



## Council of Social Service of New South Wales

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Mr Mel Keenan  
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Committee on the Health Care Complaints Commission  
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29 March 2010

Dear Mr Keenan

### ***Inquiry into the operation of the Health Care Complaints Act 1993***

In reply to your letter dated 17 March 2010, please find below NCOSS's response to the additional questions from the Committee following the public hearing.

- 1. Could you please explain to the Committee what, if any, input NCOSS had in the development of the national scheme of healthcare accreditation and regulation? Do you have any view of the effectiveness of the consultation process, and what is your opinion of the model finally proposed?**

NCOSS had limited input into the development of the National Registration and Accreditation Scheme (NRAS) due to a vacancy in the position of Senior Policy Officer (Health) during the consultation period. We are therefore unable to comment on the effectiveness of the consultation process.

While NCOSS did not make a submission on the NRAS, we lobbied Members of Parliament in collaboration with the Public Interest and Advocacy Centre (PIAC) regarding the healthcare complaints model. We were therefore pleased that our position was accepted by the then Minister for Health, Hon. John Della Bosca.

NCOSS welcomes the retention of the Health Care Complaints Commission as an independent body to assess and investigate complaints and undertake prosecutions, and the retention of the separate Health Care Complaints Act. NCOSS believes that the NSW health care complaints model is more robust than the national model under Part 8 of the Legislation and is a better safeguard of health consumer's rights.

As noted in our submission to the Inquiry, NCOSS has concerns about the retention of the NSW Registration Boards (as NSW Health Professional Councils) to manage complaints along with the creation of National Boards. This may give rise to inconsistency and/or duplication between the states and territories, and at the national level. There is potential for the effectiveness of the national registration scheme to be undermined if there are not adequate systems and procedures in place to ensure timely communication of information about practitioner misconduct in other states and territories through the National Boards to the NSW Health Professional Councils and visa versa.

We believe that the effectiveness of this system must be monitored and evaluated after an appropriate period of operation.

**2. What do you consider to be the key elements of the national scheme in terms of its impact on NCOSS' client base, and their use of the health care complaints system in NSW?**

While NCOSS does not have a 'client base' in the traditional sense, NCOSS represents and advocates for the interests of disadvantaged people and the non government social and community services sector in NSW.

As it is proposed that the draft NSW Complaints Legislation will retain the existing NSW complaints model, NCOSS does not believe that the use of the health care complaints system by disadvantaged and marginalised people in NSW will be impacted by the national scheme.

**3. Your submission notes your support for the principles of a health care complaints system in the 21st century, set out in the Committee's Discussion Paper. Do you consider that the practical implementation of these principles has the potential for a greater impact on those disadvantaged groups within society for whom NCOSS advocates? If so, could you elaborate on this?**

The impact of the principles of a complaints handling system as outlined in the Committee's Discussion Paper will depend on how they are interpreted and applied both systemically and on an individual case by case basis. Nevertheless, NCOSS believes that the implementation of the principles to the operations of the Health Care Complaints Commission and complaints handling system is an important mechanism to guide practice and ensure the best outcomes for consumers, health professionals and the community.

By the nature of their disadvantage, it is those people who are the most vulnerable who experience the greatest effects of poor practice or misconduct by health care practitioners. The application of the proposed principles, in particular the principles of transparency, fairness, and effectiveness, would therefore have a greater impact on disadvantaged and vulnerable health consumers in NSW.

For instance, transparency in the complaints system requires decision-making processes that are open, clear and accountable. This may involve ensuring written reasons for the Commission's decisions are worded in plain English or access to an interpreter for complainants who do not speak English well or at all.

Fairness requires not only balancing the rights and interests of patients and those of the practitioners, but also ensuring that consumers have equal access to the complaints system and equal opportunity to have their case assessed. For example, this may require provisions for the acceptance of verbal complaints to facilitate access by complainants who may be unable to make a written complaint due low levels of written English, such as people from culturally and linguistically diverse backgrounds, or people with a disability.

Similarly, for a healthcare complaints system to be truly effective, it must facilitate equity of access for all health consumers. This may require outreach and promotion about the role of the Health Care Complaints Commission and the complaints process targeted to the needs of specific groups, such as the publication of information materials in community languages, information resources in alternative formats, health literacy training for specific communities such as sub-Saharan refugees.

NCOSS acknowledges that the current operation of the Health Care Complaints Commission is largely in accordance with the principles outlined in the Committee's Discussion Paper. However, we still believe that it is important that these principles are formalised and promoted to enhance and strengthen the operation of the complaints handling system in NSW.

4. **Your submission notes that NCOSS supports Issue 18 of the Discussion Paper relating to the mandatory provision of written reasons by the Commission for assessment and post-investigation decisions. However, in its supplementary submission, the Commission notes on pp 18-19 that the Health Care Complaints Act already requires written reasons under s 28(8) and s 41(1).**

**Given this apparent anomaly, are you aware of instances where this has not in fact happened? If so, are you able to inform the Committee of the surrounding circumstances?**

NCOSS is not aware of any specific instances. However, in the interests of consistency and due process, we would support a requirement under the Act to provide reasons for the Commission's decision in writing, where there is not already a requirement to do so, e.g. Section 45(1).

5. **Pursuant to PIAC's submission, the Committee's Discussion Paper raised the issue of amending the Health Care Complaints Act to provide for a statutory internal review process for the Commission, based on complaint handling best practice. The Commission at pp19-20 of its supplementary submission examines its current review process in some detail, and concludes that:**

**...conducting a more extensive and detailed statutory process for "internal reviews" of all assessment decisions and investigations would be overly bureaucratic and unduly cumbersome.**

**Having regard to the experience of NCOSS clients, do you consider that this is a reasonable response? Again, I note that part of the remit of this Inquiry is to identify any unnecessary complications.**

NCOSS supports PIAC's position on a statutory internal review process for the Commission as we believe that internal review processes are a key mechanism to ensure a fair, efficient, and accountable system.

NCOSS accepts that a system that required a review of all assessment decisions and investigations would impose a significant burden on the Commission. However, establishing a review process based on best practice does not necessarily imply that *all* assessment decisions and investigations would be reviewed as stated by the Commission.

NCOSS notes that the intended purposes of codifying the review process is not to require the review of all decisions, but rather to provide greater clarity around how reviews are to be conducted, who is to conduct the reviews, and the principles that should apply to the review process.

We therefore believe that a range of alternate best practice models (that may not require a review of all decisions) should be considered that enable an appropriate balance between the general intended purpose of the review and the practical requirements of the Commission's operating context.

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

No.

**7. Is there anything you would like to suggest which would assist the Committee in the exercise of its oversight role?**

Not at this point in time.

NCOSS welcomes this opportunity to provide further information to the Committee on the operation of the *Health Care Complaints Act 1993*.

If you require any further information, please contact [REDACTED],  
[REDACTED], on [REDACTED] or email [REDACTED]

Yours sincerely

[REDACTED]

Alison Peters  
Director

29 March 2010