

Submission

No 19

INQUIRY INTO THE OPERATION OF THE HEALTH CARE COMPLAINTS ACT 1993

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The Royal Australasian
College of Physicians

01 December 2008

The Committee Manager
Committee on the Health Care Complaints Commission
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Keenan,

Inquiry into the Operation of the *Health Care Complaints Act 1993*

Thank you for providing the Royal Australasian College of Physicians with the opportunity to make a submission to the inquiry. Your correspondence was received by the Divisions, Faculties and Chapters of the College and the following comments were received.

Australasian Chapter Sexual Health Medicine (AChSHM)

My initial impression of the Act and the Health Care Complaints Commission is that complaint cases have not been used for education to the sector to the extent that they have in New Zealand.

When the Health and Disability Commission Act was first drawn up in NZ in 1994 health practitioners were suspicious and the first commissioner unfortunately was seen to take the side of complainants. The current Commissioner has been well respected by both complainants and clinicians; resolutions are written in readable language rather than legal jargon and if there are common themes or important messages these are often followed up with statements from the Commissioner or his staff.

It is worth looking at some of the complaints resolution reports and publications at <http://www.hdc.org.nz/>

Australasian Faculty of Rehabilitation Medicine (AFRM)

The NSW Branch of the Australasian Faculty of Rehabilitation Medicine (AFRM NSW) welcomes the opportunity to participate in the parliamentary inquiry into the operation of the Health Care Complaints (HCCC) Act. We train and represent specialist medical practitioners providing public and private physical rehabilitation services in NSW. A number of our members have either been requested to prepare reports for the HCCC regarding a complaint or have been subject of complaints and subsequent investigation by the HCCC. The following brief comments are based on feedback from some of these clinicians that may be useful for the purpose of this review. Please note that these comments are not specific to the practice of Rehabilitation Medicine.

1) EDUCATION

When a clinician comes in contact with the HCCC, either when they are being investigated or writing a report regarding an incident, they are not necessarily familiar with the role, powers and investigative processes of the Commission. When our members are asked to provide a report, either as a witness or as a clinician under investigation, they are not provided with any information regarding the role and processes of the HCCC and the rights of those subject to investigation. We feel that they should be.

2) INVESTIGATION PROCESS

- a. **FORM:** Investigations are performed by mail. There are no interviews conducted by the investigator that could provide an opportunity to accurately and fully explore events. The initial letter asking for a report as a witness to an event does not notify the clinician that this report may be used to make decisions regarding commencement of disciplinary proceedings against the author of the report.
- b. **TIMING:** There are significant delays at all points in the investigation process. First there is often a delay after the event before a report is requested from a clinician. Secondly, there is then a significant delay (sometimes 12 months or more) before a follow-up request for any further information is requested. Third, the clinician is then given a very tight time frame (ie 14-21 days) for completion of what could be a complex report.

Some clinicians reported that they were never informed of the completion and outcome of investigations. The significant time delay can have an adverse psychological impact on the clinician being investigated. Being investigated can have adverse effects on future employment if the clinician is not able to give a prospective employer a clear idea regarding the progress or possible outcome of the investigation.

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3) SUPPORT FOR JUNIOR MEDICAL STAFF

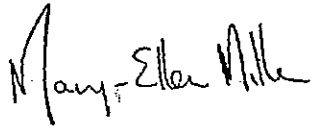
Junior Medical Officers are not required to hold professional medical indemnity insurance if working in public hospitals in NSW, and are not encouraged to do so. As HCCC inquiries can proceed to referral to the NSW Medical Board for possible disciplinary action, Junior Medical Officers may be disadvantaged as they are much less likely to be in a position to access legal advice in the preparation of HCCC responses than are their senior colleagues.

RECOMMENDATIONS:

It is important that the processes of the HCCC are transparent and as such we recommend:

- 1) That an information package be sent with the letter requesting a report that outlines the roles, powers and processes of the HCCC.
- 2) That this information package should contain clear plain English information regarding possible uses of any written reports and the rights of the person writing the report, whether it be a witness report or response to a complaint against the clinician.
- 3) That investigations are carried out in a timely manner.
- 4) That anyone writing a report be given a reasonable time in which to complete it.
- 5) That the clinician being investigated is provided with regular updates regarding the progress of the investigation
- 6) That the clinician being investigated is notified of the completion and outcome of the investigation in a timely manner.
- 7) That medical practitioners should consider obtaining legal advice in preparation of HCCC responses.
- 8) That Junior Medical Officers be advised when they commence employment with a public health body that their employer will not provide them with legal advice in connection to the writing of HCCC responses and that they should consider belonging to a medical defence organisation.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mel Miller". The signature is written in a cursive style with a large initial 'M'.

Dr Mel Miller
Chief Executive Officer
The Royal Australasian College of Physicians