Responses to Questions on Notice for the Health Care Complaints Commission on the 2007-08 Annual Report

Executive Summary

1. The Annual Report notes that - leaving aside complaints about ex-practitioner Graeme Reeves, and those referred by the Garling Special Commission of Inquiry - there was an increase of 6.9% in written complaints in 2007-08, possibly resulting from a general increase in publicity about health complaints since early 2008, as well as the increased promotional activities of the Commission [pp 3 & 4]. Does the Commission have any mechanism for establishing how a complainant became aware of the Commission and its role?

   Response

   When people ring the Commission's inquiry service, the inquiry officer will record, how the caller heard about the Commission, if the caller gives the information. A trial in November 2008 had established that the majority of inquirers who responded to this question heard about the Commission through the health service provider or had had previous contact with the Commission. This was followed by Internet search and through phone books and listings. However, it should be noted that such data is only indicative, as it is voluntary information collected.

Results of Inquiries for November 2008 **How did you hear about us?**	**Total 767**
no data available	276
Where response provided	**(491) 100.0%**
Health service provider/Department of Health	14.7%
Previous contact with Commission	14.1%
Internet	12.6%
Phone book and listings	10.6%
Justice Health	11.2%
Government and community organisations	9.8%
Family/friend	6.7%
Medicare	6.5%
Outreach (brochure, poster, presentations)	6.3%
Health Professional bodies	5.3%
Legal representative	1.0%
Member of Parliament	0.8%
Other complaint commission	0.2%

The case of Vanessa Anderson

2. The Annual Report notes the potential for conflict between the strict statutory restrictions on the extent to which and to whom information gathered during a Root Cause Analysis [RCA] investigation can be disclosed and the Department of Health's Open Disclosure Policy.

   Could you please advise the Committee of the results of the Commission's research into the practical operation of RCA processes and open disclosure? [p 9] Has the Commission made a submission to the NSW Department of Health's discussion paper and its review of the RCA legislation?

   Response
   In mid 2008 the Department of Health advised the Commission that the discussion paper in relation to RCA legislation and privilege had been deferred until after the release of the Garling Special Commission of Inquiry. The Commission understands that this was to allow the Garling Special Commission of Inquiry to review the RCA if it felt it was within in scope.

   The discussion paper has not been released to date.

3. In July 2008, the Australian Commission on Quality and Safety in Health Care sought tenders to conduct research into patient experiences of open disclosure, and that the Commission will continue to contribute to this work. How has the Commission proceeded with this?

   Response
   The Commission has contributed to the Australian Commission on Quality and Safety in Health Care's work regarding open disclosure through its support of research conducted by Professor Rick Iedema of the University of Technology Sydney, into 100 patient stories documenting patients' experiences of adverse events and open disclosure.

   The Commission has committed to liaising with complainants to source patient stories for Professor Iedema's research project.

4. The Evaluation by the Australian Commission on Safety and Quality in Health Care of the Pilot of the National Open Disclosure Standard analyses data collected which included 154 interviews with health care professionals, patients and family members. Did the Commission have any input into this process?

   Response
   The Commission became aware of the evaluation project undertaken by the Australian Commission on Safety and Quality in Health Care after it had commenced and was provided with some of the draft reports. The Commission made no submissions on the project.

Legislative Changes

5. In the wake of the recommendations made by Hon Deirdre O'Connor in March 2008 powers of the Commission, has the Commission made representations to the Department of Health for the implementation of those amendments to the *Health Care Complaints Act 1993* which have not made? [pp 17-18]

   Response
   In her first report to the Minister for Health, the Hon Deirdre O'Connor recommended that the following amendments be made to the *Health Care Complaints Act 1993*;

   - To amend s21A to allow the HCCC to exercise all of the powers under s34A as part of its assessment phase.
   - To extend s34A to give the HCCC power to compel documents and information from any person, rather than being limited to complainants and health service providers.

   These recommendations, and others, are part of a bill currently before Parliament. Ms O'Connor made a number of other recommendations, which have yet to be implemented.

   Over the past two years the Commission has made extensive submissions to the Department of Health and to Ms O'Connor regarding a variety of legislative amendments the Commission feels would enhance its complaint handling functions. No further formal submissions have been made subsequent to the report of the O'Connor inquiry.

6. Has the Commission received any complaints against unregistered practitioners since the *Health Legislation Amendment (Unregistered Health Practitioners) Act 2006* came into effect? If so, how many, and in what areas of practice?

   Response
   As of 31 March 2009, the Commission has received 122 complaints against unregistered health practitioners since the *Health Legislation Amendment (Unregistered Health Practitioners) Act 2006* came into effect on 4 December 2006.

   The professions of the health practitioners relating to these complaints were as follows.

Profession	
Alternative Health Provider	15
Other/unknown	10
Counsellor/Therapist	5
Radiographer	5
Administration/Clerical Staff	4
Natural therapist	4
Psychotherapist	4

Social worker	4
Naturopath	3
Acupuncturist	2
Homeopathist	2
Residential care worker	2
Speech pathologist	2
Assistant in Nursing	1
Chiropodist	1
Dietician/nutritionist	1
Health education officer	1
Home/respite care worker	1
Massage therapist	1
Occupational therapist	1
Traditional Chinese Medicine practitioner	1
Welfare officer	1
Total	**61**

Please note, that in the same period, the Commission received an additional 51 complaints about previously registered practitioners, the majority of these relating to the former Dr Graeme Reeves.

Outreach and quality improvement

7. The Annual Report notes that the Commission arranges for telephone, oral and written interpreter services in common community languages. How often has this service been required by complainants? [p 22]

   Response

   Translation and Interpreting Services (TIS) National provide telephone and oral interpreting services to the Commission, whilst written translations are provided through translators engaged by the NSW Community Relations Commission.

   During 2007-08, there were 108 occasions where telephone translation services were provided. In addition to this, on six occasions the Commission requested oral interpreting assistance, for example during meetings with the parties to a complaint. A further seven written translations were provided by the Community Relations Commission.

   The Commission very occasionally uses interpreting services engaged through a public health facility during conciliation and assisted resolution meetings. However, the Commission does not have recordings of the number of such engagements, as they are paid for by the Area Health Services.

8. How is the Commission's development of outreach to indigenous health service consumers and health workers progressing? [p 22]

Response

In June 2008, the Commission became a member of the Good Service Committee, a collaboration between the Financial Ombudsman Service, Commonwealth Ombudsman, Energy and Water Ombudsman NSW (EWON), Health Care Complaints Commission, Legal Aid NSW, NSW Anti-Discrimination Board, NSW Office of Fair Trading, NSW Ombudsman and the Telecommunications Industry Ombudsman to provide a coordinated outreach program to Aboriginal and Indigenous communities throughout NSW. The Committee conducts eight forums per year for Aboriginal and Indigenous communities throughout NSW, the most recent of which was held in Campbelltown on 13 March 2009

The Commission is also inquiring about further possibilities to enhance its outreach to Aboriginal Health Services in NSW by offering its expertise to assist Aboriginal Community Controlled Health Organisations in establishing or improving their complaints procedures.

In addition, the Commission's Executive Officer has attended briefing sessions on improving Aboriginal outreach through the "Two Ways Together" program run by the Department of Aboriginal Affairs.

9. What has been the response to the Commission's request to all NSW local councils to provide information about the Commission to their local areas? [p 22]

Response

The Commission has been listed in LINCS, a collaborative database shared by all NSW councils for the listing of community services.

In addition, in September 2008, the Commission participated in the Local Community Council - Annual Conference in Wollongong, which is a major networking event for council representatives.

In relation to the offer of holding community presentations, the Commission has not received any inquiries from councils to date. However, the Commission's main target group to reach health consumers remains through health service providers. As shown in the Inquiry Service data outlined in Question 1, the majority of inquirers heard about the Commission through a health service provider, including the Area Health Services.

Trends in complaints

10. In 2007-2008, the Commission - together with its Australian and New Zealand counterparts - developed a system that will permit the comparison of complaints data across jurisdictions. How formal do you intend this process to be, and do you plan to include this jurisdictional comparison in future Annual Reports? [p 24]

    Response

    The Commission has been using the new issues data set since 1 July 2008. Other jurisdictions that already have implemented or are currently in the process of implementing the new issues system include Tasmania, Western Australia, South Australia and New Zealand.

    Queensland and Victoria have chosen not to adopt this issues set, mainly because the scope of their legislative role and functions includes other areas that are not covered. For example, the Victorian Commission deals with complaints both under the *Health Services (Conciliation and Review) Act 19*87 as well as the *Health Records Act (HRA) 2001 (Vic).* The ACT and the Northern Territory have participated in the consultation process, but have been unable to provide a comparable data set to date.

    In preparation of the Australasian Health Commissioners' conference in February 2009 in Auckland, the NSW Commission prepared a comparison of complaints data from its counterparts covering the first six months of the financial year 2008-09. Although this data is not yet reliable for benchmarking purposes for reasons outlined above, it did offer the opportunity for increased discussion amongst the Commissioners around the types of complaints received.

    The Commission is planning to report on the issues benchmarked to other jurisdictions in future. However, due to the different levels of implementation during 2008-09 amongst the Health Complaints Commissions, it appears to be more appropriate to start in 2009-10 to allow for a full reporting year.

11. There were considerably more complaints made about public hospitals than private hospitals. Whilst this is not surprising, given the relative number of patients, did the difference in the complaint figures accurately reflect the differing numbers of patients treated in each system?

    Response

    In its Annual Report the Commission reports its complaint numbers about public hospitals in the context of data provided by the Department of Health in relation to number of emergency department attendances, number of non-admitted patient services and number of separations. The Commission does not have access to similar data about private hospitals.

    However, placing the Commission's complaints numbers into the context of activity levels of public and private hospitals as reported in the NSW

Department of Health, Annual Report 2007-08, pages 249-250, the following indication can be given for the financial year 2007-08:

HCCC data:
Complaints received about public hospitals (counted by provider): 763
Complaints received about private hospitals (counted by provider): 55

NSW Department of Health data:
Public hospitals:

- 1,527,382 separations[1]
- 27,426,053 non-admitted patient services
- 2,417,818 emergency department attendances

Private hospital

- 891,515 admissions[2]

From the data it appears, that the Commission received proportionally more complaints about public than private hospitals. However, this data should be interpreted cautiously. It does not take into account the varying complexity and risks of procedures performed and the level of care required for different patients profiles, which differ significantly between public and private hospitals. It should also be understood that patients in private hospitals choose their own doctors and often have extensive relationships with them. This may contribute to a reluctance to complain in similar circumstances where a patient might complain about a doctor in the public system, where the patient has less choice about their treating doctor and less of a relationship with them.

Inquiry Service

12. In what kinds of circumstances might a Commission officer assist a caller to prepare a written complaint for urgent assessment? [p 33]

Response
Commission officers refer an inquiry for quick assessment when immediate assistance is required and there is potential for timely resolution. The immediate concern is often related to current treatment decisions such as an impending discharge from a service, urgent treatment decisions, delay in treatment and end of life decisions.

[1] Separations for public hospitals are counted by each discharge from a ward after being admitted. One admission to a hospital could involve a number of separations as each discharge from a ward is counted separately, eg if a patient is transferred from a neurology ward to a general ward and then discharged, this would be counted as two separations.
[2] As opposed to the separation figure provided by the Department of Health, private hospital data is counted by admissions. Separations within a hospital are more common in public hospitals, as they generally manage more complex cases. Only a small minority of private hospitals provide emergency services, that would be likely to result in multiple separations per admission.

The officer will draft a complaint over the phone focusing on the particular issue that requires prompt intervention when there is some barrier to the caller writing a complaint; for example, where the caller is too distressed to express their concern coherently, is not literate, has a disability or has problems sending the information promptly to the Commission as they are at a hospital, caring for a sick relative or are in custody.

If there are other issues that may be complained about at a later date, the officer notes this in the letter. The complaint is then assessed at the earliest opportunity for referral to a Resolution Officer for immediate action.

Assessing complaints

13. In 2007-2008, a very small number of complaints [41 or (1.4%)] were referred for local resolution because the public health organisation agreed to try to resolve the matter directly with the complainant. How does the Commission monitor the outcome of these processes? [p 37]

Response

There is no follow up on complaints referred for local resolution, as the complaints referred are less serious complaints – generally relating to administration of a facility, to the some physical issue such as cleanliness or signage or to very minor difficulties in clinician/patient interactions. Such complaints do not involve significant issues of public health or safety. There is no requirement in the *Health Care Complaints Act 1993* to follow up on complaints referred for local resolution.

Investigating complaints

14. Has the Commission any explanation for the 10.0% increase in cases where the Commission made comments or recommendations to health organisations? [p 51]

Response

The increase in the number of investigations that resulted in the making of comments or recommendations to health organisations can be attributed to the more rigorous assessment process, ensuring that more serious matters are referred to investigation and a greater concentration of investigations to contribute to systems improvements for the future. The Investigations Division has spent increasing time and effort in discussing systems improvements with respondent organisations to ensure practical recommendations are made.

Prosecuting complaints

15. The Annual Report notes that Senior Legal Officers were working on projects to enhance the effectiveness and timeliness of the Commission's operations [p 58] Have these been completed and what has been their impact on the Commission's operations?

Response

One of the Senior Legal Officers worked jointly with an Investigations Manager to draft a Service Level Agreement ("SLA") to formalise services between the Investigations Division and the Legal Division. The SLA was signed by the Director of Investigations and the Director of Proceedings on 17 February 2009. The SLA sets timeframes and protocols for the referral of files from the Investigations Division to the Legal Division for consideration of prosecution action and includes a brief checklist against which files should be audited prior to referral.

The SLA also sets out timeframes and protocols to apply to the requesting of legal advice, requests for a legal officer to assist in an investigation and those matters where the Director of Proceedings requires further information to assist in the determination process. A number of enhancements to the Casemate system were made in order to support the SLA.

Whilst the SLA has only been in place for a relatively short period of time, it appears to be resulting in a shorter Brief Preparation stage. The Casemate changes have made it much easier for the Director of Investigations to monitor matters in the Brief Preparation stage to ensure that delays are not occurring.

The other Senior Legal Officer has been working on collating the various Legal precedent documents and making them available on a centralised location on the Intranet. The project has required a review and update of many of the precedent documents.