

**Submission**

**No 7**

**INQUIRY INTO HEALTH CARE COMPLAINTS AND COMPLAINTS  
HANDLING IN NSW**

**Organisation:** New South Wales Nurses' Association

**Name:** Ms Judith Kiejda

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# NEW SOUTH WALES NURSES' ASSOCIATION

In association with the Australian Nursing Federation

ABN 63 398 164 405

In reply please quote: BH:AG

30 January 2012

Mrs Leslie Williams MP  
Chair, Committee on the Health Care Complaints Commission  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Mrs Williams

## **Inquiry into Health Care Complaints and Complaints Handling in NSW**

The NSW Nurses' Association welcomes the opportunity to provide our views for your Committee's consideration. The New South Wales Nurses' Association (NSWNA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNA comprises all those who perform nursing and midwifery work. This includes assistants in nursing (who are unregulated), enrolled nurses and registered nurses and midwives at all levels including management and education.

The NSWNA has approximately 54,000 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNA are also deemed to be members of the New South Wales Branch of the Australian Nursing Federation.

Our role is to protect and advance the interests of nurses and midwives and the nursing and midwifery professions. We are equally committed to improving standards of patient care and the quality of services health and aged care services.

With regard to the terms of reference, we make the following brief points.

The Association deals with a substantial proportion of the complaints lodged with the HCCC and of these, a very significant number of cases are most certainly either directly or indirectly the result of inadequate staffing levels or poor skill mix.

It is our experience that many consumers do not understand the process for complaints and many have unrealistic expectations that anyone who has aggrieved them will be struck off the register.

Nurses and midwives often demonstrate limited awareness and understanding of the complaints handling process. There is no education provided by HCCC to educate health practitioners about the role of the HCCC and their obligations.

Beyond the terms of reference of this inquiry, NSWNA recommends that following issues be considered by the committee.

From the Association's perspective the Commission's assisted resolution process is flawed and our members do not and should not participate.

- Why should a nurse have to explain a shortcoming in the system to a complaining patient or family member?
- Why would a nurse want to confront someone who has made a complaint about them, especially in circumstances where there has been a clear discrepancy between them as to what events they believe occurred?
- A confrontation with a complainant can give the complainant further reasons or information with which to make a subsequent complaint.

Due to HCCC staffing issues, including a lack of permanent staff and staff not willing to do advocacy in these hearings, the HCCC are briefing counsel in a jurisdiction in which, up until recently, respondents were not entitled to be legally represented. In our view this is creating a situation where matters are becoming overly adversarial and costly for both sides involved. In addition, having counsel involved causes delays in hearing the matters and creates unnecessary complexity with the matters.

We submit that it is neither appropriate nor necessary to have counsel cross examine respondents and introduce (unnecessary) witness testimony in circumstances where registrants are prepared to accept reprimands and/or conditions. All this does is add to the length of the hearing and further line the pockets of counsel briefed by the HCCC.

The practice of HCCC being represented by counsel means that many respondents relying on a solicitor advocate in such proceedings feel disadvantaged.

Most nurses and midwives cannot afford to engage their own legal representation and it is one of the many reasons that they join the Association.

There are nurses who are not members of the Association and who may have been capable of self representation before the PSC, but the HCCC practice of engaging counsel places these people at an unfair disadvantage.

Another area of concern to NSWNA arises when individuals apply for reinstatement to the register. When a person is removed from the register of nurses or midwives there are generally orders made which prevent them from applying for re-instatement to the register for a specified period of time.

Primarily this is to protect the public and the profession and to serve as a deterrent for existing registrants. It also serves a function by providing these people with an ample amount of time to rectify any issues which may have led to their removal from the register.

It has always been extremely difficult for any person, once removed from the register, to obtain re-registration. This is because the HCCC becomes involved in the proceedings to object to the application for re-instatement to the register. In our view this amounts to a re-prosecution of the person for the actions which led to their removal rather than focusing on their personal rehabilitation. We submit that it is procedurally unfair.

There is no legislative requirement for the HCCC to object to an application for re-instatement to the register.

These applications are heard before the Nursing and Midwifery Tribunal of New South Wales. The introduction of the Health Practitioner Regulation National Law (NSW) No. 86a in 2010 provides that the Tribunal can award costs to the successful party in such proceedings.

When the HCCC objects to the application, in circumstances where they are successful the Tribunal have the power to award costs to the HCCC.

This means that a person who wishes to apply for reinstatement to the register cannot do so without the risk of having to pay the costs of the HCCC. Therefore, even people who have a real chance of obtaining re-instatement to the register will not make an application because they cannot take that risk. This is particularly true in the common circumstance where that person has been working as an Assistant in Nursing and is already on a very low income.

## **Recommendations**

1. That the HCCC engage more proactively in promoting awareness among practitioners and consumers of HCCC protocols and procedures.
2. That the HCCC employ a full-time hearing officer to undertake advocacy in Professional Standards Committee hearings rather than unnecessary reliance on counsel.
3. That the effectiveness of the assisted resolution process be reviewed, particularly in terms of efficiency, participation and outcomes.
4. That the HCCC not participate in applications for reinstatement to the register and for those decisions to be matters for the Tribunal.

To discuss any of these matters further, please contact Linda Alexander,  
Legal Officer at this office.

Yours sincerely



**JUDITH KIEJDA**  
Acting General Secretary