

Mr Mel Keenan
Committee Manager
Committee on the Health Care Complaints Commission
Parliament House
Macquarie Street
SYDNEY 2000

Dear Mr Keenan

I refer to the recent public hearing held as part of the Committee on the Health Care Complaints Commission's inquiry into the operation of the Health Care Complaints Act 1993. Following on from that hearing you have provided the Department of Health with a number of questions to which the Committee would like a written response.

- 1. Could you please explain to the Committee the role which the Department has played in the development of the national scheme? What do you consider to be the key elements of the scheme in terms of its impact on the NSW health care complaints system?*

The Intergovernmental Agreement to establish the National Registration and Accreditation Scheme was signed off by the Council of Australian Governments in March 2009 and was developed with advice from officers of the NSW Department of Health. Officers of the Department have also had carriage of the implementation of that agreement including the development of the legislation, and negotiations that resulted in the Australian Health Ministers' Council agreement that NSW could continue to operate separate conduct, performance and health systems that retain the existing role for the Health Care Complaints Commission.

The key element of the Scheme in terms of complaints is that NSW will effectively retain its complaints system. In this context the key impacts of the national scheme on the NSW health care complaints system are expected to largely focus on the interaction between the two systems. Most importantly these interactions will involve the exchange of information about complaints and the outcomes of disciplinary, performance and health matters.

In respect of information exchanges the national scheme is expected to deliver a greater level of transparency and free flow of information about disciplinary matters than is available under the current state-based systems. For example the practice in some jurisdictions of entering into voluntary and confidential undertakings between boards and practitioners will cease, and this is expected to be of substantial benefit to the public, employers and the health care system as a whole. The national scheme is also expected to be of benefit in allowing for the consolidation of all regulatory information about practitioners in one register

thereby simplifying the process of obtaining a comprehensive picture of the practitioner's prior practise and conduct.

2. *Do you have any general observations to make on the efficacy of lines of communication between the Department and the HCCC?*

The Corporate Governance and Risk Management Branch of the Department of Health has specific responsibility for direct liaison with the Health Care Complaints Commission. This involves receipt of both the Commissions S.42 and S.43 investigation reports. The Department responds to the investigation reports in relation to any recommendations made to the Department and advises on statewide policies and statewide initiatives relevant to recommendations made by the Commission and monitors the implementation of the Commission's recommendations to Health Services. Senior officers from the Department and the Commission liaise as required on the progress of the implementation of recommendations by the Commission. The Director-General of the Department holds a regular quarterly meeting with the Health Care Complaints Commissioner and this has proven to be an effective means of ensuring good communication between the Department and the Commission.

3. *The Department's submission notes concerns raised by the South eastern Sydney Illawarra Health Service (SESIHHS) that complying with the 28-day time frame under the Act for a health service provider to respond to serious complaints can be difficult in complex cases which may involve multiple services.*

In its Discussion Paper the Committee canvassed the issue that in exceptional cases, at the expiry of the 60 day period the Commission may review the progress of an assessment, defer the decision if it is considered appropriate in the circumstances, and advise the complainant of reasons for doing so, and I am pleased to note that this has been supported by the HCCC in its response.

Have you been made aware of any more general issues of difficulty for Area Health Services in complying with the Commission's timelines? If so, how have these been managed?

Area health services have not raised this issue directly with the Department of Health and as such I have not been made aware of any more general issues of difficulty that area health services have experienced in complying with the time frames set down in the Health Care Complaints Act.

4. *In the Department's submission you note that occasionally the Commission receives complaints relating to practitioners who are currently working at a particular Area Health Service, but which do not raise issues which relate to that particular Area Health Service, so that the AHS is not notified until the complaint has been assessed. You noted further that:*

[w]hile this may occur for only a limited period of time, it may still pose a risk to the Health Service or patients being treated there. In addition, the AHS may also hold relevant information and or be investigating a concurrent complaint against the clinician which may be relevant when taken together with the HCCC complaint.

In response, the HCCC has noted that it is bound by the Act to only notify individual respondents, and not their employers, unless and until the complaint is made the subject of an investigation; but that it has no objection to notifying the employers of individual respondents of all complaints. What are the Department's views on addressing this situation?

The Department notes that the HCCC has indicated that it has no objection to notifying the employers of individual respondents of all complaints. The Department would welcome the Committee considering whether or not the Act should be amended to allow for this approach.

5. *Are there any other comments that you would like to make with respect to the Inquiry's Terms of Reference?*

The Department of Health does not wish to make any additional comments.

Question Taken on Notice

1. *Does the service check register apply to affiliated health organisations or volunteers? If not, then, based on the Department's experiences so far, are there any plans to expand the register to cover affiliated health organisations and volunteers?*

The service check register applies only to employees and contractors of the NSW Health Service where there have been allegations relating to a serious disciplinary matter involving an allegation which if proven involves serious sex or violence offences (carrying a possible penalty of 12 months or more imprisonment) or unsatisfactory professional conduct or professional misconduct as referred to in s117 of the Health Services Act 1997. As the register relates only to employees of the NSW Health Service it does not apply to affiliated health organisations or volunteers.

The service check register has been in operation for just over 12 months and a review of its underlying policy will commence in the near future. A discussion paper has been drafted and will issue shortly to a range of interested stakeholders for comment. The prospect of extending access to the Service Check Register to affiliated health organisations and applying the policy to their staff is one of the issues identified in the discussion paper.

Thank you for providing the Department of Health with the opportunity to provide these additional comments.

Yours sincerely



Leanne O'Shannessy
Director Legal and General Counsel

11 May 2010