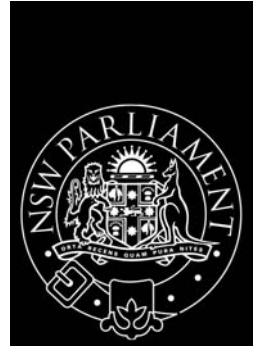


PARLIAMENT OF NEW SOUTH WALES



Committee on the Health Care Complaints Commission

History and Roles of the Committee on the
Health Care Complaints Commission
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Functions of the Committee

The Joint Committee on the Health Care Complaints Commission was appointed in 1993. 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

This year marks the 10th anniversary of the establishment of the Committee which was formed an integral part of the unique framework for dealing with health care complaints put into place by the *Health Care Complaints Act 1993* (NSW).

Parliamentary oversighting committees over “watchdog” agencies are almost standard in New South Wales. They began with establishment of the Independent Commission Against Corruption in 1988 and, aside from this Committee, we now have Parliamentary Committees to oversight the Ombudsman's Office, the Police Integrity Commission and the Children and People's Commission.

The necessity for a Parliamentary Committee to oversight the functions and operations of the Health Care Complaints Commission has been particularly important given the controversial New South Wales model of combining investigation and prosecution powers into the one agency. This agency, while receiving its funding through the health budget, runs largely autonomously.

Further, there has never been a formal and comprehensive appeals process provided for within the legislative framework apart from the Commission's ICRC. There is no formal external independent body to review Commission decisions for complainants. Similarly, appeals against disciplinary outcomes from health professional tribunals can only be taken to the Court of Appeal on the narrow path of points of law.

In the last ten years this Committee has examined the spectrum of this state's health care complaints handling system. It has examined complaint handling at the local level, within the Commission, within the health professional boards and at the Conciliation Registry. It is the only single body to do so.

Recent events involving the Macarthur Area Health Service have thrown issues of effective complaint handling, investigation and quality assurance into the spotlight. These events have also ultimately seen significant changes made by the government to the Commission's operations and senior management. No doubt more will come with the handing down of the final report of the Walker inquiry and the Cabinet Office review of the *Health Care Complaints Act 1993*.

I believe this Committee has played an active role in bringing about these changes. Its monitoring of the Commission over the last ten years has resulted in it raising many concerns to Parliament about the Commission's operations. In particular, delays in investigations. It has also, for many years, been requesting a comprehensive review of the existing legislation.

This report chronicles the work of the Committee over the last 10 years.

Jeff Hunter MP
Chairman

Chapter One - Background

Introduction

The Committee on the Health Care Complaints Commission was established under Section 65 of the *Health Care Complaints Act 1993* (NSW). The powers and functions given to the Committee under this piece of legislation mirrored those of Parliamentary Committees already overseeing the New South Wales Ombudsman and the Independent Commission Against Corruption.

It is the role of the Committee to: monitor and review the exercise of the Health Care Complaints Commission's functions; examine each annual report; and consider changes which may be desirable to the Commission's functions, structures and procedures. The Committee also has a power of veto over the appointment of the Health Care Complaints Commissioner. These functions and powers are discussed in more detail on page 3 of this report.

The Committee is comprised of Members from both the Legislative Assembly and the Legislative Council. Members were first appointed to the Committee by the Parliament on 12 June 1994.

The Health Care Complaints Commission

The Health Care Complaints Commission (HCCC) which was also established under the *Health Care Complaints Act 1993* (NSW) commenced operations on 1 July 1994. The decision to establish an independent, state government-funded body resulted from the findings of the Royal Commission into Deep Sleep Therapy (the Chelmsford Inquiry) which recommended that the existing Health Complaints Unit be changed into a body which: had defined powers and was accountable to Parliament; had a prosecuting and investigating arm as well as a complaints handling and conciliation arm; and was an independent statutory authority.

The Commission's dual role of investigation and prosecution of complaints is unique. Other government health care complaints bodies within Australia (apart from the Australian Capital Territory) tend to be restricted to more cursory investigation and conciliation, rather than prosecution, of complaints relating to professional conduct. Complaints of a more serious nature are more rigorously investigated and, if warranted, prosecuted by the relevant health professional registration boards.

The New South Wales model relies on a collaborative relationship between the Health Care Complaints Commission and the respective health professional boards regarding receipt and assessment of complaints. The assessment process determines how a complaint will be dealt with. It may be referred for conciliation to the New South Wales' Health Conciliation Registry or to another body for investigation. Alternatively, the Commission may either decide to investigate or discontinue to deal with it any further.

- When the Commission conducts an investigation of a complaint, at the end of the investigation it must do one of the following:
 - prosecute the complaint *as a complainant* before a disciplinary body
 - intervene in any proceedings that may be taken before a disciplinary body
 - refer the complaint to the appropriate registration authority (if any) with a recommendation as to any disciplinary action the Commission considers appropriate in respect of the complaint
 - make comments to the health practitioner on the matter (which is) the subject of the complaint
 - terminate the matter
 - refer the matter the subject of the complaint to the Director of Public Prosecutions.

Disciplinary bodies, such as tribunals and professional standards committees, established under respective health registration Acts have the power to discipline a health practitioner in a variety of ways including the suspension or cancellation of their registration.

The HCCC must provide an annual report on its activities and this is tabled in the Parliament by the Minister for Health. In the 2002-2003 financial year the HCCC dealt with 2718 complaints. These included complaints about Clinical Standards (1,357 or 49.9% of complaints), Quality of care (498 or 18.3%) and Business practices (289 or 10.6%). Other categories of complaints were: Prescribing drugs, Patient rights, Provider-consumer relationship, Impairment, Other unethical/improper conduct, Fraud, Complaints management, Resources, Character, Waiting list and Operative complication.

Health Conciliation Registry

Health care complaints deemed suitable for conciliation during the assessment stage by the Health Care Complaints Commission are referred to the Health Conciliation Registry.

The Health Conciliation Registry is a statutory body within the NSW Department of Health, which, on receipt of the complaint for conciliation from the HCCC deals directly with the parties concerned with the aim of resolution.

The Health Conciliation Registry is managed by the Health Conciliation Registrar. The Registry employs conciliators on a part-time “as needs” basis only.

From 1 July 2003 until 30 April 2004 the Registry conciliated 113 matters. In 89 per cent of these an agreement was reached.

Health Professional Boards

Health professions in New South Wales are regulated by Boards which oversee the registration of their members and maintain professional standards. Within the requirements of respective Acts, the Boards deal with disciplinary matters.

The health professional boards include:

- Chiropractors Registration Board
- Dental Board
- Dental Technicians Registration Board
- New South Wales Medical Board
- Nurses Registration Board
- Optical Dispensers Licensing Board
- Osteopaths Registration Board
- Board of Optometrical Registration
- Pharmacy Board
- Physiotherapists Registration Board

- Podiatrists Registration Board
- Psychologists Registration Board.

Alternate health practitioners are not registered.

The New South Wales Medical Board is the largest of the health professional boards. It is a statutory body under the *Medical Practice Act 1992*.

The Medical Board is charged with the responsibility of administering the provisions of the Act including the administration of complaints and disciplinary matters' the administration of an impairment program and a professional standards program.

Membership of the Board comprises Ministerial appointees and persons nominated by respective Colleges of medicine.

Disciplinary Bodies

In New South Wales, serious matters that might lead to the suspension or deregistration of a medical practitioner are referred for formal hearings by the Medical Tribunal, which is a part of the NSW judiciary at the District Court level.

Tribunals comprise a Judge, two peers of the practitioner and one lay person.

Less serious matters are referred to a Professional Standards Committee, which may reprimand the practitioner, require them to attend counselling or education courses, impose fines or impose restrictions on the practice.

Insurance

Under the *Health Care Liability Act 2001* health professionals in New South Wales must be insured with a medical indemnity fund in order to remain registered.

The key medical indemnity funds are United Medical Protection, Medical Indemnity Protection Society and the Medical Defence Association. Public health providers and employees are covered by the Treasury Managed Fund.

Clinical Excellence Commission

The NSW Government committed \$10m funding to the Clinical Excellence Commission (CEC) which will continue the work of the Institute for Clinical Excellence and support Professional Practice Units with responsibility for referral

of deaths to the Coroner; referral of serious complaints to the Health Care Complaints Commission and referral of potential systemic issues to the CEC. The Professional Practice units are attached to Area Health Services and are made up of staff with legal, clinical and mediation skills reporting directly to the CEO of an Area Health Service.

The CEC will also oversee new clinical teams, or flying squads, to go into hospitals to investigate problems and ensure improvements are carried out. The flying squads will ask and demand answers to three basic questions: what happened, why did it happen; and how can we stop it happening again.

The CEC will also focus on:

- Developing and promoting information about best practice in health care, including training and education programs;
- Conducting state-wide audits and reviews of patient safety;
- Establishing a system of information sharing with the Health Care Complaints Commission; and
- Ensuring that the process of identifying errors and dealing with complaints begins at the local level.

Chapter Two - Committee History and Membership

16 September 1992	Health Care Complaints Bill introduced into Parliament
18 November 1993	Bill passes lower house and Legislative Council
2 December 1993	Health Care Complaints Act 1993 receives assent (including provision to “constitute a joint committee of members of parliament”)
Initial membership (June 1994)	Mr Ian Glachan MP (Chairman) Dr Peter Macdonald MP Mr John Mills MP Mr Wal Murray MP Mr Stan Neilly MP Mr Stephen O’Doherty MP Mrs Beryl Evans MLC Miss Jennifer Gardiner MLC Mrs Dorothy Isaksen MLC
Second Committee (following March 1995 elections)	Mr John Mills MP (Chairman) Mr James Anderson MP Ms Marie Andrews MP (Vice-Chairman) Ms Maria Ficarra MP Ms Jill Hall MP Dr Peter Macdonald MP Mr Stan Neilly MP Mr Bill Rixon MP Hon Elisabeth Kirkby MLC Hon Dr Brian Pezzutti MLC Hon Patricia Staunton MLC
Changes to membership, from September 1998	Mr Jeff Hunter MP replaced Ms Jill Hall MP Hon John Johnson MLC replaced Hon Patricia Staunton MLC Hon Dr Arthur Chesterfield-Evans MLC replaced Hon Elizabeth Kirkby MLC
Third Committee (following March 1999 elections)	Mr Jeff Hunter (Chairman) Ms Marie Andrews (Deputy-Chairman) Mr Wayne Smith MP Mr Peter W Webb MP Hon Dr Brian Pezzutti MLC Hon Henry Tsang MLC Hon Dr Peter Wong MLC
Fourth Committee (following March 2003 elections)	Mr Jeff Hunter MP (Chairman) Ms Pam Allan MP (replaced by Mr Allan Shearan MP) Ms Tanya Gadiel MP Mr Russell Turner MP Hon Christine Robertson MLC (Deputy Chairman) Hon David Clarke MLC Hon Dr Peter Wong

Committee Inquiries/Reports

In accordance with its role and powers under the legislation from time to time the Committee inquires into matters of concern relating to the functions, structures and procedures of the Commission and any questions relating to the Committee's functions. Committee Inquiries/Reports include:

Tabled	Inquiries (Title of Report)
June 1996	Report on the disclosure by the Health Care Complaints Commission on information subject to a suppression order Committee resolved to conduct inquiry 21 September 1995
August 1997	Localised Health Complaint Resolution Procedures Reference received 22 February 1996 from the Minister for Health, Hon Dr Andrew Refshauge MP
August 1997	Management Review of the Health Care Complaints Commission Committee resolved to conduct inquiry 10 April 1997
December 1998	Unregistered Health Practitioners: The adequacy and appropriateness of Current Mechanisms for Resolving Complaints Committee resolved to conduct inquiry 10 April 1997 Discussion paper tabled July 1998
November 2000	Report on Mandatory Reporting of Medical Negligence
April 2002	Seeking closure: improving conciliation of health care complaints in New South Wales Committee resolved to conduct inquiry on 5 April 2000
December 2003	Inquiry into the Procedures Followed During Investigations and Prosecutions undertaken by the Health Care Complaints Commission Discussion Paper tabled November 2002 Final Report tabled December 2003
Current Inquiry	Inquiry into Alternative Dispute Resolution Committee resolved to conduct inquiry – December 2003 Discussion Paper tabled 3 June 2004

Report on the Disclosure by the Health Care Complaints Commission of Information Subject to a Suppression Order

In February 1995 the Health Care Complaints Commission gave an ABC journalist access to files containing identifying and other personal information concerning four patients infected with the HIV virus in a doctor's surgery. The identities of these patients had previously been suppressed by the Medical Tribunal.

The Committee made two recommendations for improvement.

The Committee found that the Commission had not been vigilant in protecting the patients' identities. It recommended that guidelines be formulated regarding access to Tribunal documents.

Report on Localised Health Complaint Resolution Procedures

This inquiry examined the adequacy of existing models and methods of resolving health complaints which were not investigated by the Health Care Complaints Commission.

In particular, the Committee examined the three tier framework for complaint handling at the hospital and area health service level.

The Committee made seven recommendations for improvement.

A number of recommendations concerned the need for more consistency and robustness in localised complaint handling as well as recommending the expansion of the role and powers of the Health Conciliation Registry.

Management Review of the Health Care Complaints Commission

In June 1997 the Committee engaged Coopers and Lybrand to undertake a management review of the Health Care Complaints Commission.

Coopers and Lybrand made various recommendations for improvement including: greater involvement of staff at all levels in forward planning of its activities; the implementation of an exit interview policy; a more robust induction process; and the introduction of an open forum team review.

Unregistered Health Practitioners

This inquiry examined the experience of consumers in dealing with unregistered health practitioners. In particular it sought to establish what complaint mechanisms already existed, how effective these were and what scope there was for strengthening them.

The Committee concluded that there was real cause for concern about the lack of regulation of unregistered health practitioners and the consequent inability for them to be sanctioned for unprofessional behaviour.

The Committee made seven recommendations.

Recommendations included providing the Health Care Complaints Commissioner with the legislative power to publicly name unregistered practitioners who had defrauded or endangered their clients and the introduction of a generic form of registration for all alternative health practitioners.

Mandatory Reporting of Medical Negligence

This inquiry arose from the Committee's concerns about the complete separation between the civil law tort system and the disciplinary process. There is currently no way that the Health Care Complaints Commission or the health professional bodies can cross check whether adverse events which have resulted in civil litigation and been the subject of out of court settlements have ever been the subject of a complaint to them.

Several states in the United States of America such as Massachusetts require that insurers notify the appropriate registration body of any pending litigation against a health provider.

Ultimately the committee believed that it was in the public interest to introduce a system of mandatory reporting of medical negligence matters in New South Wales.

The Committee made 12 recommendations.

Recommendations included that, as part of a two year pilot project, the New South Wales Medical Board receive detailed data from health professional insurers and that it cross check that data with its own records of complaints to ascertain how many serious cases had not come to their attention. It was also recommended that the Health Care Complaints Commission receive de-identified information concerning medical negligence litigation for statistical analysis purposes.

Seeking Closure

This inquiry focussed on health care complaint conciliation processes in New South Wales. In particular, the effectiveness of the mediation process employed by the Health Conciliation Registry was examined.

As the basis for the inquiry the Committee surveyed over 300 complainants and respondents who had attended mediation at the Registry over the previous three years. As a result of this survey the Committee found that, in contrast to respondents, there was a general dissatisfaction amongst complainants about what they saw as a power imbalance during mediation conferences.

The Committee made 30 recommendations.

A number of key recommendations aimed to improve the process including: changes to the selection and training of conciliators; a stronger definition of the term “support person”; the assumption that a complainant or respondent has a right to be accompanied by a support person in a conference; and that Patient Support Officers have more clearly defined roles and responsibilities and a more stringent performance review process.

Investigations and Prosecutions Undertaken by the HCCC

During the course of this inquiry the Committee examined the procedures followed by the Health Care Complaints Commission during the investigation process, the amount of evidence considered sufficient for prosecution, the treatment of cases referred from other jurisdictions, and ways in which the investigation and prosecution process could be improved.

A Discussion Paper was tabled in Parliament to allow for further feedback on possible Committee recommendations.

In its final report the Committee made 25 recommendations.

Recommendations made by the Committee included: methods to increase procedural fairness afforded to practitioners; ways to reduce investigation delays; increased clinical expertise at the Commission; and the introduction of better policies and training for peer reviewers.

Alternative Dispute Resolution

The Committee is currently conducting an Inquiry into Alternative Dispute Resolution of health care complaints in New South Wales. Terms of Reference include:

- The role, functions and operations of the Health Conciliation Registry;
- Whether the Health Conciliation Registry has adequate powers under Part 6 of the *Health Care Complaints Act 1993* (NSW) to perform its functions;
- The role of the Patient Support Office in mediating and conciliating complaints; and
- Other appropriate methods of resolving health care complaints other than investigation.

The Committee has tabled a discussion paper on future options for the direction of the Health Conciliation Registry and public submissions have been invited.

Other Reports Tabled (Annual Meetings With Commissioner)

The Committee meets annually with the Commissioner as part of its functions to examine the Commission's annual report and report to both Houses of Parliament on any matters arising.

Tabled	Title of Report
May 1996	First Meeting on the Annual Report of the Health Care Complaints Commission. Meeting held 22 November 1995
August 1997	Second Meeting on the Annual Report of the Health Care Complaints Commission. Meeting held 26 March 1997
May 1998	Third Meeting on the Annual Report of the Health Care Complaints Commission Meeting held 3 March 1998
April 2000	Fourth Meeting on the Annual Report of the Health Care Complaints Commission Meeting Held 27 October 1999
April 2000	Fifth Meeting on the Annual Report of the Health Care Complaints Commission Meeting held 25 January 2000
June 2001	Sixth Meeting on the Annual Report of the Health Care Complaints Commission Meeting held 8 March 2001
June 2002	Seventh Meeting on the Annual Report of the Health Care Complaints Commission Meeting held on 6 June 2002
November 2003	Eighth Meeting on the Annual Report of the Health Care Complaints Commission Meeting held on 18 September 2003
May 2004	Ninth Meeting on the Annual Report of the Health Care Complaints Commission This meeting was held on 1 April 2004

Contact the Committee

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