

QUESTIONS ON NOTICE

2006-2007 ANNUAL REPORT OF THE NSW HEALTH CARE COMPLAINTS COMMISSION

EXECUTIVE SUMMARY

Question 1

The Report notes as follows:

'Although the number of inquiries increased from the previous year, the restructure included the handling of inquiries at one central point, so a comparison with figures from previous years cannot readily be made. The improvement in the quality of advice given by the Inquiry Service has contributed to the Commission receiving fewer written complaints in 2006-07.'

Could you please clarify these statements?

RESPONSE:

The first statement is explained in more detail at page 32 of the Annual Report under the heading 'Inquiries received' as follows:

'In 2006-07, the Inquiry Service dealt with 7927 inquiries. Chart 9.1 shows the number of inquiries dealt with by the Commission during the last three years [4577 in 2004-05, 6003 in 2005-06, and 7927 in 2006-07].

The apparent increase in the number of inquiries is partly explained by a change in counting methods. Chart 9.2 shows the numbers of both inquiries and resolution matters that were received during the last three years. The increase in inquiries corresponds with a decrease in matters that were previously handled by the Resolution Service when it was called the Patient Support Service. Until March 2005, the inquiries handled by the Patient Support Service were counted separately from the inquiries handled by the Inquiry Service. They are now counted together.'

The second statement is also explained in more detail at page 32 of the Annual Report under the heading 'Inquiry Service' as follows (emphasis added):

'The Inquiry Service in its current form has operated since April 2006.

The Inquiry Service, staffed by Resolution Officers, helps potential complainants by providing information and answers to questions. The Service can also provide advice on various approaches to resolve the concerns in question. This may include discussing strategies to deal with those concerns, and in some cases referring callers to a more appropriate agency.'

By way of elaboration on the matters referred to in the sentence underlined:

- Strategies to deal with a caller's concerns can include encouraging the caller to raise their concerns directly with the health service provider, and providing guidance on how to do so, with a view to a prompt resolution of the concerns directly between the caller and the practitioner or health service organisation. If the matter can be resolved in this way, it obviates the need for a written complaint to the Commission.

- Staff of the Inquiries Service have met with and clarified the role of other relevant agencies, such as Medicare, the Aged Care Complaint Scheme, and the Office of Fair Trading. This has enabled the Inquiry Service, where appropriate, to refer the caller to another agency more suited to dealing with their concerns.

In addition, the Commission has introduced a process called 'assisted referral'. Where a caller raises a concern which should only take a quick telephone call to resolve, the matter will be promptly dealt with by an officer of the Inquiry Service in this manner – again obviating the need for the caller to write a letter of complaint to the Commission.

IMPROVING THE HEALTH SYSTEM

Question 2

The report notes that Commission staff made a total of 62 presentations to health service and community groups during the reporting period, and that Resolution Officers also participated in various community events to promote the Commission's services. Did the Commission seek feedback from participants, or seek input as to how to increase community awareness of the role of the Commission?

RESPONSE:

The Commission did not seek formal feedback from the groups that attended the presentations. The Commission is in the process of developing a formal feedback process which it proposes to implement from 1 July 2008.

The answer to Question 3 below also goes to the issue of increasing community awareness of the role of the Commission.

Question 3

The Commission plans to develop information packages, including brochures and posters, to support health service providers in informing patients and the public about how to use the services of the Commission. Could you please advise of the progress of these plans?

RESPONSE:

The Commission provided its existing information material to all Area Health Services between September and November 2007. The Commission also advised the Area Health Services that it was reviewing the content and presentation of this material, and sought feedback from the Area Health Services to assist with this review. The Commission subsequently finalised its review of the content and design of its various publications, and consulted with the representatives of the key consumer bodies through its Consumer Consultative Committee in doing so. The new brochures and posters will be available for distribution to the Area Health Services in April 2008.

LEGISLATIVE CHANGES

Question 4

The report notes that legislative amendments strengthened provisions against de-registered health practitioners? Having regard to the recent tragic cases involving ex-doctor Graeme Reeves, does the Commission intend to review its internal practices with regards to referring practitioners to the Office of the Director of Public Prosecutions?

RESPONSE:

Following an investigation, the Commission can refer the conduct of a practitioner to the Office of the Director of Public Prosecutions if there is evidence that an offence has been committed. The Commission's Investigation Division manual makes this clear.

The Commission will also refer allegations of criminal conduct to the police where it has obtained the consent of the complainant to do so – as has occurred with the Commission's referral of certain complaints about Dr Graeme Reeves to the NSW Police Force Strike Force "Tarella", which is investigating the issue of possible criminal conduct by Dr Reeves.

The *Health Care Complaints Act* provides for the referral of evidence of possible criminal conduct to the Director of Public Prosecutions at the end of an investigation. In December 2007 (some months before the publicity surrounding Dr Reeves), the Commission sought a legislative amendment to the *Health Care Complaints Act*, which enacted, will give the Commission the power to disclose information to law enforcement, investigative and prosecuting agencies at any time.

Question 5

Does the Commission have an ongoing plan for recommending further legislative changes in the immediate future?

RESPONSE:

Yes. The Commission has recently made 29 recommendations for amendments to the *Health Care Complaints Act* and the legislation governing registered health service providers. The desirability of many of the proposed changes has been reinforced by various concerns raised by the case of Dr Graeme Reeves.

TRENDS IN COMPLAINTS**Question 6**

With respect to complaints made about nurses, in the category 'communication', the proportion increased by 4.2 per cent in 2005-06 to 9.1 per cent in 2006-07, the main issue in relation to communication being attitude. Whilst these are small figures, has the Commission examined why this figure has more than doubled?

RESPONSE:

In terms of actual complaint numbers, the 4.2 per cent of complaints about communication by nurses in 2005-06 represents eight complaints, while the 9.1 per cent of complaints about the same issue in 2006-07 represents 18 complaints. Accordingly, the increase in the actual number of complaints is very small in real terms.

It should also be noted that, in 2004-05, the number of complaints about communication by nurses was 12 – higher than the figure of eight complaints the following year.

All of these complaint numbers are set out in Table 18.6 of the Annual Report at page 129.

Question 7

With respect to dentists, there was a significant increase from 6.5 per cent in 2005-06 to 15 per cent in 2006-07, in relation to issues of professional conduct, most commonly relating to competence and illegal practices. The Report notes further that

complaints about dentists are generally referred to the NSW Dental Board, which has 'robust processes' for managing them. Has the Commission had any feedback from the Board on the cause/s of this increase?

RESPONSE:

In terms of actual complaint numbers, the 6.5 per cent of complaints about professional conduct by dentists in 2005-06 represents 12 complaints, while the 15 per cent of complaints about the same issue in 2006-07 represents 28 complaints. Accordingly, the increase in the actual number of complaints is relatively small in real terms.

It should also be noted that, in 2004-05, the number of complaints about professional conduct by dentists was 20 – higher than the figure of 12 complaints the following year.

All of these complaint numbers are set out in Table 18.6 of the Annual Report at page 129.

In light of the above discussion, there has been no occasion for the Commission to seek feedback from the Dental Board on these matters.

Question 8

Access to Justice Health services has been the subject of a number of complaints to the Commission. What types of issues have been raised, and how are they being resolved? Does the Commission liaise with the Ombudsman in relation to Justice Health?

RESPONSE:

As illustrated in Chart 8.15 of the Annual Report at page 26, a total of 119 issues were raised in complaints about Justice Health.

As noted in Table 18.11 of the Annual Report on page 135, these 119 issues consisted of:

- 69 about treatment;
- 31 about access;
- 10 about professional conduct;
- seven about communication;
- one about privacy/discrimination;
- one about grievance.

As noted in Table 18.23 of the Annual Report at page 142, the Commission assessed 98 complaints about Justice Health in 2006-07. The outcomes of these assessments were as follows:

- 62 were discontinued;
- 23 were referred for assisted resolution;
- five were referred for investigation;
- three were referred to another body;
- three were referred to a registration board;
- two were resolved during assessment.

The Commission liaises with the Ombudsman in relation to the handling of particular complaints.

INQUIRY SERVICE

Question 9

The Report notes that only one in seven people who have contact with the Inquiry Service see the need to request a complaint form to make a formal complaint to the Commission. Do you have any concerns that members of the public – especially those from non-English speaking backgrounds, or people with mental illness or intellectual disability - may be discouraged from making valid complaints by this process? What is the Commission doing to ensure that this does not happen?

RESPONSE:

Inquiry Service staff use interpreter services when dealing with people who do not use English as their first language. They have also attended training about providing support to people with a mental illness or developmental disability.

Inquiry Service staff can provide support in the writing of a complaint, by drafting the complaint and sending it to the complainant to sign and return to the Commission

To assist people from a non-English speaking background, the Commission is having its current publications translated into twenty community languages; having signs in these languages displayed in its reception area; and having details of the telephone interpreter service placed on the back of its letterhead.

The Commission uses the Consumer Consultative Committee to ensure that its publications are accessible to the various groups who are potential users of the Commission's services, including people with a mental illness or developmental disability.

ASSESSING COMPLAINTS

Question 10

The Commission must advise the parties to a complaint about its assessment decision within 14 days. In 2006-07, 87.8 per cent of decision letters were completed within this timeframe. While this is a significant level of compliance, what is the average timeframe for the remaining 12.2 per cent, and for what reasons are they not sent out within this period?

RESPONSE:

The average time for the despatch of letters not sent within 14 days was 25.1 days.

There are various reasons (individually or in combination) for assessment decision letters not being finalised within the 14-day timeframe:

- The Commission has been training its staff to write in plain English, with a view to more effective communication between the Commission and complainants. In supervisors ensuring that letters use plain English, there are times when a draft letter will require considerable redrafting, meaning that the final version of the letter is produced beyond the 14-day timeline.
- Some complaints raise complex medical issues which require particularly careful drafting of the assessment decision letter, and therefore liaison between the Commission assessment staff and the Commission's internal medical advisers to discuss appropriate terminology for the assessment letter.
- Commission officers telephone complainants to discuss the assessment decision before sending the decision letter. In some cases, the complainant will provide further

information relevant to the matter that should be, and is, referred to the internal medical adviser for consideration, in order to determine whether the original decision should be adhered to. The need for the internal medical adviser to consider the additional information and provide further advice, and for this advice to be reflected in the final decision letter, necessarily extends the time taken to finalise the decision-making process and the preparation of appropriate correspondence.

Since the publication of the 2006-2007 Annual Report, the Commission has introduced a process to track the drafting and despatch of assessment decision letters.

CONCILIATING COMPLAINTS

Question 11

The Report notes the positive feedback received by the Health Conciliation Registry. How does/will the Registry act upon any unfavourable feedback, especially if the feedback is related to the process generally?

RESPONSE:

The brochure provided by the Registry to all parties referred for conciliation includes information about making a complaint with respect to the conciliation process.

If unfavourable feedback relates to the staff and/or processes of the Health Conciliation Registry – the Registrar contacts the person to see if the concerns in question can be resolved. Resolution can involve a change to the Registry's processes. There are instances where this has occurred – for example, as a result of feedback in an evaluation form, the Registry has included in its correspondence additional information explaining the role of support people in conciliations.

If the Registrar cannot resolve a complaint about a staff member, or the complaint is about the Registrar herself – the matter is referred to the Director of the Assessments and Resolution Division to manage.

If a complaint is made about a conciliator's conduct – the Registrar contacts the complainant and then refers the complaint to the conciliator for comment. The Registrar considers the complaint in the light of the conciliator's comments and the Commission's code of conduct, and reports on the outcome of the investigation to both the complainant and the conciliator.

INVESTIGATING COMPLAINTS

Question 12

In 2006-07 two matters were re-opened for re-assessment. What was the basis for re-opening these matters?

RESPONSE:

In substance, the two matters arose out of one investigation and concerned the conduct of two doctors.

The parents of a person with a mental disability complained about many issues relating to the treatment of their daughter, including whether they had given consent to a surgical procedure. The Commission investigated the complaint and found that informed consent had been given. The parents requested a general review of the outcome of the investigation. The investigation was re-opened to investigate the specific issue of whether the appropriate current consent form under the *Guardianship Act* had been used.

PROSECUTING COMPLAINTS

Question 13

In 11 cases referred by the Commission, the Director of Proceedings made a determination not to prosecute the matter. What were the types of matters for which this determination was made?

RESPONSE:

Five matters related to complaints about nurses. Of these, four related to clinical practice, while one concerned alleged criminal conduct which could not be substantiated. Four of the five matters were referred back to the Commissioner for the consideration of further action, such as referral to the Board for counselling. In the remaining matter, no further action was taken.

A further five matters related to complaints about medical practitioners. Of these, two related to clinical practice, and two involved allegations of the crossing of professional boundaries – one was referred back to the Commissioner for the consideration of further action, and no further action was taken in relation to the other three matters. The remaining matter related to a breach of conditions – no further action was taken in relation to this matter because the practitioner had died.

The remaining matter related to a podiatrist. Whilst the Director of Proceedings was of the view that the matter warranted further action, she did not consider it was sufficiently serious to warrant prosecution before a Tribunal. In the absence of a Professional Standards Committee in this jurisdiction, the matter was referred back to the Commissioner with a recommendation that it be referred to the relevant Board for a Board of Inquiry.

ACCESS TO SERVICES

Question 14

The Report notes that the Commission has attempted to ensure representation of people from culturally and linguistically diverse backgrounds on the Commission's Consumer Consultative Committee. How has the Commission gone about this?

RESPONSE:

The Ethnic Communities Council represented the interest of culturally and linguistically diverse community groups on the Commission's Consumer Consultative Committee. As the Council has ceased to exist, the Commission is currently arranging for a suitable replacement.

In addition, the other consumer bodies on the Consumer Consultative Committee have CALD strategies in place to reach their members from culturally and linguistically diverse backgrounds. The bodies represented on the Committee are:

- Aboriginal Health & Medical Research Council
- Alzheimers Association
- Association for the Wellbeing of Children in Healthcare
- Carers NSW Inc
- Combined Pensioners and Superannuants Association
- Council on the Ageing
- Ethnic Communities Council
- NSW Consumer Advisory Group – Mental Health

- Mental Health Coordinating Council
- NCOSS
- NSW Council of Intellectual Disability
- People with Disability Australia Incorporated (PWD)
- Positive Life NSW
- Rural & Remote Health Consumers of Australia
- Women's Health NSW

Question 15

Given the Commission's current low percentage of staff with a disability, has the Commission considered specifically targeting people with disabilities in future recruitment processes?

RESPONSE:

The Commission developed a three year Disability Action Plan in 2006, which identified a range of strategies to assist the Commission in increasing the number of employees with a disability within its workforce. These strategies have been successful in increasing the percentage of staff recorded as having a disability within the workforce, as demonstrated by the increase of 67 per cent in the percentage of employees that have been recorded as having a disability from the 2004 figures. The current figure of 9 per cent is 3 per cent below the NSW Government Benchmark.

It should be noted that the data collected on whether an employee has a disability is completely voluntary. There are a number of employees who have a known disability, and, in particular, a disability that has required a work-related adjustment, who have declined to identify as having a disability when recording their data. As a result, and similar to the data of other agencies in this category, the Commission's data is not a one hundred per cent reflection of the true representation of people with a disability within its workforce.

The Commission already has one employee who was employed under an affirmative action strategy for people with a disability. No further targeted recruitment programs are planned at this stage.

Question 16

Information on the Commission's services was to have been made available on the Commission's web page in twenty community languages by the end of 2007. This has not occurred. Could you advise how this is progressing?

RESPONSE:

Information on the Commission's services has been part of the overall review of the Commission's information material, as described in the response to question 3, and is currently being translated. The translated information will be available in April 2008.

ORGANISATION AND MANAGEMENT

Question 17

Could you please advise the Committee on the status of the Commission's implementation of the online, self-paced corporate induction program for new staff and completion of the training competencies for positions?

RESPONSE:

The Commission is proceeding with the development and implementation of the online induction program. The modules on OHS for managers and staff are complete and will be established by April 2008; the general modules will be in place by June 2008.

The Assessment and Resolution Division and the Investigation Division have had competencies developed for all of their positions. The competencies for positions in the Legal Division, Corporate Services and the Executive Unit will be completed by June 2008.

Question 18

What has been the impact upon the operations of the Commission of the introduction of performance management?

RESPONSE:

The introduction of performance management has established clear expectations for all staff about their performance, resulting in improved overall performance for the Commission, as demonstrated by the key performance indicators in the Annual Report.

Question 19

How is the Commission's planned review of its Code of Conduct progressing?

RESPONSE:

A revised version of the Code of Conduct is being prepared, and should be finalised by the end of June 2008.

Question 20

At what stage is the new development project aimed at extending Casemate's capabilities to the Legal Division and re-engineering legal processes in accordance with its business requirements?

RESPONSE:

A number of significant changes were made to the Casemate Legal Division processes in November/December 2007. This involved streamlining the existing processes to better reflect the work carried out by the Legal Division, and allows for compliance with external timeframes (such as those imposed by Tribunal directions) to be captured and reported upon in the Casemate system. Information will be captured in relation to all Legal Division processes that were opened after the changes were introduced.

Casemate now has the capacity to record non-prosecution work carried out by the Legal Division, such as FOI applications.

Question 21

Has the Commission achieved accreditation to ISO 27001 *Standards for Information Security*?

RESPONSE:

Yes – the final audit certification from SAI Global was obtained on 13 December 2007.

Question 22

Could you tell the Committee in detail about the audits of the Commission's Assessment of Complaints Service and its Resolution Service?

RESPONSE:

The reports by SAI Global on its audit of Assessments (dated March 2007) and its audit of Resolution Services (dated August 2007) are attached. [See appendices]

Question 23

The Commission's Executive Assistant now has responsibility for developing and implementing a CALD promotion strategy for the Commission over the next twelve months. How will the promotion of the Commission's services to people from culturally and linguistically diverse backgrounds take place?

RESPONSE:

The Commission's Executive Assistant – who herself is from a culturally and linguistically diverse background – recently took over the responsibility of developing and implementing a promotion and education strategy to all external stakeholders of the Commission. The role has now been broadened to the full-time position of Communications and Stakeholder Relations Officer.

In relation to the promotion of the Commission to people from a culturally and linguistically diverse background, the Commission has displayed signs in its reception area and in its regional offices to allow people to indicate the type of language assistance that they would like an officer of the Commission to arrange for them.

The Commission has printed on the back of its letterhead advice in twenty languages on how to seek help in translating correspondence from the Commission by contacting the Translating and Interpreting Service. The advice on how to seek language assistance is now being made part of all Commission publications as part of the review.

As mentioned in the answer to question 16, the information about services offered by the Commission will be available online in April 2008.

The Commission is also arranging presentations about its functions and services that will specifically target CALD communities. In the coming year, the Commission plans to contact community radio stations to arrange for the Commission to be present in programmes targeting members of the various communities of NSW.

Question 24

What supports does the Commission have in place to assist the staff member in the Aboriginal and Torres Strait Islander position?

RESPONSE: The officer in this position is located in Dubbo – an area where there is a large Aboriginal population. The officer is well connected to the community, and is encouraged to participate in appropriate cultural events to strengthen their connection to the community and to improve networks. The officer attends monthly meetings at the Commission's main office, and has supervision meetings with their supervisor on a six weekly schedule. The

Commission engaged this officer during February and March 2008 to work on a project to identify key elements for effective service delivery to Aboriginal communities.