PARLIAMENT OF NEW SOUTH WALES

REPORT OF THE JOINT COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION

5th Meeting on the Annual Report of the Health Care Complaints Commission and Final Briefing from Commissioner Merrilyn Walton

April 2000

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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.

COMMITTEE MEMBERSHIP

Legislative Assembly

Mr Jeff Hunter MP - Chairman
Ms Marie Andrews MP – Vice-Chairman
Mr Wayne D Smith MP
Mr Peter W Webb MP

Legislative Council

The Hon Dr Brian Pezzutti, RFD, MLC
The Hon Henry Tsang OAM , MLC
The Hon Dr Peter Wong AM, MLC

Secretariat

Ms Catherine Watson, Director
Mr. Keith Ferguson, Project Officer
Ms. Susan Want, Committee Officer
Ms Glendora Magno, Assistant Committee Officer

Chairman's Foreword

I am pleased to present this report of the 5th Annual General Meeting with the Commissioner of the Health Care Complaints Commission as required by Section 65(1)(c) of the *Health Care Complaints Act 1993.*

This report marks my second annual general meeting as Chairman of the Committee and the final meeting with Ms Merrilyn Walton as Commissioner.

The 5th Annual General Meeting not only allowed the Committee to discuss the 1998/99 Annual Report and the Commission's efforts to achieve its statutory obligations and internal objectives, but also provided an opportunity to discuss with Ms Walton the challenges, successes and frustrations she experienced as Commissioner of the Health Care Complaints Commission since its establishment in 1993.

The report summarises the key issues raised during the meeting including options for resolving complaints, indicators for measuring the Commission's performance, consumers' awareness of their right to complain and the collection of statewide complaints data.

This Committee, both under the previous Chairman and since I became Chair last year, has met regularly with the Commissioner in order to fulfil its own statutory obligation to examine each annual and other report of the Commission and to report on any matters appearing in, or arising out of these reports. At all times the Committee has appreciated Ms Walton's considerable knowledge and willing cooperation. The Committee relies on a good relationship with the Commissioner and the Commission's staff in order to fulfil its prescribed functions.

I would like to thank Ms Walton for her attendance before the Committee, to congratulate her on her new appointment and to wish her well in the future.

I thank the Committee Secretariat for their efforts in the preparation of this report.

JEFF HUNTER MP
Chairman

Summary of Key Issues

Options for resolving complaints

The Commissioner advised the Committee that the new management structure of the Commission which replaced the position of Deputy Commissioner with two senior positions – the Director Complaints Resolution and the Director Investigations and Prosecutions - had achieved the objective of shifting the emphasis in resolving complaints from investigation and prosecution to the wider range of options available.

The Commissioner believed that the new structure will enable this change in emphasis to continue to develop. However, education of the community about the various options for resolving complaints is essential. Recent research conducted by the University of New South Wales showed that complainants wanted disciplinary action to be taken against the provider. However in many cases this course of action is not appropriate. The community needs to understand that there are acceptable alternatives to investigation and prosecution and that there are benefits to resolving complaints quickly and without the use huge resources.

As an alternative dispute mechanism, the Patient Support Office has been very successful. In 1998/99 it assisted more than 2,500 consumers and has had the positive impact of reducing the number of complainants who have been referred for conciliation following initial assessment. The Commissioner advised that surveys of complainants indicate that many people want the Commission to remain involved in the resolution of their complaint. The Patient Support Office is an alternative to complaints being referred to an external body for conciliation.

Currently, the Commission refers parties to a complaint assessed as suitable for conciliation to the Health Conciliation Registry, a section of the New South Wales Health Department. This requires consent from both parties. Those complaints which do not warrant investigation by the Commission or conciliation through the Health Conciliation Registry are referred to the Patient Support Office for direct resolution.

The Commissioner advised the Committee that trends were showing that the conciliation model currently in place in New South Wales is fast becoming redundant. The Annual Report indicated that 43% of complaints originally assessed for conciliation were not referred to the Health Conciliation Registry because one or both parties failed to consent for the complaint to be referred. The Commissioner advised there was also a significant drop out rate due, in her opinion, to complainants wanting the Commission to remain involved in the resolution of their complaint.

The Commissioner was of the view that the Commission should have a conciliation role as happens in other jurisdictions such as Victoria and Queensland. The Commissioner is of the opinion that if the Commission was to have conciliation as well as investigation and prosecution powers it could develop a better alternatives for

resolving complaints. This model is currently being implemented in the Australian Capital Territory.

Performance Measures

NSW legislation explicitly requires that every public sector organisation is accountable for its performance and is required to meet all of the relevant legislative requirements.

One of the key principles of the move toward greater performance accountability is the use of performance indicators. Performance indicators are not an exact measure of achievement, but should indicate the level of effectiveness and efficiency of the primary objectives of the public sector organisation.

In response to a question concerning the Performance Measures in the Annual Report, the Commission conceded that the Commission could better report its performance.

The Commissioner provided the Committee with detailed business plans for each division within the Commission. These plans outline such things as specific goals to be achieved, action required, personnel responsible and time frames. The Commissioner agreed that an abridged version of the business plans would better document the performance of the Commission and satisfy its annual reporting requirements.

As well as statutory requirements for performance accountability, the *Health Care Complaints Act 1993* prescribes time frames within which the Commission must perform certain activities. The Commissioner advised that the Commission meets with these time restrictions. For example, 100 percent of notifications must occur within two weeks, and 100 percent of complaints are assessed within 60 days.

Statewide complaint data

The Annual Report states that the Commission, the Department of Health and the Area Health Services had agreed that statewide local health complaint data be collected. The data collection would provide the Commission with a better picture of complaints made at the local level and allow it to perform its function of reporting to the Minister on all complaints made within the public health system.

The Commissioner advised that as a result of discussions with the Director-General and Area Health Services, a working party was established to develop protocols for the complaints data collection. However, discussions concerning the de-identified information that would be provided to the Commission had delayed implementation of the project. Currently, a Memorandum of Understanding between the three parties is still to be signed as the Commissioner remains concerned that the de-identified information to be passed to the Commission is not comprehensive enough.

Currently, complaints that are made directly to an Area Health Service are not automatically referred to the Commission. It was the Commissioner's view that it

was essential for the Commission to be aware of complaints made about particular departments of hospitals in order that the Commission be able to identify problems and trends. It was the Commissioner's view that the public is entitled to know the total body of complaints against a particular facility.

Consumer awareness

The Committee queried the continuing low number of complaints being made to the Commission concerning unregistered health practitioners which suggests that the public largely remains unaware that complaints can be made to the Commission concerning these practitioners. The Committee queried what the Commission should be doing to better inform the public of their rights to complain.

The Commissioner advised that the Commission is embarking on a three-year promotions plan as a means to accessing those people in the community who do not know about the Commission. In the previous three months the Commission had distributed 90,000 rights and responsibilities brochures, 16,000 copies of the new complaints brochure and 1,500 copies of other brochures to multicultural centres in 15 community languages.

The Annual Report notes that another area where complaints appear to be particularly low was those complaints received from Aboriginal and Torres Strait Islanders. This was despite information received from the Aboriginal Medical Service which revealed consistent themes of discrimination and lack of access to hospitals. The Commissioner advised that a draft report has been prepared following these consultations which recommends that area health services improve access and that they involve aboriginal and Torres Strait Islander communities in the development of services for Aboriginal people.

It has been the Commissioner's experience that complaints made by Aboriginal communities were received by the Commission from the Aboriginal Legal Service rather than individuals and that Aborigines and Torres Strait Islanders tended not to complain. The Commissioner recognised the need for the Commission to make its service more accessible to Aboriginal and Torres Strait Islanders.

Language barriers have also been recognised as an impediment to consumer complaints. The Commissioner advised that the Ethnic Communities Council had identified the need for the Commission to specifically target communities. She advised that the Commission is employing a consultant to look at a specific promotion strategy for non English speaking communities.

Ombudsman Style powers for the HCCC

The *Health Care Complaints Act 1993* prescribes an ombudsman style role in relation to the investigation of the care and treatment provided by health organisations but does not provide the Commission with the powers bestowed upon the Ombudsman. The Ombudsman Act provides that the Ombudsman may conduct an investigation into the conduct of a public authority whether or not a complaint has been made.

The Commissioner is of the view that the *Health Care Complaints Act 1993* could be amended to provide the Commission with a monitoring power and the power to review the quality of an investigation conducted by another organisation such as an area health service.

This power would ensure that the Commission was aware of the quality of investigations, whether investigations revealed public health or safety issues and whether the results of an investigation highlighted any policy implications.

The Commissioner's reflection on her time at the HCCC

Two of the Commissioner's biggest challenges during the past 15 years was the period of transition when the complaint unit of the NSW Health Department moved to a statutory authority and the application of a very prescriptive and complex Act.

Another constant challenge had been managing the different expectations and agendas of stakeholders including consumers, professional groups, registration boards and the Joint Parliamentary Committee and remaining neutral and free from capture from any one group.

The Commissioner said that she believed that:

> *The integrity of the place depends on not becoming an advocate for patients, not becoming an excuse for the profession, and not becoming bureaucratic in our response to the problems of the health system.*
>
> *Transcript, 25 January 2000 p.25*

The Commissioner said her biggest frustration had been a poor understanding of the Commission's jurisdiction exacerbated by the fact that professional board membership regularly changed. The lack of public involvement and debate about

many of the issues confronting both the medical profession and health had also been frustrating.

The Commissioner advised that the Commision had identified three "big picture" items it would focus on over the next three years: improving investigation time frames, improving the profile of the commission for alternate complaint resolution and improving feedback to the health system where deficiencies have been identified.