

Submission

No 32

INQUIRY INTO THE OPERATION OF THE HEALTH CARE COMPLAINTS ACT 1993

Organisation: NSW Nurses' Association

Name: Mr Brett Holmes

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BH:ABU

21 October 2009

Mr Mel Keenan,
Committee Manager
Committee on the Health Care Complaints Commission
Parliament of New South Wales
Macquarie St
Sydney NSW 2000

Dear Mr Keenan,

Operation of the Health Care Complaints Act 1993 – Discussion Paper

Thank you for the opportunity to contribute to the discussion on the operation of the *Health Care Complaints Act 1993*. The NSW Nurses' Association (NSWNA) notes the discussion of many issues raised with the Committee on the Health Care Complaints Commission and welcomes many of the proposed amendments to the Act, which will result in improved complaints handling in NSW.

In particular, the NSWNA supports the proposed amendments and suggested strategies for issues: 1-3, 5-6, 12-15, 17-19, 21-23 and 26-27, as outlined in the Committee's discussion paper.

We would like to provide the following comments on the remaining issues discussed in the paper:

Issue 4 - The following amendments be made to the Health Care Complaints Act 1993:

- that s 3A(4) give full recognition to public health organisations as the primary legal entities responsible for their own management and control of clinical issues;
- that s 25 and 25A require the Commission to directly inform a public health organisation of a complaint made against it; and
- that s 43 require a public health organisation to make any submissions in response to a Commission's recommendations or comments directly to the Commission

NSWNA has concerns that the final amendment proposed in this issue risks a situation where responsibility for systems failures is placed on individuals and not appropriately recognised as a wider failure of the system. This amendment is therefore not supported.

Issue 7 - That the various NSW Registration Acts be repealed, and replaced by a single Health Professionals Registration Act.

NSWNA supports this proposal in principle. We cannot offer full support until we have the opportunity to review the proposed single Health Professionals Registration Act and can be assured that all necessary and appropriate funding arrangements for the operation of the Act are in place.

Issue 8 - That a NSW Office of Health Practitioner Registration Boards be established to provide administrative and operational support to assist the various NSW Registration Boards and to assess complaints and undertake investigations on their behalf.

NSWNA supports this proposal in principle. As above, we would we wish to review the full details of this proposal before offering unconditional support to ensure that the proposed Office will include all NSW Registration Boards and that all necessary and appropriate funding arrangements for the operation of the Office are in place.

Issues 9 & 10 –

NSWNA supports the Public Bodies Review Committee resolving to review each Annual Report of all NSW Registration Bodies and report back to the Legislative Assembly on these reviews, rather than establishing another new committee, which may require additional unnecessary resources or create unnecessary competition for existing resources.

Issue 16 - That s 22 of the Health Care Complaints Commission Act be amended to provide 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.

NSWNA supports this proposed amendment in principle. However, the decision must not be deferred indefinitely. The amendment must include a more prescriptive definition for any additional time period.

Issue 20 - That in the event of disagreement between the Commission and a Conduct Committee, or its equivalent, as to: the peer reviewer chosen by the Commission; or the standard applied by a peer reviewer in investigating a complaint, the Commission is to seek a further opinion prior to completing the investigation of the complaint.

NSWNA supports this amendment in principle. However, the legislation must require this process to be conducted in a timely manner so that registrants are not disadvantaged by unnecessary delays to the complaints handling process.

Issue 24 - That s 39 of the Health Care Complaints Commission Act 1993 be amended to provide that, at the conclusion of an investigation, in the event of disagreement between the Commission and the relevant Registration Authority, the most serious course of action proposed by a party should be followed.

NSWNA supports this amendment with the proviso that the word *irreconcilable* is added. That is, so that the amendment provides that *in the event of irreconcilable disagreement* because all attempts to reach agreement must first be made.

Issue 25 - That a new s 29AB be inserted into the Health Care Complaints Act 1993 requiring the Health Care Complaints Commission, at the completion of an investigation to conduct a review of the process, to be made public to the extent that is appropriate.

NSWNA supports this amendment in principle, provided that all required resources to conduct these reviews are provided and that conduct of such reviews will not result in delays to the management of other matters.

Issue 28: That the Health Care Complaints Act 1993 be amended to provide that where a person is named as an individual respondent to a complaint, and that person is employed by, or contracted to work for, an Area Health Service, that Area Health Service be notified by the Commission that the complaint has been made.

NSWNA has concerns with this proposed amendment. The Commission must establish that the complaint is not vexatious or trivial before making such a notification. Provision for management of a situation where an individual is a risk to the safety of the public or themselves already exists in current legislation, for example the *Nurses and Midwives Act 1991*, and should be retained in any new Health Professionals Registration Act.

Issue 29: That, on requesting a response from an Area Health Service to an individual complaint against a practitioner employed by, or contracted to work for, that Area Health Service, the Health Care Complaints Commission specifically request from the Area Health Service information on any other complaints or practice-based concerns in respect of that practitioner.

NSWNA supports this suggestion provided that the Commission specifically requests only that information for any complaints or practice-based concerns which is relevant to the handling of the current complaint and is sufficiently recent to be of relevance to the current complaint.

Thank you again for the opportunity to contribute to this discussion, we look forward to your consideration of these comments and to resulting improvements in complaints handling in NSW.

Yours sincerely



BRETT HOLMES
General Secretary