

Submission

No 44

INQUIRY INTO THE OPERATION OF THE HEALTH CARE COMPLAINTS ACT 1993

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**Submission to the Committee on the Health Care
Complaints Commission: Operation of the Health Care
Complaints Act 1993 – Discussion Paper**



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29th October 2009

Mr. Mel Keenan
The Committee Manager
Committee on the Health Care Complaints Commission
Parliament House
Macquarie Street, Sydney NSW 2000
Email: chccc@parliament.nsw.gov.au

Dear Mr. Keenan,

RE: Submission to the Committee on the Health Care Complaints Commission: Operation of the Health Care Complaints Act 1993 – Discussion Paper

The NSW Consumer Advisory Group – Mental Health Inc. (NSW CAG) is the peak, independent, statewide organisation representing the views of mental health consumers at a policy level, working to achieve and support systemic change. Our vision is for all mental health consumers to experience fair access to quality services that reflect their needs.

NSW CAG is pleased to have the opportunity to comment on the Committee on the Health Care Complaints Commission Discussion Paper on the Operation of the Health Care Complaints Act 1993. NSW CAG broadly supports the issues outlined in the Discussion Paper from the Committee, which recognise the need for a more effective and efficient health care complaints system in NSW. We also consider that there are some areas that require consideration that were not raised in the discussion paper; these are included in the submission below and are related to information-sharing, access to individual advocacy and support, and formats in which complaints can be lodged.

Please do not hesitate to contact me with any further enquiries you may have.

Yours sincerely,

Karen Oakley
Executive Officer

Basis of this advice

NSW CAG exists to ensure that policy makers hear the perspectives of mental health consumers across NSW. The basis of this advice derives from information obtained through our core work, including regular interaction and consultation with people who use mental health services across NSW including:

- Over 900 people on our Network who are accessible via the internet;
- Face to face consultations with consumers on each Area Health Service across NSW; and
- Our knowledge base derived from consulting with consumers of mental health services in NSW over the last 17 years.

Comments on the Discussion Paper

NSW CAG supports the issues identified in the Discussion Paper on the Operation of the Health Care Complaints Act 1993 (herein referred to as “the Act”). In particular, NSW CAG strongly supports issues advocating for improvement around issues raised in our previous submission, including:

- Timeliness of addressing complaints (Issue 16, 17)
- Procedural fairness (Issue 19)
- Transparency around the entire review process (Issue 25)

NSW CAG makes the following comments on issues raised in the Discussion Paper:

The objects of the Health Care Complaints Act 1993 (Issue 1, 2, 3)

NSW CAG recommends that the Health Care Complaints Committee (HCCC) recognises the principles outlined in the *Australian Charter of Healthcare Rights*. This reflection of the Charter and principles contained within, in assessing or otherwise dealing with a complaint, should be used as a consistent approach to upholding human rights for consumers who access the Australian health system and make a complaint around the services received. Indeed, through our consultative work with people who access the mental health system, we are aware that it is common for consumers to have their rights infringed upon, and also to face stigma and discrimination both in service provision, and more broadly in the community. Thus it is important that human rights are protected through the HCCC’s compliance and reflection of the *Australian Charter of Healthcare Rights*.

NSW CAG recommends:

- That the HCCC is compliant with the principles outlined in the *Australian Charter of Healthcare Rights*, and that the Health Care Complaints Act 1993 is amended to reference the Commission’s compliance with this Charter.

Communication (Issue 5)

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 may be available.

In NSW CAG's previous submission to the *Inquiry into the Operations of the Health Care Complaints Act 1993*, we raised the issue that there is a need for better liaison between officers of the Commission and complainants. We noted that from the perspective of consumers, there is a lack of communication about the system and its processes, and about the progress of individual complaints. While this is acknowledged in the Discussion Paper: Issue 5, the only issue pertaining to communication, it is restricted in focus to the Commission's communication with practitioners. Further consideration around communication must include increasing communication between the HCCC and the complainant.

NSW CAG recommends:

- Regular contact be made between the HCCC and the complainant to keep them informed of the progress around a complaint. It is recommended that this time frame be the same as delineated for the Commission to keep Area Health Services informed around the progress of a complaint – on a monthly basis (Issue 27);
- A complainant is provided with the option of how they would like to conduct further communication with the HCCC, whether it be in written or verbal format; and
- Each complainant be provided with one contact person within the HCCC who remains with the case to its completion and provides liaison with the consumer.

Complainants with special needs (Issue 6)

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 NSW CAG's previous submission we related that some people living with mental illness have impaired cognitive and/or visual deficits, and/or reading difficulties. As such, it was a recommendation that provisions be made to allow for people to make verbal complaints to the Commission. This is essential in presenting the opportunity for equality of access in making a complaint, as is in line with Australia's obligations under the Convention on the Rights of Persons

with Disabilities (see Article 9: Accessibility). This must be a consideration in the development of criteria to assess a client's capacity to understand.

Also raised in NSW CAG's previous submission was the need to have individual advocacy services and support both within mental health services and the community, to assist consumers in making a complaint and navigating the system. This is currently a gap in service provision in NSW and is also required as a vital consideration in the development of criteria to assess a client's capacity to understand.

NSW CAG recommends:

- People are able to lodge complaints in both written and verbal formats, including by telephone, and that this is recognised in the development of criteria to assess a client's capacity to understand; and
- Consumers of mental health services are provided with adequate levels of advocacy and support to be able to make a complaint and navigate the system, and that this is recognised in the development of criteria to assess a client's capacity to understand.

Outcomes (Issue 25, 26)

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

NSW CAG views that a move to make public a review of the process is a necessary step towards keeping complainants aware of the progress of the complaint, as well as increasing accountability and transparency of the process for all stakeholders involved.

NSW CAG views that it is important to have a review process of the HCCC investigation following the conclusion of an investigation. Further, to enhance the transparency of these reviews it is recommended that individuals concerned in the initial investigation should not be involved in the conduct of the subsequent review.

NSW CAG recommends:

- Reviews of investigations are made public, to the extent that it is appropriate; and
- As a means to enhance transparency, reviews of the investigation process are carried out by the HCCC. Individuals who were involved in the initial investigation should not be involved in the subsequent review.

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

NSW CAG supports the HCCC's compliance with NSW Health's Open Disclosure Policy, as it outlines a framework for communication with consumers and their support person. It is essential that, where consent is provided by the consumer, this support person is also kept informed of the complaint process throughout its duration.

- NSW CAG recommends that the HCCC complies with the principles as outlined in NSW Health's Open Disclosure Policy Directive.

Additional Comments and Recommendations

The Need for Information

Whilst not an issue explicitly identified in the discussion paper, NSW CAG identifies the need, and current gap around consumers being provided with adequate information around the status of their complaint as it progresses. Chapter Four – "Information-sharing between the Commission and Area Health Services and Registration Authorities" in the discussion paper outlines the processes around information sharing, however lacks a comparative section for the Commission and complainants.

NSW CAG recommends:

- Complainants are informed in a timely manner around any alteration to the complaint as allowed for in the Act, including additions to a complaint;
- Information is provided to complainants in a number of formats, including in both written and oral formats, and in a language that the person can understand, so as to ensure equity of access for all; and
- Requests for reviews of decisions be extended to include verbal requests.

The need for transparency

While transparency is outlined in the Discussion Paper as being a necessary principle for the HCCC to adhere to (p.2), NSW CAG hears from consumers that more needs to be done to make the complaints process transparent and impartial. This is also closely tied to the need for more information and effective communication.

NSW CAG recommends that:

- The complainant be informed on any aspect of the complaint that is altered, or deleted as allowed within the Act;

- The complainant be advised of any aspect of the complaint that is disregarded or assessed as not warranting further action without an explanation;
- The complainant be informed of any addition to the complaint unless the provision of this information would breach the confidentiality of another individual;
- Criteria is made available around when hearings are open or closed; and when they are closed that the complainant be informed of the reason, and that the reason be publically disclosed; and
- Complainants are able to attend and give statements at hearings.