

Submission

No 42

INQUIRY INTO THE OPERATION OF THE HEALTH CARE COMPLAINTS ACT 1993

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**SUBMISSION TO THE PARLIAMENT OF NEW SOUTH WALES
COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION
IN RESPONSE TO ITS DISCUSSION PAPER ON THE OPERATION OF
THE HEALTH CARE COMPLAINTS ACT 1993**

OCTOBER 2009

The College appreciates the opportunity to make this submission and in general supports the review of the operation of the *Health Care Complaints Act 1993*.

It is particularly concerned, however, about Issues 20 and 21 and specifically the selection of peer reviewers.

The College is not concerned about Issues 1, 2 and 3 and supports Issue 4 relating to the notification of a public health organisation when a complaint is made against it.

The College strongly supports the notification of practitioners when they are under investigation and the provision to them of detailed information of what to expect from the process, including statutory timeframes, and of any support services which might be available.

The College supports Issue 6 and offers no comment on Issues 7, 8, 9 and 10.

The College agrees that the HCCC should have the power to conduct investigations of its own motion as suggested in Issue 11, but the College does not agree with the Public Interest Advocacy Centre that the HCCC would be the appropriate body to undertake broader investigations and inquiries into the clinical management of care of patients in general.

The College supports Issue 12.

The College does not support Issue 13 as the subject matter is covered by Issue 18 which would relate to all complaints, including malicious and vexatious ones.

The College strongly supports Issue 14.

The College does not support Issue 15. The College does not agree with the NSW Nurses' Association's view that the sentence "*The Commission will investigate with a view to moving to prosecution of the complaint before the appropriate professional board, committee or tribunal*" would imply that the HCCC was assuming merit in a complaint or was assuming the guilt of the health practitioner, or that the sentence precludes the possibility of a fair and impartial process of investigation.

The College has confidence that the HCCC is empowered to investigate complaints fairly and impartially, and is capable of applying principles of natural justice in a setting in which the protection of the health and well being of the community, and of individual health practitioners, is paramount.

The College supports Issues 16, 17, 18 and 19.

The College of Surgeons is particularly concerned with Issues 20 and 21 regarding peer reviewers. A peer reviewer must be appropriately qualified **and** experienced in the matter which is the subject of a complaint.

The College does not agree with Issue 21 where the peer would be *“sufficiently qualified **or** experienced to give expert advice on the matter the subject of the complaint”*.

It is essential that a peer reviewer of surgery be both appropriately qualified **and** experienced, and to be either currently active procedurally in the field relating to the subject matter of the complaint or to be within 5 years of being procedurally active in that field of practice.

It is essential that a peer reviewer be regarded as a peer by members of the appropriate professional body. The College is concerned that some of the peers selected by the HCCC in the past have not been generally regarded as appropriate peers.

The College supports Issues 22, 23, 24, 25, 26, 27, 28 and 29.