PARLIAMENT OF NEW SOUTH WALES

REPORT OF THE COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION

6th Meeting on the Annual Report of the Health Care Complaints Commission

June 2001

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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, Committee Officer
Ms Glendora Magno, Assistant Committee Officer

Chairman's Foreword

I am pleased to present this report of the 6th 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 makes my third annual general meeting as Chairman of the Committee and my first meeting with Amanda Adrian as Commissioner. Ms. Adrian was appointed Commissioner of the Health Care Complaints Commission late last year following the first Commissioner's move to academia.

Under the *Health Care Complaints Act* the Committee is charged with confirming or otherwise the appointment of the Commissioner. This Committee performed that task last year and is therefore aware of Ms. Adrian's background, experience and expertise. Ms. Adrian comes to the position with a solid and varied background in the area of Health Care provision having been employed in both the public and private areas. On behalf of the Committee I would like to take this opportunity to welcome Ms. Adrian to the position of Commissioner.

This report summaries the key issues raised during the meeting including: complaint handling; increasing success of the Patient Support Officer Scheme; complaints against unregistered health practitioners; and in respect to delays in completing the investigation process.

In the past year the Commission has received a record number of complaints, 18% more than previously. There is no doubt that the continued increase of complaints being lodged will have a significant impact on the ability of the Commission to provide an efficient service to the health care consumer. The strategies to streamline the Commission's processes and the continued development of the capacity of local area health services to address complaints are to be commended.

The success of the Patient Support Officer scheme has resulted in a substantial increase in the number of health consumers receiving assistance. The Patient Support Officers provide invaluable assistance in a wide range of services including providing information, facilitating access to appropriate health care services, and in the timely, efficient and effective resolution of health concerns.

There is a real need for this service to be expanded to ensure that current workloads are adequately addressed and Patient Support Officers are placed in all local area health services.

In conclusion I would like to thank my fellow committee members and the Committee Secretariat for their efforts in the preparation of this report.

JEFF HUNTER MP
Chairman

Summary of Key Issues

1. Complaint Handling

The Committee noted there continues to be a large number of outstanding complaints. While 277 investigations were settled during the year there were over 500 cases still outstanding. Dr. Pezzutti noted that he is receiving increasing amounts of complaints from medical practitioners who state that it takes months for them to be notified of a complaint.

The Commissioner advised that they have a major strategy in place to reduce the number of investigations that have been on going for sometime. There has been significant realigning and investing of resources in the investigation area to reduce the number of old investigations.

As part of this strategy the Commission has been conducting investigation workshops with local area health services who are developing their own expertise in the management of frontline complaints handling. The Commission is continually looking at the areas for investigation and reporting back to enable improvements to be made in the investigation process.

The Commission received a record number of complaints during 1999/2000. Nearly 2,500 complaints were received during year, an increase of 18% on the previous year. The Commissioner advised that 10% of the increase is due to counting complaints that were referred to the Commission by the Health Registration Boards. They were previously not included in the figures for the Commission.

The Commission is streamlining its processes to meet the higher number of complaints received, particularly reviewing its resources to ensure that there is adequate staff to support the complaint resolution strategies.

2. Types of Complaints

On receipt and assessment of a complaint the Commission allocates a primary category which reflects the main issue raised by the complaint. In 1999/2000 clinical standards continued to be the category receiving the most number of complaints, 1,264 lodged or 52.1% of all complaints. Other categories, which received large numbers of complaints, include quality of care 332, business practices 228, prescribing drugs 171, provider/consumer relationship 123 and patients rights 101.

The Committee noted that there was a ten percent decrease in complaints concerning clinical standards, down from 56.9% last year. The Commissioner advised that

though there had been a percentage decrease, the actual numbers are increasing (up from 1,168). The Commissioner considers that the reason for the decrease, in percentage terms, may be due to the culmination of the Commission's endeavours allocating the complaint to its correct category. Some cases that would previously have been included within the clinical standards category are now being dispersed to other categories.

Business Practice is the term given to a broad category of complaints. It includes complaints about fees charged, waiting times for surgery or missed appointments and can also include actual conduct of the practice, such as the receptionist's behaviour. The Business Practice category increased from 140 in 1998/99 to 228.

The Category of "Prescribing Drugs" has almost doubled since 1997/98, increasing from 97 in 1998/99 to 171. The Commissioner is of a view that the increase is due to a better collection of data by both pharmaceutical services and other agencies, for instance the methadone committee, and by individual practitioners. The information provided to the Commission in respect to this category is now much clearer and readily categorised.

3. Patient Support Officer

The Patient Support Officer service introduced by the Commission continues to be a successful alternative dispute mechanism. The number of consumers assisted during 1999/2000 has risen to record levels with the service assisting nearly 4,000 people, a significant increase on the 2500 of 1998/99.

The Commissioner advised the Committee that the expanding workload of the patient support officer service and the value of the service is adding to the improvement of the health complaint system. The expanding workload is such that several new patient support officers had been appointed during the past 18 months.

To assist regional New South Wales an officer has been appointed to handle consumer inquiries from areas outside the Metropolitan Area.

The Commissioner considers the Patient Support Officers are developing a close relationship with hospitals and health services, particularly the patient representatives employed by the health services. This relationship is resulting in an increased referral by the hospitals to the Patient Support Officer.

The Commissioner also advised that due to the service's success additional funding has been sought to enable the Commission to employ patient support officers for all local health areas.

The Commission has also employed an Aboriginal support officer who is to work exclusively with Aboriginal communities throughout New South Wales.

4. Statewide complaint data

Last year the then Commissioner advised the Committee that a Memorandum of Understanding had been reached between to the Commission, the Department of Health and the Area Health Services for statewide local health complaint data be collected. Following discussions a working party had been established to develop protocols for the complaints data collection however the Commission advised that delays had been occasioned through concerns in respect to de-identified information being provided to the Commission.

The Commissioner advised the Committee that the first draft report from the statewide complaint data collection project had been prepared however there were further discussions to be held concerning some of the issues raised in the report.

Concerns have been raised by the Local Area Health Services that the collection of data will expose them to criticism however the Commissioner considers that those concerns are waning and that there is a growing acceptance of the need for data to be released to the community.

5. Investigations by other body.

The Committee raised the issue of investigations made by another body following referral by the Commission of a complaint. Fourteen per cent more complaints were referred in 1999/2000 compared to the previous year, with fifty-one per cent of those complaints being in respect to clinical standards.

Under Section 26 of the Health Care Complaints Act the Commission may refer a complaint to another person or body for investigation.

The Commissioner informed the Committee that the Commission has undertaken a campaign to develop the competence of the front line complaint resolution and management investigation of registration boards, local area health services and other health service providers. In 1999/2000 almost 900 health service staff have undertaken the Commission's two day workshop on investigations. In light of this campaign the Commission has been willing to refer more complaints to the registration boards and to the area health services.

The Commissioner advised that as the competence and capacity of the area health services and boards to deal with matters at a local level increases so will the expectation that referrals from the Commission will also increase.

6. Unregistered Health Practitioners.

The Committee raised the issue of unregistered health practitioners. For sometime the former Commissioner, Merrilyn Walton raised with the Committee concerns in

respect to the lack of adequate and appropriate mechanisms for resolving complaints against an unregistered health service provider. The former Committee undertook an inquiry and tabled a report in 1998 (*Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints – December 1998)* making seven recommendations that the Committee believes would offer greater protection to the public.

The Commissioner advised that the Commission is continuing to receive complaints in respect to unregistered health service providers. In some cases the conduct is of a level of harm which causes the Commission considerable concern. In a number of cases the Commission has provided adverse comments and has been quite critical of people providing the health service. However, unless the Commission can form the view that the conduct of the unregistered provider reaches a criminal standard there is little recourse for the Commission to take disciplinary action.

The Committee considers that the establishment of adequate mechanisms for resolving customer clients is an important issue, and again commends to Parliament the recommendations made within the Committee's report of 1998.

7. Director of Prosecutions

The Committee raised the issue of the need for separate divisions between the investigation part of the Commission and the Prosecution section. The Committee during its visit to New Zealand as was informed that the Health and Disability Commissioner has a separate and legislatively independent Director of Prosecution.

The Committee is concerned as to whether the present structure in the Commission allows for sufficient independent scrutiny of the investigation before commencing a prosecution.

The Commissioner informed the Committee that there are currently two separate units within the Commission, an investigations unit and a prosecution unit. Upon the investigation unit completing an investigation to the satisfaction of the Commission and the Health Registration Board the action proceeds to the prosecution section. The evidence is scrutinised very carefully by that unit, and if the matter is controversial or unclear then senior counsel's advice is sought before a decision is made to commence prosecution against the practitioner.

The Commissioner further stated that the old structure within the Commission of having one Director in charge of both the investigation and prosecution units is to be abolished. In future the investigations unit and the prosecution unit will report directly to the Commissioner. The Commissioner considers that this restructure will provide an absolute separation of the processes within each unit.