Judge Taylor suggested that the Committee should look at whether there was a reduction in the number of matters that went to investigation each year, with a significant increase in the number of matters that were dealt with during the first couple of months of the assessment period.

The Committee was very pleased to see that the backlog is no longer an issue for the Commission. Judge Taylor, Mr Pehm and staff of the Commission are to be congratulated on achieving this goal. The Committee also welcomes the Commission's intention to better utilize a range of alternative dispute resolution mechanisms.

CASE MANAGEMENT

The Committee has previously expressed its disappointment with the long delay in implementing a case management system and was therefore pleased to learn that CaseMate was scheduled to go on line on 7 March 2005.

At the meeting on 3 March 2005, Judge Taylor advised that all of the relevant staff of the Commission had undergone training and that data migration had taken place. The CaseMate system is much more accurate than the HCCC's previous system and better ensured that the correct data was entered as the investigation proceeded and that timelines were met.

Judge Taylor believes that the impact of CaseMate will be very significant in his successor having confidence in the data collected.

The Committee will therefore review its effectiveness in the future.

TERMINATION OF CASES

The Committee noted that 42 per cent of investigations had been terminated and sought to compare this with previous termination rates. The Committee was also interested in complainant responses when their case had been terminated. The Deputy Commissioner, Mr Pehm, replied that the outcomes on termination were broadly consistent with those in previous years in terms of counselling, comments and prosecution.

Complainants could request a review of the decision to terminate but there had not been a huge upsurge in requests. Mr Pehm added, however, that some of the cases that had been terminated were so old that the complainants

may have preferred to not pursue the matter any further. He also admitted that, although information about claimant requests for review was one of the obvious default indicators that should be recorded, this had not been done. This information would, however, be recorded under the new CaseMate system.

In terms of what were the key reasons for terminating a case, Judge Taylor said that, what people want to know, as we all know, is what happened, why and what has been done about it.

The new powers the department has given the Commission and the new focus the Commission has on dealing with matters at, colloquially, the front end is meaning that more complainants' concerns are being addressed during the assessment phase and that will continue as these powers are implemented. In the past, matters have gone to investigation to resolve primarily the question of what happened. Once people find out what happened, they can better deal with the issues that they have.

REPORTING OF PERFORMANCE

At the Committee's request, Mr John Chan Sew, consultant to the Health Care Complaints Committee undertook a review of the Commission's Annual Report for 2003-2004, together with Commission planning documents, including the Corporate Plan for 2004-2005 and Action Plan for February-June 2004.

Mr Chan Sew's overall assessment was that the focus of the 2003-2004 Annual Report was on how successful the Commission had been in implementing internal reform initiatives identified in the Action Plan.

Generally the key performance indicators used in the report were similar to previous years and a majority of deficiencies that had been identified by this Committee's previous reviews had not been addressed. Mr Chan Sew's report is attached at Appendix Three.

When asked why the Commission had not adopted the Committee's previous recommendations concerning performance indicators, Mr Pehm replied,

The Commission is very committed to developing appropriate performance indicators. The ground rules were up in the air with the new legislation. A fundamental shift there is the removal of making quality improvements to improve systems, which I note the review of the annual report picked up and was talking about measuring the effect of the Commission on quality improvement in hospitals. It is very clear after Macarthur with the new legislation that is not a role of the Commission any more, and other changes to the legislation left that up in the air.

To develop performance indicators you obviously have to have a base line to begin with as to what is a reasonable level of performance. The information in the Commission does not allow or has not yet allowed the development of that base line. We got a very raw figure of the number of investigations finalised in the year divided by the number of investigators on board. That comes out at about 20 cases per year per officer. We concede that as our base line we think we can do a lot better than that. I think that our base should be set at a higher level. They are broadly the reasons why we have not concentrated on performance indicators.

Mr Pehm indicated that the Commissioner would meet with the Committee as these indicators were developed. Judge Taylor added that, he felt it was important to return the Commission to a normal level of operations, because it was only in that context that performance could effectively be measured.

The Committee agreed that it would be appropriate to wait until the CaseMate system had been in operation for a full year and will therefore re-examine the issue of performance indicators in the light of the 2004-2005 Annual Report and subsequent meetings with the Commissioner.

The Committee noted that some statistical information that had previously appeared in the main body of the annual report now appeared as tables in an appendix without any explanatory narrative. Mr Pehm explained that this was a design decision as it had been felt that there were too many tables in the main body of the report.

The Committee felt that by using this approach it was likely that information could be overlooked when reading the annual report and suggests that, if this approach is adopted in future reports, reference should be made to the appendices in the main body of the report.

The Committee also noted that information about the Commission's internal committees (list of panel of peer reviewers that had been in previous reports) that had appeared in the previous report was also missing. The Committee believes that information about these committees, particularly their terms of reference and composition, is useful and recommends that it be included future reports.

Another omission from the 2003-2004 Annual Report was a profile of the consumers of the Commission's services, including geographical as well as demographical information. Mr Pehm indicated that the omission was partly an oversight and partly lack of data. Every complainant was sent out a demographic survey form and the response rate was only about 19 or 20 per cent. Collection of this information would now become part of the normal case management and entered into CaseMate, so it would be possible to include this information in future reports.

PLANNING DOCUMENTATION

In the past the Committee has criticised the Commission for its lack of planning documentation. There was no Corporate Plan for the reporting period and only an Action Plan for February-June 2004. The Committee noted, however, that the Commission now has a Corporate Plan for 2004-2005 although it was not publicly available on the Commission's website. This omission that has now been rectified.

The Deputy Commissioner, Mr Pehm, noted that the Commission would be drafting a Corporate Plan for 2005-2006 towards to the end of the current financial year, and agreed that the usual plan cycle would be to have a five year strategic plan as well. He argued that during the reporting period the Commission was not in a normal operating environment therefore it was felt appropriate to only have an interim corporate plan with short-term goals. Now that the legislation was in place the forward budget could be set and once the new Commissioner was appointed the planning cycle could begin and a five year strategic plan prepared.

PATIENT SUPPORT OFFICERS

The Deputy Commissioner, Mr Pehm, advised the Committee that under the revised structure a Director of Assessments and Resolution had been recruited and would be responsible for the conciliation registry and the patient support officers. The name of the 'patient support' officers' had been changed to 'complaint resolution officers', in order to address the perception that they were advocates for complainants. It was intended that they would be impartial complaint resolvers rather than advocates for one side.

THE HEALTH CONCILIATION REGISTRY

The Committee noted that the Health Legislation Amendment (Complaints) Act 2004 came into force on 1 March 2005. The effect of the legislation is to refocus the Commission on investigating serious complaints and realign the Commission's activities.

Under the new legislation the Health Conciliation Registry is now under the administrative and managerial responsibility of the Commission and would be co-located in the Commission's offices.

In its *Report into Alternate Dispute Resolution of Health Care Complaints in New South Wales*, the Committee recommended that the activities of the Registrar be reported in a separate section of the Commission's annual report.

The Committee also recommended that the Health Conciliation Registrar should meet on an annual basis with the Committee independently of the Health Care Complaints Commissioner to discuss issues arising from each Health Care Complaints Commission annual report, which relate to his or her functions.

The Committee reiterates these recommendations.

The Committee also previously recommended against co-locating the Registry within the Commission's offices on the grounds that it was important to physically separate the Registry from the Commission in order to reinforce its independent status to respondents attending a conciliation process.

The Deputy Commissioner, Mr Pehm, indicated that the 12th floor of the Commission's premises would be remodelled to provide a separate entrance for the Registry. The facilities would include a major meeting room, two minor meeting rooms and two separate reception areas.

ADDITIONAL INFORMATION

The opening statement tabled by Judge Taylor on 3 March 2005 is attached at Appendix Two.

The technical review of the Annual Report and planning documentation undertaken by Mr John Chan Sew is attached at Appendix Three.

TRANSCRIPT OF PROCEEDINGS

REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION

At Sydney on Thursday, 3 March 2005

The Committee met at 10.00 a.m.

PRESENT

Mr J Hunter MP (Chair)

Legislative Council

Mr A. F. Shearan
Mr R. W. Turner

Legislative Assembly

The Hon. D. Clarke
The Hon. Christine Robertson
The Hon. Dr P. Wong

Transcript provided by CAT Reporting Services Pty Limited

KENNETH VICTOR TAYLOR, Judge, Acting Commissioner, Health Care Complaints Commission, Level 13, 323 Castlereagh Street, Sydney, and

KIERAN TIBOR PEHM, Deputy Commissioner, Health Care Complaints Commission, Level 13, 323 Castlereagh Street, Sydney, sworn and examined:

CHAIR: The Committee, since the Commission has tabled the report with the Minister and he tabled it in Parliament, have read the report with interest and we would like to say that we think the Commission should be commended on the coverage in the annual report of past operational problems and the specific actions that have been or are planned to be taken to improve performance. Notwithstanding that, the Committee seeks today to clarify some issues arising from the annual report and recent legislative changes. Judge Taylor, would you like to make an opening address to the Committee?

Judge TAYLOR: I have prepared a short opening statement that has been reduced to writing and made available to members of Committee and, Chair, I formally table that. What I propose to do now is speak to that briefly. The approach that I will take is to work through the graphs that have been supplied to members of the Committee and in doing so I should cover the salient points of the opening statement.

If I can take the members to the first graph in the group, that is the backlog in investigations, the backlog is defined there as being open investigations prior to 1 August 2003. I have chosen to start with that because that was the largest problem for the Commission on my arrival. There were 448 open investigations in the backlog and there was a room in which there were dozens and dozens of files that had not been attended to and not assigned to any officer. It was a very serious problem and one that no doubt was causing a great sense of grievance in relation to the Commission's complainants and respondents.

I developed from that the notion that I should realign the Commission's processes with the legislative guidance and that involved two things, internal change and where the procedures of the Commission were effective, to actively participate in the legislative reform. I will give you an example - that the power to produce documents during the assessment phase was very limited. This was an impediment so far as the Commission was concerned. There was no power. It was not a question of realigning the internal processes, but seeking the necessary change.

Second, it was very important to return the Commission to a normal tempo of operations, that is to have on hand open investigations, that being the core business, that were capable of being completed in a timely way by the staff within the establishment and within budget. Obviously with 448 in the backlog it would be extremely difficult to reduce that and maintain the current operations of the Commission, so the backlog was the most important matter for me to deal with. As at the end of February it was reduced to 17 and at the end of March it should be six, so that, by the end of March, 99 per cent of the backlog would have gone.

The points that I have been making are illustrated by the second graph which on the blue line shows you the open investigations and what was, from time to time, the level of operations. At the top, just above the figures in the graph you will see that in June 1997 the open investigations were 921 and then the 1998-99, 2000-01 investigations, so you can see they are at their lowest, 777.

CHAIR: Sorry, which chart are we looking at?

Judge TAYLOR: The second one, which should be "Open and Finalised Investigations".

CHAIR: I thought that you mentioned 900.

Mr PEHM: There is a line at the top. It goes back to July 2002.

Judge TAYLOR: You can see in 1997 it was 920. It was very, very high. During my period, as you can see in the middle of May 2004 it got back up to 760 and that was because the Macarthur investigations had been treated as one complaint, that is Ms Kruk's complaint, and what I did of course was to turn that into individual complaints using the ordinary tests and that has produced 139 or thereabouts, and so, although we were reducing the figures, the net figure increased. As at the end of January we were down to 408. My advice to the Committee is that between 350 and 400 open investigations on the current establishment represents the normal level and tempo of operations and I suggest that if you look to that in the future as a benchmark then you will have an idea as to whether or not the figures are slipping to the right.

It has crept up by the end of February to 429. That was a little disappointing. The explanation for that is that the Nurses Registration Board have had difficulty in securing the annual reregistration of nurses and it has been necessary for them in 50 cases to make a complaint to us, because the failure to reregister and pay the fee is unprofessional conduct and they have exhausted the administrative procedures, bearing in mind the tens of thousands of nurses they have, and we can expect to get those from time to time. We got 50 this month so that is why our figure is that, otherwise I was hoping to come along here and say we were between 350 and 400.

The Hon. Dr PETER WONG: Despite what you are saying, the evidence seems to show the trend of complaints is going upwards as the year goes by. I mean, your 420 whatever a year, with time, more and more people complain about different professional persons.

Judge TAYLOR: 429, Doctor, is the number that are open at the present time.

The Hon. Dr PETER WONG: Yes, but the trend of complaints from people is increasing every year. Your records show previously--

Judge TAYLOR: Not significantly I do not think.

Mr PEHM: Not on the last two years from 2002-03 to 2003-04. It was a one or two per cent rise. It was a very negligible rise.

CHAIR: Given the amount of publicity surrounding the Macarthur inquiry we would have thought that would have generated maybe more complaints.

Mr PEHM: There was a big bump from about January to March or April 2004, but over the year they have settled, when you take into account the one-off increase in Macarthur investigations and then the current one of 50 nurses complaints.

The Hon. CHRISTINE ROBERTSON: Can I ask about the Nurses Registration Board? Is not the employer responsible for ensuring the nurse is registered? Are they employed nurses?

Mr PEHM: Employers should check registration but it is the nurse's responsibility.

The Hon. CHRISTINE ROBERTSON: I realise the nurse has to do it but I wonder why the Nurses Registration Board is reporting people for not registering.

Mr PEHM: It is not that they are not registering; a new provision has been brought in whereby nurses have to lodge an annual return answering a lot of questions, for example, dealing with criminal convictions, and it is a new disclosure regime which has only come in this year. So we do not know whether the nurses are just not understanding or are confused about the form. The Nurses Registration Board has gone through quite a lengthy process trying to get everyone to answer the returns.

CHAIR: So if those returns are not lodged they are deemed to be in breach?

Mr PEHM: Under the Act, failure to lodge the return is a serious breach.

The Hon. CHRISTINE ROBERTSON: There is quite a big change?

Mr PEHM: Yes.

Judge TAYLOR: Because of the continuing issue, and it represents more than 10 per cent of complaints, although they are not difficult to investigate, I would suggest that my successor would look to having that figure identified discretely so that you get a true picture.

The Hon. CHRISTINE ROBERTSON: Because of the process?

Judge TAYLOR: Yes.

CHAIR: Can I just carry on to say that that is in all the new revised Acts. So you are saying the nurses are about the last to implement that procedure or will the other professions--

Judge TAYLOR: With the Medical Board, I go there every month, usually three times, for their various meetings and they have a list. It is very small. They write to them three times I think and then the magistrate refers it to the board and they regard it as a performance issue, but it is not an issue for doctors.

Mr SHEARAN: You said that that figure should be discretely identified. Should not all categories be identified?

Judge TAYLOR: No. In the new CaseMate system it will be easy to do that, but the purpose of this graph is to give you an overview of what I have described as the tempo of operations. At a glance you should be able to see whether or not the Commission's workload is consistent with its establishment, and this Committee should be able to deal with it at a glance. One of your complaints has been that you found it very difficult to gain a true and clear, accurate, up-to-date picture of the stresses and strains internally in the organisation. This creates a little bit of artificiality and that is why we think it should be identified for you, that is all.

Mr PEHM: We think the nurse complaints will be very simple administrative investigations. They will not be of the nature of other investigations where witnesses have to be interviewed. It is a resource issue. It will not take a lot of resources.

CHAIR: 50 at once is a big impact on the figures.

Judge TAYLOR: Yes.

Mr PEHM: Yes.

Judge TAYLOR: That would cause you, in the ordinary course, concern. It is so easily explained. The other matter that will need to be identified for you from time to time, where there is an investigation involving multiple complaints, such as the Macarthur investigation, where there are more than a dozen or so complaints, you will need to be able to see that from these figures as well.

The Hon. Dr PETER WONG: Number one, congratulations on the excellent results. We notice that 42 per cent is labelled under 'termination, with 181 cases, on page 2. What was the termination rate previously and what reason was given for the termination of cases? What were the responses from the complainants for termination of such cases?

CHAIR: We are talking about the chart on page 2 of your opening statement. The top of the page I think he is referring to.

Mr PEHM: The outcomes on termination are broadly consistent with the outcomes in previous years in terms of counselling, comments, prosecution and so on.

The Hon. Dr PETER WONG: The reasons, what were the main reasons for termination and were the complainants happy with the termination of cases?

Mr PEHM: We have not had a huge upsurge in requests for review. The only way I can tell you if they are happy or not is from the number of complaints that request reviews, which they can under the Act, and there has not been a huge increase in those numbers. It is hard to say whether they are happy or not. Some of these cases are so old they may have just let go and could not be bothered following it up, but there has not been a big increase in requests for review.

The Hon. Dr PETER WONG: So not many requests for review?

Mr PEHM: It is hard to be specific about that because that is one of the obvious default indicators that should be recorded but the Commission has not recorded. The new system will record that and we are keeping a separate data base on that.

The Hon. Dr PETER WONG: Of the categories, what were the key reasons for terminating the cases?

Judge TAYLOR: What people want to know, as we all know, is what happened, why and what has been done about it. The new powers the department has given the Commission and the new focus the Commission has on dealing with matters at, colloquially, the front end is meaning that more complainants' concerns are being addressed during the assessment phase and that will continue as these powers are implemented. In the past, matters have gone to investigation to resolve primarily the question of what happened. Once people find out what happened, they can better deal with the issues that they have.

I should say that why I have said 350 to 400, in my opinion what the Committee should look to is the number of matters that go to investigation each year should be reduced and the number of matters that are dealt with during the first couple of months of the assessment period should be significantly increased. I must say in a general way, apart from making good sense, that conforms to one of the underpinning concerns that the Commission has had, that the alternative dispute resolution mechanisms should be better employed by the Commission and that we should look to investigation as a matter of last resort.

CHAIR: Thank you very much. We will let you continue.

Judge TAYLOR: The next one is headed "Investigation files opened by year of receipt", and it is the same figures, but I have caused them to be displayed in a different way. It is important in the context of the annual report and the comments made by the reporter, and then, of course, it was six weeks or so before Kieran was engaged, and so you can only describe the upper management of the Commission as skeletal, having regard to the removal of the Commissioner and the upper management people. That is the context in which I particularly was operating for the first nine to ten months.

The delays went back to 1998. As you can see there, there were a couple of matters 1998. They have completely gone. The 39 matters from 1999 have gone. The 83 matters from 2000 have gone and 2001 has been reduced from 81 to one. So that is to open the 21st century. You can see the other figures there. Of course, once you get to 2004, the comparison is not very helpful.

CHAIR: You have got a benchmark of trying to complete all investigations or 90 per cent of the investigations in 12 months?

Judge TAYLOR: Yes, but I have stated it in the annual report as 80 per cent, because you can see, having regard to those figures, notwithstanding the Government's injection of very significant funds and the ability to recruit investigators and train them and deal with all these matters that they have been unassigned, it is unrealistic to develop a plan that will look good on paper but may or may

not be achievable. I think I said right from the start when I came to this Committee that I was going to approach it from a common sense point of view, deal with the obvious, and I think I said at the time that it may not appeal to the management purist, but it was perfectly obvious what needed to be done straight away to return the Commission to a normal level of operations.

The next one is "Macarthur Team Investigations", and it consists of information more than anything else. You can see that by the end of the March we are projecting that there will only be two open, but that is the subject of quite a deal of work that needs to be done to achieve that. That may slip out into April, but you can see it is basically under control.

CHAIR: And you have that Macarthur investigation team still in place?

Judge TAYLOR: Yes.

CHAIR: And it is funded until the end of the financial year?

Judge TAYLOR: That is right.

CHAIR: So once you close those remaining two matters, that resource is available to you to work on some of the other investigations?

Judge TAYLOR: That is right. The Minister, in announcing the Government's provision of the funds, used the word "overhaul". He said that the funds should be used to overhaul the Commission, and he identified Macarthur and the backing of it, and so the overhauling process is going to continue well beyond June. What I have been keen to achieve is that the backlog of the Macarthur investigations will have been eliminated, thereby not requiring the Government to fund beyond recurrent expenditure. We are, of course, negotiating what is an appropriate recurrent expenditure, because one of the stresses the Commission seemed to be under before I arrived was that there just was not enough money to provide the services. Does that answer your question?

CHAIR: Yes.

Judge TAYLOR: The last one is merely again for your information. It shows the number of investigations concluded each month. The lowest we have had was January. There was a little bit of consulting with some of the boards then, but the principal reason for that was that a large number of people within the Commission had not taken leave at an appropriate time going back many years, and as we were starting to refine the internal arrangements from about October last year, we have arranged for people to take leave during this period. So we were lightly staff, but December was obviously a big month to compensate for that.

I said in the opening statement, and I should highlight it here, that between July and December 2003 the average number of investigations completed per month in the Commission was 19 and a half, just under 20, and between July and December last year, in the equivalent period, it was 89. So it was over four times the productivity. I note in our annual report there are some comments about effectiveness and efficiency. Quite frankly, that demonstrates the effectiveness of our policies and the fact that we do not appear to be receiving any more requests for review proportionally than before. The result seems to be the same sort of spread between comments and prosecution and termination. That is how we have demonstrated our effectiveness, but, again, perhaps not in a way that a management purist would wish.

CHAIR: I think what we will be aiming for is in the next annual report these kind of matters are more clearly shown.

Judge TAYLOR: Yes, we recognise that. Dealing with some of your questions, while I do not have it under "Management Structure", the middle management structure was weak. It has required a very personalised style of leadership to actually deal with the individual cases and ensure that the flow of them comes through Kieran and myself, and in your report we request that you take into account not

only the extreme circumstances under which we were operating, but also the fact that the reporting period only covers three months, I think, of my time and about six weeks of Kieran's.

CHAIR: I think we discussed this at previous meetings. I can assure you everybody understands that. Thank you very much. I appreciate that additional information you have provided us. You have tabled that, so we will include that as part of the report. We might move on to questions.

Just looking at the questions that I prepared, the Committee notes that the Health Legislation Amendment (Complaints) Act 2004 came into force on 1 March. Can you provide the Committee with an overview of the changes to the Commission arising out of that legislation? So that has only been in place for a few days, or in operation for a few days.

Judge TAYLOR: In answer to that question we provide you with the following information: First, refocussing the Commission on investigating serious complaints, as I stated earlier, realigning the Commission's activities with the statutory guidance.

Second, sections 21A and 34A will empower the Commission to require the production of hospital, medical and practice records during assessment of the complaint and investigation. In addition, when the Commission investigates a complaint it will be empowered to require relevant people to provide documents and information. While that information cannot be used in criminal or civil proceedings, it can be used in disciplinary proceedings. As you will remember from our previous meetings, it was very much a focus of our interest and our engagement with the special commission of inquiry and this Committee on that particular issue. We are very pleased with the results.

Third, the Commission itself is excused from responding to a subpoena and documents provided will be inadmissible in proceedings, for example, when the subpoenaed information contains self-incriminating answers.

Fourth, section 25B provides that the Commission may refer a matter to a registration board for consideration of performance assessment at any time when dealing with a complaint or at the completion of an investigation. This provision, in recognising the co-regulatory regime, makes it clear that investigation by the Commission and performance assessment by the registration boards are alternative streams. The Commission has strongly supported the Medical Board's use of performance assessments, and you will be aware of that, and the developing performance assessment regimes in the other boards we strongly support. There would be a strong educative process so far as the public are concerned, because referring a matter to the Medical Board is often seen as an opportunity for the board to discipline the practitioner, and there is a little bit of trouble in coming to grips with the notion of performance assessment rather than punishment.

Moving forward, fifth, to expedite the investigation process, the requirement that a statutory declaration be provided to initiate investigations is removed. That is straight forward.

Sixth, the Commission must promptly identify doctors and nurses who are the subject of complaints and the allegations against them. In addition, an ongoing obligation has been imposed on the Commission to keep under review its assessment of a complaint. I have said to you before that that has been an object of the Commission whilst I have been there and we are very pleased to see it in the statutory requirements again, so it does not get lost.

Seventh, the Commission will use its best endeavours to give notification of the outcomes of the assessment of a complaint to a client whose treatment is the subject of a complaint, or to the next of kin if the client is deceased or incapacitated. That is an important reform.

Eighth, there is a provision in the legislation that gives protection for whistleblowers. Section 96 of the principal Act is amended to provide that the complainants will be protected from liability if

they make a complaint in good faith.

Ninth, the creation of the new Office of the Director of Proceedings within the Commission, although co-located with the Commission, the director will make independent decisions on whether complaints should be prosecuted. This proposal addresses perceptions that the Commission lacks objectivity and is biased in its processes. To ensure that the co-regulatory nature of the system is preserved, the director of the proceedings will be required to consult with the relevant registration board about its views before deciding whether or not to institute disciplinary proceedings. As you know, that has been somewhat of interest to us in the Commission. We negotiated with the stakeholders before we advanced that reform to the Cabinet Office. We did so for a number of reasons, but the primary influence was that both here in this Committee and in dealing with the stakeholders, there was a widespread concern that the decision to prosecute was not independent and that the Commissioner was responsible for running investigations and running prosecutions and that the mentality in prosecuting could be infected by an unfairness. That was the way it was perceived, so Kieran and I decided to address that issue and try to find some middle course, if you like, and there is no equivalent mechanism in Australia and we had a close look at the New Zealand model which, in that respect, works very well.

I should also say that the concept of independence is one that this Parliament strongly supports and it permeates this legislation. The relationship between myself and the Minister is governed by independence and the conciliation registry's director of proceedings and so forth. Independence is a fundamental contemporary device for ensuring that, as best one can, the checks and balances are maintained. So we saw the innovation as being one that is consistent with the approach that the Parliament has taken to issues of this kind.

Lastly, the legislation integrates the Health Conciliation Registry and the Commission so that all dispute resolution functions can be performed by the same body. Integration, of course, is only of an administrative kind. To ensure that the conciliation functions of the registry are kept independent of the Commission there is a statutory recognition of the separate role of the registry. Provision of the registry and conciliators are independent of the Commission when conducting conciliations. Offence provisions to prevent the unauthorised disclosure by registry staff, of conciliators, or of information obtained as part of their duties in giving the Parliamentary Joint Committee a role in overseeing the operation of the registry. That has been a matter of some discussion between us. We are pleased with the present arrangements and there is another question where we will deal here with the conciliation registry.

CHAIR: The Committee believes that the person recently appointed to the position of Conciliation Registrar still undertakes the duties of her previous position in the Patient Support Office. Is this correct and, if so, why have the two positions been amalgamated into one?

Mr PEHM: The two positions have not been amalgamated. We have advertised for the position of registrar and with the transitions and the Christmas break unfortunately we could not get that on to coincide with the commencement of the legislation. We called for expressions of interest within the Commission to act in the meantime and the best candidate turned out to be the current PSO from Wollongong. We met with the registrar and the Health Department Legal Branch which administers the registry and, after assessing the current workload of the registry, it was pretty apparent that the full-time position would be idle for a good part of a working week if they were solely doing Health Conciliation Registry work, so until the position is formally recruited, the current acting registrar is also doing work as a PSO, which can be similar in nature. We do not see any conflict in those two roles.

CHAIR: I think we recommended that the PSOs in the registry all come under the one stream in our report.

Mr PEHM: You did. We have recruited a director of assessments and resolution, and part of

that broader strategy of the Commission is to really beef up the front end of the complaint receipt process. He is responsible for the conciliation registry and for the PSOs. We think there are a lot of opportunities for cross-fertilisation and skilling and training that would be applicable to both areas. We met with all the conciliators currently appointed. They are very interested in exploring training with the PSOs. We have also changed the name of the PSOs to complaint resolution officers, to again address this issue of bias and address this perception that they were advocates for complainants. We want to see them as impartial complaint resolvers rather than advocates for one side.

CHAIR: You were talking about the current workload for the Conciliation Registrar not equalling a full week's work. Is that because there has been a reduction in the number of cases being sent to the registry for conciliation?

Mr PEHM: Over an annual period there has been a slight reduction. The former registrar tells us that they have been much busier in the past. I have not gone through monthly figures so I cannot tell you what the variations are from month to month, but it may be at the moment there has been a slow down. I am not sure what the reasons for that would be.

The Hon. CHRISTINE ROBERTSON: Does this have any affect on the Aboriginal program for the patient support officers, the change of focus, because they were deliberately put out there to support.

Mr PEHM: The patient support officers are still out in the regional areas. We have one in the far west area that might be based at Dubbo. The Commission also has an Aboriginal Liaison Officer who is currently on leave. She is coming back, we understand, in the next few weeks, part-time.

The Hon. CHRISTINE ROBERTSON: I am not actually asking details about it. You are changing the focus of the support program to resolution officers. Will this make a difference to the structure in the long-term - I am talking big, not little - of the Aboriginal support officers that were put out there as resolution officers. Is work going to go into changing what they do?

Mr PEHM: No. We have discussed this at great length with the patient support/complaint resolution officers. We do not see any real change in their function. It is partly a titling, a labelling issue which addresses some concerns which have been out there, but really to conduct an appropriate resolution or conciliation it is very important that the resolver or conciliator addresses issues of power imbalance between the parties. You cannot have an effective conciliation where the will of one party is over all. It is implicit that where a party is disadvantaged that the resolver will take that into account and put in place mechanisms to address it.

Judge TAYLOR: You appreciate that the Registrar notified us in February that she was resigning and it was necessary therefore to appoint an acting person because the legislation commenced on 1 March and the Act requires me to appoint someone from the staff so that is why I took that approach.

CHAIR: Just a final question from me on that point, was there a changeover period? Was there an exchange of information? It would be very hard for someone walking in cold into the registry.

Mr PEHM: Yes, about a two week period where the new Acting Registrar has gone in and looked at their systems and they are all in our possession now. She is very capable and she has raised no issues or problems about the transition.

CHAIR: It is currently located where?

Mr PEHM: It is still in the Foveaux Street building, which is run by the Department of Health, but they have indicated to us that they would like to use that space for their own purposes. We have had plans drawn up to remodel our 12th floor which would provide a separate entrance for the

Conciliation Registry. We cannot see that being finished before the end of June but we hope by the end of this financial year to have the registry installed. We will have a major meeting room, two minor meeting rooms and two separate reception areas, so it should be well set up for the function.

The Hon. CHRISTINE ROBERTSON: Can you tell us what the current status of the recruitment process for the Director of Proceedings is, please?

Judge TAYLOR: Karen Mobbs has been appointed as the Director of Proceedings and she will commence with the Commission on 21 March 2005. In the interim Mr Chris Hanlon, the Director of Assessment Resolution, is acting in that position.

Mr PEHM: Karen Mobbs is leaving a position as the Deputy Director of Professional Conduct with the Bar Association, so she is experienced with professional conduct type prosecutions. Prior to that she was in the Department of Environment, doing land and Environment Court prosecutions. Prior to that about 10 years in the Commonwealth DPP as Principal Legal Officer, so very competent, very capable, and we are very happy to get her.

The Hon. DAVID CLARKE: Judge, could I ask what is the current status of the recruitment process for the Commissioner, please?

Judge TAYLOR: The position of Commissioner has been advertised and the recruitment process is a matter for the Premier's Department. My appointment expires on 21 March and the interviews will take place before then, so I would expect that your Committee would be consulted a little bit after the middle of March.

CHAIR: Under the legislation the Committee has the power of veto over the appointment, and we certainly will be putting to whoever is nominated to assist the Commissioner a number of pertinent questions in regard to future dealings with the Committee. We appreciate how good the relationship has been with you.

Judge TAYLOR: Thank you.

CHAIR: We would like that to continue with whoever is nominated by the Government as the next Commissioner.

Judge TAYLOR: I would just like to see the Commission move forward and build on what has been able to be done so far.

CHAIR: The relationship with you has been a very open and honest one, which is good, and we very much appreciate it.

Judge TAYLOR: It is a privilege actually.

Mr TURNER: Commissioner, the annual report notes that the CaseMate project is planned for completion in February 2005 and that CaseMate will become a crucial tool in improving the Commission's performance, as indicated on page 34. Can you provide the Committee with an update on this project?

Judge TAYLOR: Yes. CaseMate is due to go live next Monday, 7 March. All the Commission's investigators, lawyers, complainants, resolution officers and the managers have had training in CaseMate. The training completed for the last few people yesterday afternoon. The data migration has taken place. So it is ready to go. It probably will be addressed later, but I should emphasise that in preparing the annual report it was very difficult for me to sign off on some of the figures. A lot of the material that we have provided to you on a regular basis, such as these graphs today, had been prepared from the electronic data base, but we have looked at it from a number of perspectives and compared the results, and with these particular results in the graphs, we actually

have a call-over every week of the matters, and so I can verify on a case by case basis whether that is correct.

You cannot do that with all the Commission's statistics, it is out of the question, and so we have been very reluctant to accept some of the data, having regard to the reluctance of many officers to enter the data properly and attend to their files properly. This CaseMate system is much more developed in ensuring that the correct data is entered as the investigation proceeds. It has got the usual types of devices where time lines are set and if they are not complied with the manager receives an e-mail and so does the person in the electronic checking system.

That is a rather long answer to your question, but the impact of CaseMate will be very significant in my successor having confidence in the data. The other system, I am not making any criticism of the system, was not really capable of doing it.

Mr SHEARAN: I am just trying to pick it up from these graphs. As at 30 June how many investigations were open which had been open for more than 18 months?

CHAIR: 30 June 2004?

Mr SHEARAN: Yes.

Judge TAYLOR: The simple figure is 248 as at 30 June 2004 were older than 18 months.

The Hon. CHRISTINE ROBERTSON: Can you let us know what is the longest period currently for an open investigation?

Judge TAYLOR: At the close of business on 28 February we had 429 open investigations, 23 of which, in comparison to the 248, were older than 18 months. You can see from the graph that I have given - I am sorry, with respect, there is a question there which has been missed.

The Hon. CHRISTINE ROBERTSON: Which one did I miss?

Judge TAYLOR: Number 7.

CHAIR: It is very similar to 6.

The Hon. CHRISTINE ROBERTSON: How many are currently open which have been open for more than 18 months?

CHAIR: That answers that. As at 28 February there were 23 older?

Judge TAYLOR: 23. 248 down to 23, and in respect of the next question, what is the longest period currently for an open investigation, the oldest complaint is 36 months from the statutory declaration, and this complaint is due to go to the consult for the Medical Board next year. 12 months ago the oldest complaint was five and a half years. You have the figures in the graph there, but we have only one complaint that is between 30 and 36 months, and that is the one that I have just referred to, which is over 36 months.

CHAIR: In the past, the Committee has made several recommendations concerning performance indicators that appear in the Commission's annual report. The indicators in the 2003-04 annual report are primarily concerned with the workload levels of different activities and the timeliness of different outputs, e.g. complaints, assessments and investigations. Can you explain why the Commission has not adopted the Committee's recommendations for inclusion in the 2003-04 annual report?

(Short adjournment)

Mr PEHM: The Commission is very committed to developing appropriate performance

indicators. The ground rules were up in the air with the new legislation. A fundamental shift there is the removal of making quality improvements to improve systems, which I note the review of the annual report picked up and was talking about measuring the effect of the Commission on quality improvement in hospitals. It is very clear after Macarthur with the new legislation that is not a role of the Commission any more, and other changes to the legislation left that up in the air.

To develop performance indicators you obviously have to have a base line to begin with as to what is a reasonable level of performance. The information in the Commission does not allow or has not yet allowed the development of that base line. We got a very raw figure of the number of investigations finalised in the year divided by the number of investigators on board. That comes out at about 20 cases per year per officer. We concede that as our base line we think we can do a lot better than that. I think that our base should be set at a higher level. They are broadly the reasons why we have not concentrated on performance indicators.

CHAIR: We really need to have a full year of the CaseMate system being in operation to assist us.

Mr PEHM: We will develop it over the next year and we will certainly be happy to meet with you and discuss with you the sorts of things we have in mind as we develop them.

Judge TAYLOR: I think I should make clear why I thought it was so important to return the Commission to a normal level of operations, because it is only in that context that you can really measure performance.

Mr TURNER: The Committee has received a suggestion that a table should be included in the annual report that gives figures for each category of health care professional or service showing the number of complaints received in the relevant year and the number of complaints carried over or still under investigation, withdrawn and dismissed. Can you comment on this suggestion?

Mr PEHM: The Commission publishes a number of tables of statistical information which we pretty much reproduced last year because we came in on the tail end of the financial year and assumed there were good reasons for them. Many of them were put in the appendix and perhaps they have been overlooked for that reason. The information that is suggested be captured there we think is captured in tables 35, 36 and 47.

CHAIR: What page are they?

Mr PEHM: 68. The reason why the complaints were put in the appendix and the format was different from last year is simply that the designer of the annual report said that there are too many tables and not enough text. The decisions may have been more or less arbitrary at the time. We now have familiarity with this information, but the information is there.

The Hon. CHRISTINE ROBERTSON: Is the 2004-05 corporate plan available on the Commission's web site?

Judge TAYLOR: It is. Due to an oversight the corporate plan was placed on the Commission's intranet site but not on the public web site, and it is now available.

The Hon. CHRISTINE ROBERTSON: The wording of the vision statement in the report is different to that in the corporate plan. Which document contains the correct wording and, if it is the annual report, has the corporate plan been updated to reflect the new wording?

Mr PEHM: The corporate plan was drafted earlier, the annual report later. The only substantive change is the removal of the word "reviewing". That word was removed because the review function was part of this extracurricular activity that the Commission developed, in that it would send

complaints off to other agencies to investigate, then review the investigations and then have meetings with the agency and try to bring about systemic reform. It is not a function that is endorsed by the Act. It was removed in a later iteration in the annual report. These plans are living documents, in a sense an organic document, so your conception when we drafted the provision for the corporate plan, I think it probably had changed by the time we did the annual report.

To get on to your next question, we will be drafting another corporate plan towards the end of this financial year. The usual plan cycle, as your reviewer points out and criticises our past annual report for not having done this, is to have a five year strategic plan and then a corporate plan which is drafted at the end of each year. In a normal operating environment, that is what you do and we agree that should be done. The Commission was not in a normal operating environment at all for the past year basically, so we concentrated on brass tacks. We put in that interim corporate plan which had some reasonable short-term goals, we thought, but now that the legislation is set, by the end of March, early April, our forward year budget should be set. That is the basis on which you can plan more extensively into the future. We will be going through that cycle when the new Commissioner is on board. That is pretty essential to forward planning.

The Hon. CHRISTINE ROBERTSON: This is the strategic plan?

Mr PEHM: The strategic plan. We will do a five year plan at the end of this year.

CHAIR: You have pointed out that the appendix, which covers a lot of the information, was not in the main body of the report and the instance of complaints referred to the Health Conciliation Registry. In past reports however there has been a bit of a narrative on actually those complaints. That, of course, is not in this year's report. Is that something, with the registry coming into the Commission in future, you will be able to address and give some more information on the types of complaints being referred to conciliation rather than just numbers?

Judge TAYLOR: I would expect so, Chair. To formally answer the question, appendix 1 on page 70 of tables 40, 41, 42 and 43 contains the information. I recognise that there was commentary in the 2002-03 annual report. For 2003-04 the registry did not provide any commentary but, as I say, I would expect that to occur in the future.

CHAIR: There was a similar situation about complaints referred to another body?

Judge TAYLOR: There is. Again the material is in the appendix and I can identify tables 38 and 39.

Mr PEHM: That relates back to an answer I gave earlier, in that the Commission had this function of reviewing. That was a big part of its commentary. It would get investigations back from other agencies and comment on them in its report. It was an extra statutory role, so it is not being pursued at the same level it was in the past.

Mr SHEARAN: The 2002-03 annual report contains detailed information about internal committees. What is the current status of these committees?

Judge TAYLOR: The Complaint Assessment Committee meets weekly. That is very important of course. The Workplace Consultative Committee meets monthly. That is proceeding well and, of course, the performance issue that you have raised is one for discussion in that committee. The Consumer Consultative Committee, last year I felt that there really was not much constructive that would be achieved by that committee, as important as it is. Our position by the end of last year was such that I thought we could reactivate that committee and we had a meeting on 25 February. It was well attended and it was very productive, positive, and we have agreed to meet four times per year and we have set out a standing agenda, if you like. That looks like it will be a positive dimension for the Commission in the future.

The Independent Complaints Review Committee meets about four times per year and considers four to eight complaints at a time. The current chair is Heather Johnson of COTA. The committee members' appointments expire in July this year and I think we have raised with this Committee before we are currently considering the future of the ICRC, its utility. That is something we will be doing in consultation with the appropriate stakeholders.

Mr PEHM: The Complaints Review Committee is not a statutory body either. It seems to have been set up in an attempt to continue to deal with disgruntled complainants. The Commission is obliged to perform a review function, which the commission does. It was set up with the concurrence of the Minister, so we will talk with the Minister about whether we need that in the future. We are hoping that if we can improve the quality of complaint handling there really should not be a need for continual backstops to deal with disgruntled complainants.

Judge TAYLOR: The final committee we had was a Senior Management Committee. We have superseded this by having an Executive Committee and that includes senior executive staff and we meet every fortnight. That has been very useful.

CHAIR: The Committee in the past has seen in the annual reports that there has been detailed information on those internal committees, and we think that that was a good thing to have in the reports. So we might recommend as a formal recommendation that that happen in the future and also just point out to you that there are Treasury guidelines about when a committee has been abolished it should appear in the annual report, but it seems as though one of those committees was only in suspension and has been reformed.

Mr PEHM: None have really been abolished. I have not read the Treasury guidelines. I am not sure, I am yet to have a chance to research it, whether they refer to internal working committees or not, and whether you call the assessment committee a committee, it is really a medium for consultation between us and the Medical Board, for instance. Different people in the Commission consult with the other boards. So it is very fluid to call them committees and probably misleading anyway, but we will take that recommendation on board. We are happy to do that.

The Hon. CHRISTINE ROBERTSON: Do we have the terms of reference for any of these committees? I would be very interested to see the terms of reference of the consultative committees.

Mr PEHM: The workplace consultative - the consumer consultative committee?

The Hon. CHRISTINE ROBERTSON: Yes. I am sorry, I may have used the wrong words.

Mr PEHM: We can provide that to you.

CHAIR: The 2002-03 annual report contains details of senior staff but this information is missing from the 2003-04 report. Why is the information not included in the 2003-04 annual report?

Judge TAYLOR: Page 43 of the annual report, under the heading "Management" gives the details of the senior staff for the reporting period. You will see that the report has not adopted the approach that you see in so many glossy reports of photographs of everybody and a long story that may or may not be of help to people, but the approach to this report was to try and present to you a clear, accurate, up-to-date picture as best we could within the time available. Perhaps in the future that could be developed a bit more on the personal side.

The Hon. CHRISTINE ROBERTSON: Does this mean a lot of names to be printed in it?

CHAIR: In the past, the Commission in their annual report, certainly in the 2002-03 report, printed a list of every employee.

Mr PEHM: Every employee?

CHAIR: Surname, first name, status, title as at the end of the year, qualifications, and I am sorry, my question was about senior staff but I was going to go on and add a question to that about in the past.

Mr PEHM: I just do not see the purpose of naming every staff member. Obviously, even through accountability, we would not have everyone's - senior staff, certainly.

The Hon. CHRISTINE ROBERTSON: Senior staff are required under the--

Mr PEHM: I think above the SES level are required but we have gone further than that. The senior management committee in the old annual report, page 71, had 17 people on it, which you cannot manage with a committee of 17 people.

The Hon. CHRISTINE ROBERTSON: It is a workshop.

Mr PEHM: It is just very difficult to get decisions out of that sort of scale.

Judge TAYLOR: It is very difficult; so many reports can give the impression of trumpeting. You can see my whole approach has been to minimise that type of activity and to get down to the business of the place and report it.

CHAIR: I can understand if the management of the Commission has privacy concerns about listing every member. That is probably a discussion we can have at a later date.

Mr PEHM: Officers identify themselves to complainants or respondents as contact people and that is quite appropriate.

CHAIR: As I said, we can have a discussion about that at a future date, but I also notice on page 100 of the previous annual report 2002-03 professional review and advisory panel. I do not think that appears in the current report. That was an issue that had been raised with the Committee in the past and it took some time to achieve the listing of those people who will review as appearing and people were aware of who was available to participate in the review process, but, as I said, they are issues we can discuss as the hearing continues.

Question 19: What reasons exist for not including a profile of the consumers of the services of the Health Care Complaints Commission?

Mr PEHM: That, again, was just oversight, partly oversight, but also a lack of data collation and entry at the time the annual report was done. If I could address the second part of that question, while there is no demographic data collected on a complaint form, when a complaint is received, every complainant is sent out a demographic survey form with those sorts of issues. The response rate to that is about 19 or 20 per cent. That material was collected during this financial year but not collated in a readily available form to publish when doing the annual report. We will continue to do that. There is absolutely no problem with publishing that in the future. It will now become part of normal case management and be entered into CaseMate when it is received, rather than have having a mad scramble at the end of the financial year and people running around with bits of paper.

The Hon. CHRISTINE ROBERTSON: Excuse me being country centric, but in the future can that include some geography, not just demography?

Judge TAYLOR: Yes, I will of course see that--

The Hon. CHRISTINE ROBERTSON: You have got it in the area health services block but, because you did not have the data, it is not crossed with any other indicator.

CHAIR: This kind of information is included in the Victorian Health Services Commission's annual report.

Mr PEHM: Once we can guarantee the reliability of the data we will fit it under our new CaseMate system.

The Hon. CHRISTINE ROBERTSON: Is that data by area health service so I can pick something up?

Mr PEHM: You can probably get it by postcode. It will just mean writing a report for the computer of postcodes and matching it to area health services.

Mr SHEARAN: Page 2 of the report lists the 14 stakeholders of the Commission. Have you considered providing a profile of these stakeholders with details of the relationship management undertaken by the HCCC, rather than just listing the names of the stakeholders?

Mr PEHM: The short answer is we have not considered that, and when you look at some of the stakeholders, it would be very difficult to have someone who is self-evident on this committee, the Minister. Others would be very difficult to profile and explain relationships, like the media and other Government agencies. I am not just sure exactly what you had in mind there. We have relationships with the health registration boards and we meet with them regularly. We manage those relationships. Perhaps if you can elaborate over the coming year, we can address that concern.

Mr SHEARAN: I think basically from the view of a person who has no idea of these associations and how they are reached with the Commission.

CHAIR: With the interest in the Commission that has been generated over the past few years, maybe more people are reading your annual report, and for the lay person, if there was some more simpler information of the work that you do, they would understand the complexities.

Mr PEHM: Yes. I think it explains where we fit into the system generally, which is much clearer in the new Act and the relationships with the Clinical Excellence Commission and the department.

The Hon. CHRISTINE ROBERTSON: It sounds like a table to me.

Mr PEHM: You want it to be meaningful, rather than just reporting information. We are certainly working on it.

Mr TURNER: I think it has been partly answered earlier, but what was the impact of the Macarthur investigation on the number of other complaints attended to in light of the additional resources dedicated to the Macarthur investigation?

Judge TAYLOR: The impact has been minimal. The \$5.7 million budgeted were for the purposes of overhauling the Commission and it has been sufficient for us to establish, to use a discrete term, a team of investigators and to support them adequately and to deal with the other issues in the Commission. We have been able to appoint for a period of 12 months 15 new investigators within that budget and that has been a great contributor, of course, to the reduction in the backlog.

Mr TURNER: Has the publicity surrounding the Macarthur investigation led to an increase of other complaints and questions from the broader public?

Judge TAYLOR: There was a fairly intense period in the political debates early in 2004, and during that period we issued a statement to say that we had identified a person in the Commission who would deal with these extra complaints that were anticipated. It did not have any impact on us really at all. We accepted the increase, such as it was, within our normal operating.

Mr TURNER: It did not generate into an avalanche?

Judge TAYLOR: No, it did not.

The Hon. CHRISTINE ROBERTSON: When the extra funds for the extra staff to cover Macarthur and the backlog have gone, I cannot think of a proper word, are plans in place to deal with the changes that it is going to make to your organisation not to have all the extra staff?

Judge TAYLOR: Yes, very much so, because - I will withdraw that. We have addressed that.

The Hon. CHRISTINE ROBERTSON: Exit plan?

Judge TAYLOR: Exit plan. One of the reasons for concentrating so strongly on the backlog in Macarthur is because the funding is only available to the end of June. People have been recruited on the basis that they are there for 12 months and they are in the process now of leaving us and will continue to do so certainly until early July. The Commission then will be restored to what I describe as a normal level of tempo of operations. Its establishment is appropriate for that, although we are negotiating with Treasury, and this level of funding, we think this recurrent funding needs some increase and we are confident with our negotiations at the moment. But the funding has been sufficient to do the job.

CHAIR: We look forward when the new positions are recruited, particularly in reference to the health conciliation registry, to coming down and meeting with those new staff members, and I just wanted to say, Judge Taylor, before I give you the opportunity for closing comments, that we appreciate the openness in the relationship that we have had with you since you have come into the position as Acting Commissioner and it has certainly been a sea change compared to the relationship we had with the previous management of the Commission. Just in your opening statements today when you talked about the large number of unallocated investigations to investigation officers that you found when you arrived at the Commission, that is completely contradictory to what the previous Commissioner had told this Committee under oath on a number of occasions. So we appreciate the openness and the good working relationship we have had with you over the past 12 months and we wish you all the best back on the bench.

Judge TAYLOR: Thank you very much, Chair. I say shortly it has been a privilege dealing with this Committee. It is an opportunity that I thought I would never have in my working life, to be part of these processes, particularly legislative reform and, as I say, it has been a privilege to deal with you all and thank you very much.

(The witnesses withdrew)

(The Committee adjourned at 11.30 a.m.)

OPENING STATEMENT BY JUDGE TAYLOR TO THE JOINT PARLIAMENTARY COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION 3 MARCH 2004

INTRODUCTION

The period between tabling the 2003/04 Annual Report and 2002/03 Annual Report has been one of considerable upheaval and challenge at the Health Care Complaints Commission. The extensive changes occurring at the Commission meant that the Annual Report for 2003/04 was prepared by a new and at the time, skeleton Executive Team who were reporting on a financial year in which they had largely no involvement and one which was characterised in the first part of the year by unsatisfactory Commission performance and in the second part, by urgent and fundamental reform.

In December 2003 the former Commissioner was dismissed for failing to ensure that the Commission was fulfilling its statutory obligations in its investigations into adverse events at Campbelltown and Camden Hospitals (the Macarthur investigations). As it has now been widely reported the report released by the former Commissioner focused on systemic issues but failed to thoroughly investigate individual practitioners who were involved in these events.

The Commissioner's dismissal resulted in the appointment of interim Commissioner Bill Grant who began the process of refocussing the Commission's direction on rigorously investigating individual cases of poor health care and professional misconduct.

Backlog

The failings of the investigations into Camden and Campbelltown Hospitals was only one challenge confronting Mr Grant when he took over as interim Commissioner in December 2003. A considerable and unacceptable backlog of investigations was also identified. Mr Grant identified all complaints prior to 1 August 2003 as forming part of a "backlog" of matters.

A budget enhancement of \$5.7 million, to overhaul the Commission allowed the appointment of additional investigators to concentrate on processing and finalising the backlog matters.

The budget enhancement also enabled the creation of a separate team of investigators and legal officers to examine exclusively the matters arising out of referrals from the Special Commission of Inquiry into unsafe treatment or inadequate care at Camden and Campbelltown Hospitals (the Macarthur matters).

In taking on the role of Acting Commissioner I have made it a priority to finalise complaints identified in the backlog. This process has been essential for 2 reasons, namely:

- To ensure that complainants and respondents are provided with resolution to matters that have been outstanding for some time; and
- To ensure that the Commission is meeting its statutory obligations by investigating individual complaints.

As I state in my foreword to the Annual Report, at the end of March 2004 the backlog stood at 448 open investigations. This was reduced to 315 at 30 June and halved by the end of July. As at 28 February 2005, the backlog stands at 17. I anticipate that most of these investigations will be closed by the end of March. These matters have all been properly investigated and appropriately closed according to our statutory requirements. The following sets out the outcomes of the backlog investigations.

Investigation/Prosecution Result	Total	%
Make Comments (health practitioner)	56	13.0%
Make Comments (recommendations)	14	3.2%
Prosecution	107	24.8%
Referred to Board for Disciplinary Action	73	16.9%
Termination	181	42.0%
Grand Total	431	100.0%

Macarthur

A special and discrete team of investigators, lawyers and counsel has been established to deal with those matters arising from the complaints against Camden and Campbelltown Hospitals. This team has had no prior involvement in the earlier Macarthur investigation under the administration of Ms Adrian.

In March 2004 there were 103 investigations into the Macarthur Health Service. This figure peaked at 139 in July 2004 following a number of referrals from the Special Commission of Inquiry. Currently, there are 29 open Macarthur investigations. I am confident that the Commission will close most of these matters by the end of March.

Current Investigations

As at 28 February 2005, the Commission has 429 open investigations.

The HCCC has improved its monthly performance from an average of 19.5 completed investigations between July and December 2003 to 89 between July and December 2004.

I have stated in the Annual Report that the Commission has resolved to use its best endeavours to finalise 80% of current complaints within 12 months.

Casemate

The Annual Report indicates that the Commission has contracted for the development of an electronic case management system called CaseMate. This system will go live this coming Monday, 7 March 2005. CaseMate will significantly improve the Commission's file management processes and data collection capacity.

Consumer Consultative Committee

The Commission's Consumer Consultative Committee was "put on hold" for most of 2004 whilst I focussed on reforming and improving the Commission's operations and processes. I am pleased to advise Members that I have re-activated that committee and a meeting was held on Friday 25 February 2005. The Commission plans to convene meetings of the Consultative Committee on a quarterly basis. We hope to utilise the expertise and community links of the members to formulate policies and improve Commission practices so that we are reaching as many health consumers as possible.

Legislative Amendments

As Members will be aware, the amendments to the Commission's legislation came into effect this week on 1 March. A number of significant changes to the Commission's processes and structure have accompanied the introduction of these amendments. Staff have participated in training on the new legislation.

Health Conciliation Registry

With the commencement of the new legislation the Health Conciliation Registry is now under the administrative and managerial responsibility of the Commission and will be co-located in the Commission's offices. I can assure Committee members that the role and the decision making capacity of the registrar will be completely independent of the Commissioner. The jurisdictional boundaries of each role are clear.

Overall improvements to HCCC

Significant improvements in the operations of the HCCC have occurred in the past 12 months. Examples of these improvements are:

- Staff are now organised into teams that allow for closer monitoring and supervision and training in basic investigation techniques, interviewing and statement taking has been provided for staff.
- A review of recruitment and training for peer reviewers is occurring to increase the panel of peers.
- A corporate planning process is continuing, including the establishment of divisional business plans and performance management systems for all staff.
- Internal Medical Advisers hours have doubled as they now participate in all assessment consultations with the Medical Board and where possible other Boards.
- The CaseMate data system will commence operation from 7 March 2005.
- A Director of Investigations has been appointed.
- A Director of Assessments and Resolutions has been appointed.
- A Director of Proceedings has been appointed. She will commence employment on 21 March 2004.
- The recruitment process has begun for a permanent Commissioner.

Conclusion

When I became Acting Commissioner, my priority was on directing the Commission to refocus on its statutory role of dealing with complaints against practitioners and of overseeing the reduction in the unacceptably high backlog of uncompleted investigations. In addition to this, I have been directing the Commission in its investigations of the matters referred to it by the Special Commission of Inquiry into allegations of unsafe treatment or inadequate care at Camden and Campbelltown Hospitals.

During the past 12 months, including that period covering the Annual Report, there has been a sense of urgency in implementing reforms. Processes have needed to be developed and new structures established within the organisation to ensure that the Commission functions effectively and fulfils its statutory obligations.

The report of the review of the Annual Report makes some useful recommendations about improvements to future Commission reports. In a normally functional organisation, effective plans and processes would have been in place at the start of the 2003/04 year. My primary concern as Acting Commissioner has been on rebuilding the Commission as an effective complaints-handling body and restoring the integrity of the complaint-handling process in a practical and immediate way. The results speak for themselves.

Report on the Review of the
2003-2004 Annual Report of the
Health Care Complaints Commission
By Mr John Chan Sew

February 2005

Introduction

Under the terms of reference for the consultancy, a review was conducted of the following documents for the Joint Committee on the Health Care Complaints Commission (HCCC):

- The HCCC 2003-2004 Annual Report
- The HCCC Corporate Plan for 2004-2005
- The HCCC Action Plan for February-June 2004.

The key purpose of the review was to provide comment on:

- the form and content of the Commission's planning documents;
- the reporting of performance results achieved during the year; and
- compliance with the statutory disclosure requirements as specified in the Annual Reports (Statutory Bodies) Act 1984 and Regulations and the Health Care Complaints Act 1993.

This report is intended to assist the Joint Committee in its conduct of an examination of the 2003-2004 Annual Report of the HCCC in accordance with section 65 (i) (c) of the Health Care Complaints Act 1993.

There are three major sections in this Report presenting:

- the findings of the review of the planning documents;
- the findings of the review of the Annual Report with a special focus on the adequacy of performance reporting and compliance with statutory disclosure requirements; and
- a set of detailed recommendations aimed at further improving the quality of the planning documents and the Annual Reports in the future.

Background

At the Hearing on the 2002-2003 Annual Report of the Commission held on 1 April 2004, the following performance reporting issues were discussed with a view to taking appropriate actions when future reports are prepared:

- Explanations for under-performance in relation to the targets set and disclosure of strategies to address performance shortfalls.

- Information on progress made in the move away from paper-based investigations.
- Update report on introduction of a new case management system.
- Provision of details of staff training including dates, components and number of staff completing modules.
- Independent conduct or review of stakeholder feedback surveys (e.g. surveys of the levels of satisfaction with the patient support service and the investigation processes and outcomes).
- Benchmarking comparisons with the performance results achieved by similar agencies in other Australian jurisdictions.

The first four of the above issues have been attended to, to a large extent, in the 2003-2004 Annual Report. However, the review of the Report has shown that no further action has yet been taken in relation to the other two issues.

At the Hearing held in September 2003 on the 2001-2002 Annual Report of the Commission, a number of other performance reporting issues were raised but, in reviewing the latest Report, it was found that no further progress had been made. Those issues cover:

- adoption of a more comprehensive performance reporting framework that extends beyond the limited number of performance indicators that are currently specified in the Health Care Complaints Act;
- linking of the reporting of performance results to the individual corporate goals of the Commission;
- inclusion of details of planned initiatives and performance targets in the Annual Report;
- expanding the scope of the stakeholder feedback surveys to cover all of the major activities of the Commission; and
- changes to the design of the stakeholder feedback surveys to increase the response rates and also to encourage the making of suggestions for service improvement.

Overall Assessment

As a result of major changes in the top management of the organisation during the year, the focus of the 2003-2004 Annual Report was on explaining specifically how successful the Commission was in implementing the wide range of internal reform initiatives as identified in the short term Action Plan. Apart from this, generally, the key performance indicators disclosed in the Report are similar to those used in previous years and they are quite limited in scope. A majority of the deficiencies

noted by the Joint Committee's previous reviews are still found in the 2003-2004 Report. It appears that, to date, the Commission has made little progress in developing a comprehensive suite of key performance indicators as recommended by the Joint Committee on a number of occasions in the last few years.

The Commission, therefore, should be requested to, as a matter of high priority:

- prepare a Strategic Plan and an annual Corporate Plan;
- develop a comprehensive suite of key performance indicators in consultation with the Joint Committee; and
- use the new suite of indicators for performance management and accountability reporting.

The recommendations put forward at the end of this Report are intended to provide a template for the preparation of the Commission's planning documents and Annual Reports in the future.

Set out in the next two Sections are detailed comments on the results of the review of the planning documents and the Annual Report that has been undertaken.

Review of Planning Documents

Planning provides a strategic direction for an organisation. In pursuing that direction, objectives are set together with strategies and actions to indicate how the objectives are to be achieved. Plans form an important basis for accountability in that the key initiatives and the performance measures and targets specified in the plans are used by agencies to account for the performance outcomes achieved through the Annual Report. Therefore, if the performance measures and targets and the other key elements in the planning documents are deficient, the end result is that it will have an adverse flow-on effect for ex-post accountability.

The Commission did not prepare a Strategic Plan nor an annual Corporate Plan for the 2003-2004 year. It only had a short term Action Plan (drafted by the then Acting Commissioner Mr. Bill Grant) to guide its operations for the period February –June 2004. The focus of the Action Plan was on reducing the backlog of incomplete investigations, restructuring the organisation and its internal business processes as well as implementing a wide range of changes to the policies, procedures and systems of the Commission.

Apart from the Action Plan, the only planning document that is currently available is the Corporate Plan for 2004-2005. This document has been examined with a view to coming up with suggestions for further improvement that can be taken into account by the Commission when preparing similar plans in the future.

The 2004-2005 Corporate Plan provides information on:

- the vision, corporate values, environmental factors and challenges of the organisation;
- the corporate goals, strategies and performance indicators;
- the expectations and needs of stakeholders; and
- the key sources of risk for the Commission.

A major deficiency of the Plan is the inadequacy of the performance indicators because they are not capable of effectively measuring the achievement of the five corporate goals of the Commission. In particular, those indicators identified in the Plan are mainly concerned with measuring efficiency but not effectiveness and outcomes. Also, the Plan should have provided some information on the Commission's planned strategies to minimise the business risks and on the projected financial and budget position.

The common practice in the public sector is to prepare a Strategic Plan for the medium term (3-5 years) and an annual Corporate Plan for each financial year. The key elements of a Strategic Plan normally include the vision, mission, objectives, priorities, strategies and financial outlook of the organisation. The Plan should also provide an analysis of the operating environment (including challenges and risks faced by the organisation) and those factors that are critical to the achievement of the corporate goals and priorities (i.e. the critical success factors). The annual Corporate Plan normally focuses on the services and initiatives (i.e. outputs) to be delivered in the next 12 months and a specification of the resources and budget funding required as well as the quantitative and qualitative performance measures and targets prescribed for that period.

Review of Annual Report

The Health Care Complaints Commission has been given a number of specific statutory responsibilities to promote quality health care in the state of New South Wales. Therefore, it is critical for the Annual Report each year to provide a 'clear and concise snapshot of the vital work' that was carried out during the period under review.

To be an effective instrument of accountability, the Report must contain a strong outcomes focus with clear linkages to the goals, strategies and outputs. When reading the Report, apart from the efficiency and timeliness of the complaints handling and investigation processes, the stakeholders should also be able to assess the part that the Commission has played in effecting systemic improvement in the health sector and in improving the quality of health care services.

In reviewing the 2003-2004 Annual Report, the following major matters were noted:

- The Report provides the readers with a comprehensive coverage of the year's activities. It appears to attempt to be both an instrument of accountability and an

information document. As a result, there is a vast amount of low-level details on both major and minor projects and initiatives and ongoing functions. A significant part of these details should be provided to the stakeholders by other communication means e.g. the Commission's website and information brochures. In addition, all of the case studies should be transferred to the Appendices Section with only the major issues relating to the studies being discussed in the main body of the Report. This is to avoid an unnecessary distraction from the performance focus of the Report.

- The Section on 'About Us' (pages 2 and 3) has identified the vision, charter, organisational model and stakeholders of the Commission but the five goals of the organisation have not been stated in the Report. Also, it has been noted that the wording of the Vision Statement in the Report is not identical to the wording in the Corporate Plan.
- The 'Five Year at a Glance' Section (pages 4 and 5) comprises a series of bar charts showing the volumes of different activities over the last five years. The charts, however, are not accompanied by a discussion and analysis of the trend data thus limiting the usefulness of the information.
- In relation to the reporting of performance, the Commission's current approach does not enable a clear picture to be provided of what the Commission set out to achieve, what it did achieve (as compared to plans and targets) during the year, and what it plans to achieve in the following year.

The most significant issue of concern is the quality of the performance indicators shown in the document. Those indicators, as a whole, are not comprehensive enough to be able to assess the achievement of the corporate goals (particularly the effectiveness aspect) and the desired performance outcomes. This is because the indicators are mainly concerned with the workload levels of different activities and the timeliness of certain outputs (e.g. complaints assessments and investigations). The four timeliness indicators disclosed in the Report are: % of investigations completed within 12 months (target 80%), time taken to complete patient support service cases and time taken to notify receipt of complaints and to finalise assessment of complaints. Also, it has been noted that performance targets have been given only in a few cases thus making it difficult to determine the degree of success of the Commission's operations.

- A positive feature of the Report is that it has provided quite a good coverage of the past operational problems and the specific actions that have been or are planned to be taken to improve performance. However, in some instances, the review of the results of operations is less than adequate. For example, no explanations have been provided for the high percentage of the investigations that were terminated by the Commission. The percentages are: 74% of the health organisation

investigations and 58% of the health practitioner investigations (page 23). Also, although one of the corporate goals of the Commission is to achieve 'quality' improvement in the health system, the Report has not given any details on the percentages of the Commission's recommendations that have been adopted by the relevant bodies nor an outline of the major system improvements proposed.

- The conduct and reporting of stakeholder feedback surveys is an area that will require further attention in the future. Changes that are considered necessary include:
 - better designs for the survey methods (e.g. questionnaires) to enable the obtaining of more meaningful responses to issues that are related to the different aspects of the Commission's performance (including suggestions for service improvement);
 - increasing the response rates to survey requests to enable more valid conclusions to be drawn from the results; and
 - subjecting the survey processes to periodic independent reviews.

The feedback surveys should cover all of the stakeholders as identified on page 2 of the Report. To-date, the Commission has only conducted surveys on the patient support service and the investigation process. No investigations survey was conducted during 2003-2004 but the 2002-2003 Report noted on page 60 that the response rate to the investigations survey of that year was less than 10% and therefore no valid conclusions could be drawn from the results. For more transparency, it would be helpful to also publish the results of all internal reviews of the Commission's operations in the Report together with details of remedial actions taken.

Details of the survey methodologies, findings, lessons learned and actions taken or proposed to be taken to improve services should be fully documented in the Report. This is not the case at present. Selected quotes from the Patient Support Service surveys have been included in the Report. Whilst they may provide interesting reading, they cannot be regarded as an accurate reflection of the general levels of satisfaction.

- There is an absence of a commentary on the shared responsibilities for cross-agency performance issues and on the Commission's contributions to the joint outcomes achieved with other relevant bodies e.g. Department of Health, Area Health Services and health professional organisations.
- At present, the Report does not provide a benchmarking comparison with the performance results achieved by similar agencies in other Australian jurisdictions.

- Although there is a lot of information given throughout the Report on completed initiatives and projects, it is difficult to determine whether the Commission was in fact successful in delivering what it planned to achieve as the details relating to those initiatives and projects planned for the 2003-2004 year have not been provided.
- The 'Review of Operations' Section needs to provide a balanced discussion and analysis of the performance results achieved during the year. This Section should cover not only the 'good news' but also setbacks and problems. Emphasis should be given to the reporting of performance outcomes and effectiveness (rather than the types and volumes of activities) e.g. stakeholder feedback, results of conciliations, investigations and prosecutions, time intervals involved in the complaints and investigation processes and adoption of the Commission's recommendations by relevant bodies.
- The Report has not provided a discussion and analysis of the financial and budgetary position of the Commission. An excellent report is one that:
 - presents financial information in a way that assists readers in understanding the information;
 - provides comparative data over a number of years together with a detailed analysis of the trends;
 - integrates financial and other resources management information into the main body of the report and not simply presents financial statements at the end of the report; and
 - provides a discussion and analysis of the financial activities and management of the organisation as well as a commentary on all material factors that affected or will affect financial performance or position.
- Provision of a breakdown of the budget allocation between different key functions (particularly the investigation of complaints) would be useful to give an indication of the prioritisation of activities. In addition, the average costs for the various categories of complaint handling and investigations can also be included to demonstrate cost efficiency.
- One of the corporate goals of the Commission is to be 'a lead agency in governance and corporate infrastructure'. The 2003-2004 Annual Report has only provided an organisation chart but there is limited commentary on the new corporate governance processes and arrangements that have been put in place under the guidance of the various Commissioners in recent times.
- The Report does not contain an Executive Summary which is normally expected to cover:

- significant issues and developments which had an impact on the performance during the year and future directions and outlook for the following year (including both positive and negative factors);
 - key performance targets and results achieved (including explanations for any major variances);
 - trend data on performance for the key result areas;
 - significant projects and initiatives completed against plans as well as key projects and initiatives identified for the following year; and
 - financial results and position for the current year as compared to budgets and past trends.
- The Report needs a separate Section at the end to deal specifically with the future operating environment and developments as well as future plans and projects (including those that are designed to further improve performance). In particular, this Section of the Report should contain pertinent forward-looking information and comments such as:
 - a discussion of the future outlook for the Commission (including issues and events that are likely to have a significant impact on the following year's performance);
 - details of expected future changes and trends within the operating environment; and
 - an outline of what the Commission aims to achieve in coming periods (particularly in the next year) in relation to the strategic priorities and performance targets that have been set.

Compliance with Statutory Disclosure Requirements

The Annual Report has complied with all of the statutory disclosure requirements as specified in the Health Care Complaints Act 1993 and the Annual Reports (Statutory Bodies) Act and Regulations:

Recommendations

To provide a meaningful discussion and analysis of the performance results of the Commission, the Annual Report needs to disclose the following matters:

- A comprehensive set of key performance indicators that are linked to the corporate goals and desired outcomes of the Commission and are used consistently from year to year.

- Brief explanation of the significance of the key performance indicators including details of any changes from the previous year.
- Performance targets for the year as stated in the Strategic and Corporate Plans.
- A comparison of the actual performance achieved during the year with the targets set.
- Adequate explanations for instances of major under and over-performance and, in the case of under-performance, also details of lessons learned and actions taken to improve future results.
- Performance results for the last five years in relation to each of the major areas of operation (i.e. trend data and a discussion and analysis of changes over time).
- Financial and non-financial information to show how resources and strategies influenced the results for the year (including the costs involved in providing the major outputs e.g. complaints assessments and investigations).
- A benchmarking comparison with the performance results achieved by similar agencies in other Australian jurisdictions.
- An outline of the major initiatives and projects planned for the year and details of the results achieved (together with explanations for any delay and the revised target date for completion).

The commentaries on performance should also cover:

- the extent to which the Commission was wholly or partly responsible for the outcomes achieved;
- shared responsibilities for cross-agency performance issues and the Commission's contribution to the joint outcomes;
- highlights of major achievements as well as significant shortcomings, setbacks and problems in performance;
- major factors, events and trends that affected the Commission's performance during the year; and
- responsiveness to client concerns about service problems (including references to the effectiveness of the complaints handling system and the use of complaints information as feedback mechanism to improve services).

It is further recommended that a 'Financial Commentary and Analysis' Section be included to provide a clear link between the financial statements and the 'Review of Operations' Section of the Report. Apart from a trend analysis, this particular Section

should also focus on providing a commentary on the financial activities and management of the Commission.

To assist the readers in obtaining a 'snapshot' view of overall performance and an insight into future outlook and developments, the Annual Report also needs to incorporate an 'Overview' or 'Executive Summary' Section at the beginning and a separate Section at the end that is dedicated to dealing with the future directions and developments of the Commission at the strategic level. Suggestions for the contents of these two Sections as well as on how other disclosure improvements can be made are set out in the earlier parts of this Report.