

Submission

No 48

## INQUIRY INTO THE OPERATION OF THE HEALTH CARE COMPLAINTS ACT 1993

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# **OPERATION OF THE HEALTH CARE COMPLAINTS ACT 1993**

**ADA (NSW BRANCH) SUBMISSION REGARDING THE  
DISCUSSION PAPER OF THE COMMITTEE ON THE  
HEALTH CARE COMPLAINTS COMMISSION**

**OCTOBER 2009**

**Australian Dental Association**  
(NEW SOUTH WALES BRANCH) LIMITED



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*Operation of the Health  
Care Complaints Act  
1993*

*Submission by  
ADA NSW Branch*

The Australian Dental Association (NSW Branch) welcomes the opportunity to comment on the Operation of the Health Care Complaints Act 1993 and, in particular, the Discussion Paper of the Committee on the Health Care complaints Commission.

## **EXECUTIVE SUMMARY**

The Branch supports or does not object to the majority of the suggestions contained in the Discussion Paper. However we do not support:

- the HCCC being both the notifier and investigator of a complaint (Issue 11);
- amending the Act to provide that, at the end 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 (Issue 24);
- the HCCC adopting NSW Health open disclosure processes (Issues 25-26);
- amending the Act 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 should be notified by the Commission that a complaint has been made (Issue 28);
- Issue 29, the HCCC already has very broad powers which should facilitate the collection of this information.

## **ABOUT ADA NSW BRANCH**

The Branch is the professional association representing dentists, whether practising in the public or private sector, in New South Wales and the Australian Capital Territory. The Branch has over 3800 members and represents approximately 80% of registered dentists in NSW and the ACT.

The Vision of ADA NSW Branch Ltd is to **add value to the community** as the oral health authority in NSW & ACT. The Association brings forward a benefit to the community through our members who are a central part of the community and deliver value through the services they provide and the position that they hold as trusted, caring professionals.

Our value proposition to the community is to advocate on their behalf to access services that are safe, of high quality, affordable and ethical. This will be achieved by working with government and other sectors in addition to the membership, to promote leading models of care.

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## COMMENT ON ISSUES RAISED IN THE DISCUSSION PAPER

The following comments are made in relation to the issues raised by the Committee in its Discussion Paper:

- Issues 1-3      We do not object to the spirit of the Charter's principles but wonder whether the HCCA is an appropriate place to include it. In particular we note that section 3 of the HCCA already stipulates that the protection of the health and safety of the public must be the paramount consideration for the HCCC.
- Issue 4        On their face the suggested amendments to section 3A do not seem problematic.
- Issue 5        We support this suggestion. We also recommend that health professionals are provided with all relevant information, records, etc. during the course of an investigation. Currently, this information is usually provided at the end of the investigation which gives the practitioner only 28 days (section 40 HCCA) to respond.
- Issue 6        We do not object to this suggestion.
- Issues 7-10    It is our understanding that these issues have been resolved. New legislation, which the Government will introduce before the end of the current session, is being developed to repeal the various NSW Registration Acts and replace these with a single Health Professionals Registration Act. The Medical Board's complaint handling, performance and disciplinary procedures will act as a template for the new Act.
- The provisions of the *Dental Practice Act* dealing with disciplinary and complaints procedures are not dissimilar to those in the *Medical Practice Act*. Similarly, both Acts provide for an Impaired Registrants Panel or Program.
- The position of the Branch is that we support this process currently under way.
- Issue 11      We do not support the suggestion that the HCCC can be both the notifier and investigator of a complaint. The powers of the HCCC have been increased in this regard by recent amendments regarding, inter alia, associated complaints. We think powers granted to the HCCC under the Act are broad enough and do not need to be strengthened further. Nevertheless, if the Committee feels compelled to support this suggestion we propose that a "nominal notifier", a person with authority to make such a decision, is preferable to some other anonymous process.



*Operation of the Health  
Care Complaints Act  
1993*

*Submission by  
ADA (NSW Branch)*

- Issues 12-14 We support these suggestions.
- Issue 15 We support the reasoning of the NSW Nurses Association and the suggestion that the Note to Division 5 of the HCCA be amended by deleting the second sentence.
- Issue 16 We believe that 60 days is sufficient time even in alleged 'exceptional circumstances'. The term 'exceptional circumstances' is open to relatively broad interpretation.
- Issue 17 We agree with the sentiments expressed in this suggestion. However any amendment to the effect that an investigation should occur 'as quickly as possible' needs to be worded more precisely.
- Issues 18-19 On their face we do not object to these suggestions.
- Issue 20-22 On their face we do not object to these suggestions. However to ensure that peer reviewers are given all relevant material it is preferable that the health practitioner under investigation be given the opportunity to provide a response to all the clinical material before a peer review opinion is obtained.
- Issue 23 We do not object to this suggestion.
- Issue 24 We **DO NOT** agree with this suggestion. We believe that the final say should reside with the body that has the ultimate responsibility for protecting the health and safety of the public, the relevant registration board. With respect to dentistry, the Dental Board is an extremely experienced, specialist organisation. Its functions are clearly detailed in the Dental Practice Act 2001 and include protection of public health and safety as well as the maintenance and promotion of professional standards of dental practice in New South Wales.
- We note that over two-thirds of all dental complaints to the HCCC are referred to the NSW Dental Board for appropriate action (another 20 per cent (approx) are discontinued as they do not raise significant issues of health and safety for the patient). The HCCC has previously written to the Branch stating that the number of complaints referred to the Dental Board reflects 'the robust structures and programs the Board has in place for addressing treatment and professional conduct'. We agree with this sentiment wholeheartedly.
- We believe that the ability of the Commission to refer complaints to the Board helps engender confidence in our members that complaints against them will be investigated and assessed by an



*Operation of the Health  
Care Complaints Act  
1993*

*Submission by  
ADA (NSW Branch)*

organisation with specialist dental knowledge. This should also promote public confidence that complaints about dental care are resolved in the most appropriate manner.

- Issue 25-26 An HCCC investigation is not part of the NSW Health open disclosure process and the HCCC should not be required to adopt the relevant policy. In short, the processes are quite separate and have different objectives and therefore the two should not be intermingled.
- Issue 27 We think that all parties to a complaint should be kept regularly advised as to the progress of the complaint. We query what sort of information is thought should be provided by this suggestion.
- Issue 28 The Service Check Register for NSW Health Services deals with this issue to a limited extent. As well, under current provisions of the Act the Area Health Service is notified of the complaint against a clinician once it has been assessed by the HCCC. Our concern is that an Area Health Service would take the view that the practitioner is guilty before being proven innocent.
- Issue 29 The HCCC already has very broad powers which should facilitate the collection of this information.

## **CONCLUSION**

In conclusion, while the Australian Dental Association (NSW Branch) supports (or does not object to) the majority of issues raised in the Discussion Paper we have significant reservations to a number of these issues. These reservations have been spelt out in detail above.

We thank you for the opportunity to provide this input and advice and would be available to provide further comment or clarification on any of these matters should the Commission so require.