

Submission

No 36

INQUIRY INTO THE OPERATION OF THE HEALTH CARE COMPLAINTS ACT 1993

Organisation: Health Services Commissioner, Victoria
Name: Ms Beth Wilson
Position: Health Services Commissioner
Telephone: 1800 136 066
Date Received: 23/10/2009



Response by Beth Wilson, Health Services Commissioner, Victoria to the Parliament of New South Wales Committee on the Health Care Complaints Commission, Report No. 5/54 - September 2009, Operations of the *Health Care Complaints Act 1993 Discussion Paper*

DATE: 23 October 2009

The Victorian Health Services Commissioner (HSC) was astonished to read on page 2 of this *Discussion Paper* at "1.7 The Committee also noted that the proposed model was based largely on the health care complaints system currently operating in Victoria. This was a matter of particular concern, given that this system had recently been the subject of strong criticism by the Victorian Ombudsman in his *Report of an Investigation into issues at Bayside Health*."

The Ombudsman's Report into issues at Bayside Health made no mention whatsoever of the health care complaints system currently operating in Victoria. As the Ombudsman notes in his Executive Summary, the investigation related to the conduct of a senior medical practitioner at Bayside Health, Professor Thomas Kossmann and the Hospital's failure to have effective internal procedures regarding auditing, and the failure of insurers, in particular the Transport Accident Commission, to monitor and audit Professor Kossmann's bills. It was about financially inappropriate behaviour. It was **not** about the health care complaints system in operation in Victoria. There is no mention made of the health care complaints system currently operating in Victoria. I am therefore at a loss to understand why the Committee on the Health Care Complaints Commission would be finding this 'of particular concern.' This is a very misleading part of the *Discussion Paper* and should be corrected. I can only speculate as to why this incorrect statement was included in a Parliamentary Report.

The New South Wales (NSW) model incorporates prosecution before the Registration Boards by the Health Care Complaints Commission (HCCC). That model is not the one adopted in Victoria and the comments made in paragraphs 1.7 and 1.8 may demonstrate a lack of understanding of that difference.

ISSUE 1: That s 3 of the Health Care Complaints Act 1993 be amended to include a fifth object "to uphold the rights set out in the *Australian Charter of Healthcare Rights*".

This is supported. I agree that incorporation of the *Australian Charter of Healthcare Rights* into the objects of the Act is an important inclusion into the quality framework for NSW.

ISSUE 2: That the Health Care Complaints Act 1993 be amended to include a provision that the Health Care Complaints Commission should consider the *Australian Charter of Healthcare Rights* when assessing or otherwise dealing with a complaint.

This is supported.

ISSUE 3: That the *Australian Charter of Healthcare Rights* be added as a Schedule to the Health Care Complaints Act 1993.

This is supported.

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.

The three dot points are supported. The comments made in paragraphs 2.8 and 2.9 indicate a culture that views complaints as a detriment to practitioners rather than an opportunity for quality improvement. Communication between the HCCC and the individuals that are the subject of complaints is critical in fostering a quality improvement approach. A review of all correspondence to practitioners should also be undertaken to ensure the focus is on quality improvement rather than a punitive approach.

ISSUE 5: That the Commission review its procedures for advising practitioners that they are under investigation, with a view to providing detailed information of what to expect from that process, including statutory timeframes, and of any support services which might be available.

The rules of natural justice already dictate that practitioners should be advised they are under investigation. Practitioners ought to be provided with detailed information of what to expect from HCCC processes including statutory timeframes. These are supported. The idea of support services which might be available is more problematic. A complaints commission should not be an advocacy service. It needs to be impartial. It might be more appropriate that doctors or other providers have this information provided by their indemnity insurers.

ISSUE 6: That the Health Care Complaints Commission develop guidelines or criteria by which either 'best endeavours' may be measured, or by which a client's capacity to understand might be assessed.

In principle there is nothing wrong with issue 6 which is consumer focussed and in accordance with human rights principles. Whether this should be the role of a HCCC is however problematic. Complaints commissions should always endeavour to make sure that clients are communicated with well and in accordance with best practice principles. I am not sure that developing guidelines is the best way to achieve this.

Issue 6 could include an additional element informing any substitute decision maker of outcomes of investigations if this is not already incorporated into the Act or the HCCC's procedures.

The requirement to submit complaints in writing is already included in Victoria's Act and is a common feature of most health complaints mechanisms.

The co-regulatory framework in NSW stands alone as the only model of its type in Australia. This system would seem to be an inefficient use of scarce resources. Transferring all responsibility of complaints management to the relevant Registration bodies would potentially decrease the level of duplication inherent in the current system.

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

I cannot see why this is necessary given that the National Registration and Accreditation Scheme will be in place by 1 July 2010.

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.

This is supported but again, seems to pre-empt the National Registration and Accreditation Scheme.

ISSUE 9: That a Committee on Health Registration Authorities be established with a remit over all NSW Registration Boards similar to that of the Committee on the Health Care Complaints Commission.

Same comment as Issue 25.

ISSUE 10: That the Public Bodies Review Committee resolve to review each Annual Report of all NSW Registration Bodies and report back to the Legislative Assembly on these reviews.

Same comment as Issue 25.

ISSUE 11: That the Health Care Complaints Act 1993 be amended so that the Health Care Complaints Commission can conduct investigations of its own motion, and so that investigations can be made more generally into the clinical management of care of patients in general.

This is supported.

ISSUE 12: That the Health Care Complaints Commission make publicly-available guidelines, setting out the manner in which it determines how a complaint is to be dealt with under s 20(1) of the Health Care Complaints Act 1993.

This is supported.

ISSUE 13: That s 20(1) of the Health Care Complaints Act 1993 be amended to provide that assessment of a complaint includes determining whether that complaint is malicious or vexatious.

This is supported. The *Health Services (Conciliation and Review) Act 1987* already has a section such as this at s 19(1).

ISSUE 14: That, when a report is requested from a health practitioner, an information package is provided which outlines the roles, powers and processes of the Health Care Complaints Commission, and contains clear plain English information regarding the possible use of any written report, and the rights of the author of the report.

This is supported.

ISSUE 15: That the Note to Division 5 of the Health Care Complaints Act 1993 be amended by the deletion of the second sentence.

The removal of the second sentence in the Note to Division 5 does not address the fundamental difficulty raised by the NSW Nurses Association in the HCCC's co-regulatory function.

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.

This is supported.

ISSUE 17: That the Health Care Complaints Commission Act 1993 be amended to require that an investigation under Division 5 must be conducted as quickly as practicable having regard to the nature of the matter being investigated.

This is supported.

ISSUE 18: That the Health Care Complaints Act 1993 be amended to provide for the mandatory provision of written reasons by the Commission for assessment and post-investigation decisions.

This is supported.

ISSUE 19: That the Health Care Complaints Act 1993 be amended to provide for a statutory internal review process for the Health Care Complaints Commission, based on complaint handling best practice.

Same comments as at Issue 25.

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.

This is already provided for in the National Registration and Accreditation Scheme which is supported by HSC.

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.

This appears to be very onerous and has resource implications. The extra resources needed would have to be justified by demonstrating the usefulness of the initiative. If it is adopted, it should be reviewed.

ISSUE 26: That, in dealing with complainants throughout, and at the conclusion of, the complaint process, the Commission adopt the principles outlined in NSW Health's Open Disclosure Policy Directive.

This is supported.

ISSUE 27: That, where an Area Health Service has referred a complaint to the Health Care Complaints Commission, the Commission keep the Area Health Service informed of the progress of that complaint on a monthly basis.

This should already be happening in accordance with natural justice principles.

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.

HSC makes the same observation as appears at Issue 27.



Beth Wilson

Health Services Commissioner