UNCORRECTED TRANSCRIPT

REPORT OF PROCEEDINGS BEFORE

COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION

At Sydney on Thursday, 1 April 2004

The Committee met at 10 a.m.

PRESENT

Mr J. Hunter (Chair)

Legislative Assembly	**Legislative Council**
Ms T. R. Gadiel	The Hon. Christine Robertson
Mr A. F. Shearan	
Mr R. W. Turner	

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WILLIAM GRANT, Chief Executive Officer, Legal Aid Commission of New South Wales, 323 Castlereagh Street, Sydney, and

SUSAN DONNELLY, Assistant Commissioner, Health Care Complaints Commission, 323 Castlereagh Street, Sydney, sworn and examined:

Mr GRANT: I appear before this Committee as former Acting Commissioner of the Health Care Complaints Commission from 10 December 2003 to 22 March 2004.

CHAIR: The Committee notes the significant changes instituted at the Health Care Complaints Commission by the then Acting Commissioner, Mr Grant, who is with us today, which he outlined in a briefing to the Committee on 18 March 2004. These include a strategy for addressing ongoing investigations relating to individual matters arising from the Camden-Campbelltown reports and investigations; a strategy for addressing the backlog of incomplete investigations; organisational structure issues including policy, administrative and procedural issues. The Committee is pleased to note that many of the recommendations it made in its report on inquiry into procedures followed during investigations and prosecutions undertaken by the Health Care Complaints Commission have been incorporated in these changes or in changes recommended to the Government. Notwithstanding these reforms, the Committee today will be seeking clarification on some issues arising from the previous annual report.

I will point out to Committee members that, while Mr Grant was acting as commissioner, I approached him and asked him whether he would appear before the Committee to help us in reviewing the annual report. Of course, it is an annual report that ran from 1 July 2002 to 30 June 2003 and tabled in Parliament at the end of December 2003, so the period of the report does not cover the time that Mr Grant was Acting Commissioner; however he agreed to appear before the Committee to give us assistance where possible and I appreciate that, and I also welcome the Assistant Commissioner, Susan Donnelly. Even though many of the issues do not relate to the period when you were in charge, you may be able to shed some light on those issues for us.

Yesterday I had the pleasure of meeting the current Acting Commissioner, Judge Taylor. He indicated his willingness to meet with the Committee in the near future. He said he has his sleeves rolled up and his head down at the Commission implementing many of the recommendations that Mr Grant put forward and he looks forward to meeting with the Committee at a later date. I did not invite the current Acting Commissioner to appear before the Committee today as he has only been in that role for a little over two weeks and I thought that that was not fair to him; it was best to speak to Mr Grant who was in the position following Amanda Adrian having left the position in December.

On the annual report, is there an opening statement you would like to make, Mr Grant?

Mr GRANT: Not an opening statement as such, but what I would like to do is provide for the information of the Committee documents which I referred to at our informal meeting a couple of weeks ago, that is a copy of the backlog reduction strategy and a copy of the action plan through until the end of June 2004.

CHAIR: May we take those as being tabled and forming part of our report?

Mr GRANT: Yes, indeed.

CHAIR: We might move on to questions: In the area of open investigations, the performance report for 2002-2003 reports that the number of open cases from 1999 and 2000 more than halved, and that is on page 13 of the report. As a matter of benchmarking, as at 30 June 2003, how many investigations were open which had been open for more than 18 months?

Mr GRANT: At that date, Chairman, the figure is 254.

CHAIR: What is the number of investigations currently open which have been open for

more than 18 months?

Mr GRANT: As at 29 March, that figure was 279. I might add that, as at 15 March, that figure was 320, so it was pleasing to see that they were actually starting to make some inroads into some of those older matters fairly early. My interpretation of that reduction of about 40 would be that there were a number of matters that were pretty close to finalisation and the backlog reduction strategy was to target those matters first and to try to move through them, so it seems that they are already starting the reduction drive.

CHAIR: What is the longest period currently for an open investigation?

Mr GRANT: The oldest matter at the moment is 62 months.

CHAIR: What is the statistical purpose/significance of table 38 on page 52? It indicates the year of receipt, but is this indicative of the date when cases were referred for investigation?

Mr GRANT: Yes, it is. It indicates the number of complaints referred in the years listed for investigation. These referrals came from both the assessment process and also as a result of area health service investigations and the investigations were still open as at 30 June 2003.

The Hon. CHRISTINE ROBERTSON: So the performance report on page 13 indicates the case management system was revised and investigations over 18 months' old were reviewed. Did the revision review offer insight to the action plan and, if so, can you outline what that was?

Mr GRANT: I have to say that it did not really. The action plan was really the result of my observations of the way the commission performed its work, the officer that was assisting me with that, Anita Anderson, and also consultation with many senior staff of the commission who were very happy to come forward with ideas for change, so really it was not informed by that earlier strategy or document of review, it was more as a result of appraising the situation and forming views as to what should happen.

Mr SHEARAN: There is still no record in the annual report, and I am referring to pages 12 and 13, of unmet performance of the HCCC and strategies to address these. Can the Committee be given an undertaking that this important annual reporting criteria will be addressed in the next annual report of the commission?

Mr GRANT: I would have to sort of be equivocal and say yes and no. I have no doubt that some of those matters will be addressed but the concern that I would express perhaps on behalf of the new Acting Commissioner is that he will be focussed very much on two things, and that would be the backlog reduction drive and I would expect there would be considerable performance data in relation to that which will be produced in the next annual report, although of course they will only be three months into that drive before the end of that reporting period, and also the Macarthur investigation.

If I can use the words that the Acting Commissioner has used to me, the commission will be very much inward focussed over the next 12 or 15 months to move those backlog strategies and Macarthur strategies forward and that is probably the principal way in which the commission can restore the confidence of the community in its operational activities.

How much it gets down to being able to completely address all of those performance targets that have been identified in the work of this Committee, I cannot give any absolute undertaking in relation to that.

I have no doubt that some of the performance matters mentioned will find their way into the annual report but probably a little too early for this one to be able to do that, but for the next one, which closes in three months time.

Mr TURNER: Mr Grant, regarding staff training, in the section of the report referring to staff education and development on page 77, information is provided about training and resolution

and safety improvement. In spite of this reference, the Committee is aware of the deficiencies evident in IRO training. Could the forthcoming annual report provide some details of staff training, providing an example of dates, components, the number of staff completing modules, et cetera?

Mr GRANT: Yes, I would certainly expect that would happen in the next report. There are actually discussions at the moment in relation to training of investigation officers, or IROs, with registered training authorities and that is in the action plan which I handed up. We are actually looking at providing basic and advanced investigation training for all investigators, and all new investigators who are being recruited as part of the backlog reduction strategy. We will actually give some sort of formal qualifications to these officers as a result of this external training.

Mr TURNER: Is that training principally internal, or do you have some of the training with outside private consultants?

Mr GRANT: At this stage we are looking at private.

Ms DONNELLY: We have had discussions with the group which was running investigation training for ICAC, a registered training authority, and the training that the investigation officers would do would be to credit them with points towards a formal qualification. I cannot remember the name of it, I am sorry, but there are a number of modules this organisation offers and we can select some.

It is probably worth mentioning that there had been plans for some other training previously, but because of the Macarthur investigation and the various media interests in it last year, it was continually postponed. There had been scheduled training which never eventuated.

Ms GADIEL: Mr Grant, in relation to the investigations, on page 46 of the report it notes that the commission is moving away from paper based investigations. Investigations are becoming more active, which involves tailoring the approach taken with the nature of the complaint and parties involved. The Committee has previously expressed concern at the lack of field based investigations and notes the Acting Commissioner's proposal to increase active investigations according to an investigation plan.

In the forthcoming annual report could there be an indication provided of how the movement away from paper based investigations is occurring?

Mr GRANT: The short answer to that is yes I think they can. The HCCC is moving to conduct preliminary investigations and that is pulling together a multi-disciplinary team of investigators, lawyers, medical advisers et cetera, to more accurately work out whether a matter should be investigated and what the issues are, and that will help people clarify right up front what the investigator needs to be focussed on and on that will include field trips, interviewing people, et cetera. It will be a more active investigation.

Perhaps I can give one illustration of that. There was a very unfortunate case reported on in the media in the last few weeks and it was the lady who died as a result of childbirth, and she had a number of unfortunate incidents that happened in her after care treatment.

We had three investigators up in the Dubbo region when the coroner was conducting a hearing in that case and he handed down his decision, and they were investigating the matter actively in that period of time in conjunction with what was happening in the coronial inquiry. That is an indication of where the commission is going with its investigations in relation to active field work.

The Hon. CHRISTINE ROBERTSON: In the last round of hearings in relation to the annual reporting of the HCCC there were a lot of issues outlined regarding the information systems and the IT. It sounded a lot like the HCCC was tangled up in a very old problem that happened in the health sector where someone decided on this wonderful program which was not much chop. What are the chances of rectification of that for the reporting this time?

Ms DONNELLY: With the IT we have gone to tender to purchase, or have developed a new case management system. It has been in the offing for a couple of years now. Part of that was to do with the fact that the Government was interested in us having partnerships.

We explored in the first instance a partnership with Tasmania which fell through, and we explored a partnership with the ACT Health, which has recently fallen through. However, we are going alone now, having gone through the processes required by the Government. I imagine it will probably take six months.

The program is one that can be bought off the shelf and then it is modified according to our requirements. We have investigated it. There are some other departments which have also used the same system. It seems as though this will be very satisfactory and will make a big difference in terms of the managers being able to manage investigation case loads and also reporting requirements and things like that.

At the moment we are working to a system which is probably about 15 years old. It is quite inadequate. I can remember 13 years ago doing a master's thesis on the complaints unit at the time and having to use that system. It is very debilitating.

The Hon. CHRISTINE ROBERTSON: For the annual report process we will have some indication of time lines for resolution?

Ms DONNELLY: The new system will not be up and running for when the next annual report is produced. It will probably be the one after. It is a matter then of using the existing system and trying to plan ahead and getting up the timeframes that you are asking about.

Mr GRANT: Implementation of the system is probably not likely before about December of this year. It will take that long to modify the package for HCCC use.

CHAIR: In the area of prosecution of cases, in terms of tribunal and board outcomes, the Committee notes that a quarter of cases heard and determined were found to be not proven or were dismissed. That is on page 55 of the report. Of the 11 cases appealed to a higher court or jurisdiction four cases, or 36 per cent, were upheld. This is a similar figure for the outcome of appeal cases in 2001-2002, where four of 10 cases completed were appealed and upheld.

The Committee has previously expressed concern and most recently in our report of the inquiry into procedures following investigations and prosecutions undertaken by the commission, that cases proceeding to prosecution should have the necessary weight of evidence behind them.

Indeed, it has been recommended that the merits of cases be independently tested following investigation. The cost of prosecuting cases on shaky evidence in financial as well as human terms is unwarranted, the Committee believes. What were the respective costs to the commission of the cases upheld in the Court of Appeal?

Mr GRANT: Just a couple of comments if I can, chairman, in relation to that. The cost was $19,092. The commission has not as yet paid any adverse costs that were awarded against the commission.

In relation to the quarter of matters that did not result in some sort of auditing, I do not know what a good or a bad figure might be. If I can go back into my own field for a minute, my understanding is that the DPP's success rate in criminal trials is somewhere around 50 per cent, and that is pretty true across the whole country as I understand it. If there is a 75 per cent success rate in disciplinary matters that may not, of itself, be a bad figure.

The job of the commission, of course, is to present those cases and it is up to the Medical Tribunal or whatever tribunal it is to determine whether or not the standard of proof has been met this these particular cases. I cannot honestly say a 75 per cent success rate is a bad figure. It may or may not be. This was the first year we have reported on that so it would be interesting in years to come to

see what the trend actually shows, whether that figure goes up or down.

The next thing I would say is that I would expect that with the new acting commissioner on board the commission would be paying a great deal of attention to having the required evidence to prosecute matters over the next 15 months or so and whether that results in a change in that trend or not will be interesting to note.

Mr SHEARAN: Is there any way of getting some comparisons with other jurisdictions on their process?

Mr GRANT: That might be able to be achieved, yes, we can take that on notice and have a look at that. We can have a look at their reports.

CHAIR: I will point out for the record that when we talk about other jurisdictions we are not necessarily talking about conciliation commissions or ombudsman's offices in other States.

Mr GRANT: It would be the registration authority.

CHAIR: The Health Services Commissioner of Victoria appeared before an Upper House committee on Monday and I think she might have said that it was apples and oranges, or someone did.

The Hon. CHRISTINE ROBERTSON: We definitely are the only State to have the separated off health care complaints system in relation to investigation and referral for possible prosecution. All of the rest combine their conciliation processes and a lot of quality stuff into their health care complaints and have much less of the HCCC role, so they are very difficult to compare. We are the only State to have this process.

Ms DONNELLY: In fact New Zealand is the other model that also prosecutes, but in the other States the prosecutions are managed by the registration board, which was the thing that was addressed in the Chelmsford Royal Commission and why the Health Care Complaints Commission in fact does have prosecutorial functions because it was seen that it was too much in-house.

Mr GRANT: I think it was Merilyn Walton who actually made the apples and oranges comment.

The Hon. CHRISTINE ROBERTSON: And the woman from Victoria.

CHAIR: The lady from Victoria pointed out that they were different. We have pointed this out before and I would hope - and I am sure he will because I raised this with him yesterday - the new Acting Commissioner, Judge Taylor, endeavours to meet with registration boards in other States which are doing a similar thing to the commission. I have no objection to our commissioner meeting on a six-monthly basis with other commissioners, but he is meeting with conciliation commissioners and they are not doing the same job as he, except of course the people from New Zealand.

Mr TURNER: Regarding your comments, Mr Grant, the number of cases appealed and upheld may very well be within the guidelines - you do not know and I certainly do not know - but we are talking about professionals' lives and professions at stake and I would understand that some of these cases would have been open for investigation for about 18 months or more; they get a finding against them and they then appeal, and I do not know how long that takes, but in some cases I would imagine that that doctor's future is in the balance for up to three years. Whilst it might be within the guidelines, and we only talk about four cases, every one of those cases that we could eliminate far more quickly and let that doctor get on with his life if he is ultimately found to be not guilty, so to speak, regardless of the cost - you said $19,000, which in the overall scheme is not very much money - but we are talking about professionals' lives and their future and any reduction that we can achieve through a better system would be highly desirable.

Mr GRANT: With respect, Chairman, I would agree with all of those comments. It is necessary in the interests of all the parties, be it the hospital concerned, if it is concerned, the

practitioner, the complainants, that these matters be resolved in a much more expeditious way.

CHAIR: Does the 75 percent success rate that you mentioned include all adverse outcomes for the practitioner or exactly the sanction that the commission had asked for, i.e. in many cases they asked for a doctor to be struck off, but that is not the outcome. There might be an adverse decision, but it is not what the commission was actually requesting.

Mr GRANT: 25 percent of cases were dismissed or not proven, so it is 75 percent that has some outcome. There was one particular case where there was an appeal by the practitioner against the medical tribunal decision imposing a condition on registration that for 12 months the practitioner not practise medicine as a private practitioner. There was no appeal against the finding of professional misconduct or the reprimand and the finding and reprimand were confirmed on appeal. The appeals cover a multitude of different circumstances, about whether the order should have been imposed, whether the order was unjust, whether the conditions that were attached were too onerous, et cetera.

CHAIR: Table 7 on page 34 indicates complaints referred to another body. Of these, 453 or an increase of 7.4 percent were referred to registration boards. Is this a trend and is there any explanation for it?

Mr GRANT: As far as we can see, it is not a trend. Cases are assessed in conjunction with the relevant registration boards. In previous years more cases have been referred to registration boards and to date 302 cases have been referred this financial year, so it seems to be fairly usual, if I can put it that way, that those sorts of figures come out, but there does not seem to be a particular increase or decrease in those figures.

CHAIR: I think there was some concern that that was one way that the commission had been able to reduce its number of cases by referring them off to boards?

Mr GRANT: Can I say, without necessarily confirming or denying that statement because I have not the knowledge to do that, one would expect that any preliminary investigation model may end up changing these figures quite dramatically. It is difficult to know, but I would expect that those figures could well change.

Mr SHEARAN: In relation to the types of complaints, table 6 on page 25 categorises the types of complaints received by the commission. In most cases this is similar to other years. Where there are emerging trends, these are commented upon in the text of the report. Is there any comment on the increase in the number of complaints about quality of care? You will notice that there has been an increase of 51 or 5.7 percent on the previous year.

Mr GRANT: In 2002-2003 the number of complaints under quality of care was 498 or 18.3 percent compared to 337 or 12.6 percent in the previous year, which was a rise of 161 or 5.7 percent. The quality of care category has many subsets. One of these is institution/hospital practice, which rose from 57 complaints in 2001-2002 to 158 in 2002-2003, a rise of 101 over that 12 month period. That seems to account for most of the change in the figures and we cannot quite find a reason why that figure rose in that particular period of time. Those matters refer to things like admission processes, cleanliness, provision of meals, state of equipment and other institutional practices that do not fall under any other category, so it is hard to know why we had that increase of about 100 matters under that particular heading.

Mr TURNER: I was talking to you earlier about the level of quality of care complaints. On the information I was given yesterday, there is a lot lower level from rural areas and we were talking about whether people are less likely to complain coming from a rural area or they get better satisfaction within the medical system in rural areas. Yesterday a lady, whose mother received less than adequate attention at a hospital - and I forget which hospital - commented to me that she was not going to bother about it and, with the publicity that this has received in the press in the last couple of days and with the assurance that I was on this Committee, that we were meeting this morning and that we were seriously looking at these complaints, she said, well, I will put in a submission because I now

believe that something might be done, so maybe the publicity that it is getting is making people more aware and they are making a complaint as a result of that publicity. I do not know, it is an unknown, but maybe that is a factor.

Mr GRANT: I would think that could well be. Publicity seems to generate those sorts of things, and maybe you are a better judge than we are of who walks through your door and what they are actually asking you to do, but I would agree: I would expect this publicity to result in more complaints. I do not know that we can say at the moment that there is any trend in that. I think perhaps by the end of this financial year some trend might be evident.

The Hon. CHRISTINE ROBERTSON: A bit like the study ICAC has sent us in relation to, over the years, the levels of complaints and satisfaction and when the police investigation was going on, the incidence of ICAC issues and resolution and how the public felt about it. It was right up here and now it has settled down it has gone back to normal.

Ms DONNELLY: I think there is no doubt that media attention spurs people on to make more complaints. They respond to whatever is in the media.

Mr GRANT: One of the things we have to do, and the Government has to do, and the community has to do, is look at the breadth of responses that can be made to a complaint. I think that was a failure of the original legislation. I am aware that this Committee has another inquiry in mind to look again at alternative dispute resolution, if I can use that term, in the health complaints system and I think that is well worth doing.

It is necessary to give people an option of where to slot their complaint. Part of the difficulty with the HCCC has been that we have not communicated well with complainants and we are reviewing that. You will notice on the action plan a fair bit of work is going to go into how we tell people the results of their complaint to us.

We actually explain to them. We do not just say that we are not going to investigate it we say, for example, we think it appropriate for conciliation for these reasons, and we actually spell out those so they can try to understand why we did not think it serious enough to investigate and why we think that is the appropriate response. All of those matters have to be looked at.

Mr TURNER: Quite often with proper consultation they are happy with the outcome.

Mr GRANT: If it is explained to them.

Mr TURNER: The report refers on page 39 to consultative resolution. The Committee has some concern about how consultative resolution is defined in the literature and put into practice. How is the performance of staff assessed in the application of consultative resolution?

Ms GRANT: I think the short answer to that is that as far as I am aware it is not. Specific performance assessment criteria for staff involved with consultative resolution have not been developed. Staff are expected to have generic skills such as negotiation skills, analytical skills, written and oral communication skills, et cetera, but there is a paper that was produced in relation to consultative resolution which I am happy to make available.

I actually would not say that the commission is going to be relying upon those sorts of processes, apart from in a general sense, in the coming period of time. I think consultative resolution to me frequently means actually communicating and talking to people about how their complaint might be resolved and there will be a lot of focus on that. I do not know that it will be relying on any particular doctrine of consultative resolution or anything of that nature. I am happy to make that document available.

CHAIR: Are you happy to table that for us?

Mr GRANT: Yes.

Mr TURNER: What is the partnership and quality improvement framework that is referred to on page 41?

Mr GRANT: It is that consultative resolution document that I have just made available.

Mr TURNER: You have answered the next one, where is this framework documented, you have tabled that. How are the outcomes of the learning approach indicated on page 40 documented and agreed by the parties?

Mr GRANT: Again it is in that document.

Ms GADIEL: The Committee is concerned that yet again the recommended independent conduct or review of investigation satisfaction surveys did not occur, pages 60 and 61 of the report. In line with previous recommendations made by this Committee will there be an undertaking to implement either independent conduct or independent review of investigation satisfaction returns?

Mr GRANT: Again, I would think that is a matter for the Acting Commissioner or beyond the Acting Commissioner's time. I think that is a substantive issue which needs to be addressed. I suspect he might be focussed on other matters in the immediate future.

I have to say that I took a decision in January this year to stop sending out surveys. The reason I did that was because we had an awful lot of things to change in the organisation, in relation to how we communicated with people, how we did our job, how we got the material to people in response to their complaints, and I thought surveys in that particular climate was inappropriate. Those surveys will of course be reinstituted at an appropriate time.

The patient support officer surveys are still being done but not those in relation to investigations. I thought that those investigations should have been handled better and in a more timely way and a better communication process attached. I did not think the surveys would actually give a better result than we had actually formed ourselves about what needed to change.

CHAIR: Mr Grant, you did say that the patient support surveys are continuing. What we are seeking is whether there will be either an independent conduct of those, or independent review of the patient support surveys, rather than an in-house review.

Mr GRANT: Again, moving to some more independent analysis on the survey results is something that will be on the drawing board. I cannot commit on behalf of the Acting Commissioner when that will be done in the current climate, and what he is focussing on in the next 12 or 15 months.

There was some work done in relation to key performance criteria. They are in the report. I will not go through those. Obviously the Committee has the view that more needs to be done, particularly in the appraisal of the work of the patient support service. I cannot give an undertaking on behalf of the new Acting Commissioner as to how he will treat that in the priorities of what he has to do to move the commission forward.

CHAIR: I think it is important for this Committee to get on the record our feeling on certain issues so that the new Acting Commissioner, when our report is tabled in Parliament, can take advantage of reading through the report and see some areas with which the Committee is concerned.

The Committee has been criticised previously, wrongly I believe, and if you go through our annual reviews of the commission we have made many strong recommendations and many of those have been ignored by the commission in the past.

Ms GADIEL: The Committee recognises the patient support service, pages 19 to 24, as a valuable component of timely local complaint resolution. Of all the information presented in the report about PSS, the Committee is concerned that yet again there is no reporting of performance

criteria or patient support officers, no moves identified towards benchmarking of activities, no discussion of assessment processes, although each of these has been previously identified by our Committee as vital for the objective assessment of the public support service.

Will there be an undertaking to introduce these performance elements for patient support officers in the next and subsequent annual reports?

Mr GRANT: As I indicated, there are some performance criteria currently there but obviously from the Committee's point of view they are considered to be inadequate. The results of client satisfaction surveys are commented upon as well as providing feedback in a description of performance monitoring measures, page 61 of the report.

Assessment processes generally within the commission are being reviewed and could be included in the next annual report, subject to the provisos that I provided before about what the Acting Commissioner sees as the priorities for the commission over a short period of time. I suppose I have to say possibly. I cannot commit on his behalf to actually doing that in the next annual report. Considering that the next annual report period expires in three months time, it would be difficult to provide more meaningful data because it has not been completed in the first nine months of this year.

The Hon. CHRISTINE ROBERTSON: My issue is in relation to conciliation. The report indicates on page 34 that 436 complaints were assessed for conciliation, 14 percent more than in the previous year, yet the commission was unable to obtain consents for 234 complaints, that is 53.6 percent of the complaints assessed for conciliation, and for a further 43 complaints only partial consent was received, so only 159 complaints were ultimately referred for conciliation. The Committee is very pleased with the improvements adopted by the Health Conciliation Registry and this is reflected in the results achieved by the registry, which had 169 conciliations completed and 80 percent of these resulted in agreement. The Committee would like to see the rate of obtaining consents lift dramatically. Is it possible to clarify the figures given for agreements reached and partly reached through conciliation? The figure of 80 percent provided in the last paragraph on page 35 does not accord with the figures provided in table 20 on page 36.

Mr GRANT: Yes, there is a mistake in the text. The table is the correct information. In 2001-2002, 80.3 percent had agreement or partial agreement reached and, in 2002-2003, 78.7 percent had agreement or partial agreement reached.

The Hon. CHRISTINE ROBERTSON: What other actions might be taken to achieve an improvement in the rate of obtaining consents?

Mr GRANT: I think, firstly, again there needs to be better communication with people as to why it is not going to be investigated and why conciliation might be the appropriate form of resolution for that particular complaint. I think that should go a long way towards lifting that. I think this Committee has in the past indicated that it thought the conciliation registry itself should be seeking those consents. The advice which I have is that there is a restriction in the current legislation which does not allow that, but I would agree. I would think that the registry itself should seek those consents after the commission has appropriately communicated why it considers an investigation is inappropriate and some other resolution mechanism should be suggested, so I think removing the seeking of consent from the commission, which has just told people "No, we do not think it is serious enough to investigate" might actually get people thinking a little more clearly about whether that is a better option for resolving the complaint or not. The last thing is I think the legislation should be amended to allow that to happen.

CHAIR: In the area of consultation, the Committee has for a long time been concerned to ensure that practitioners are also consulted along with other groups as stakeholders of the commission. The Committee is pleased to note that practitioners have been included in this category in the "Turning Wrongs Into Rights" project which the commission is conducting on behalf of the Council for Safety and Quality in Health Care. The recommendation of that group on page 64 for a national data set for health care complaints and agreed competencies for complaint handling staff and associated training is long overdue. The Committee welcomes these initiatives. What further

proposals to improve health care complaints handling have emerged as a result of this project?

Mr GRANT: The project has developed better practice guidelines on complaints management for health care services. The guidelines have received widespread stakeholder support and an accompanying handbook has also been developed. The Australian Council for Safety and Quality in Health Care gave support for the guidelines in March 2004 and will submit them to the Australian Health Ministers Conference for endorsement in July 2004. It will then be up to individual jurisdictions to implement them. The council is also considering other recommendations which were included in the summary report, such as the national reporting of complaints data. The Australasian Council of Health Care Complaints Commissions remains committed to the national reporting of complaints data and the maintenance of a national health complaints data set. However, resolution of the matter is dependent upon the availability of funding and requires the cooperation of a range of organisations, including the New South Wales Department of Health, that currently collect complaints data in the health care sector. The commission, like all other health complaints commissions, is committed to promoting the guidelines and handbook to health care services by publication on its website, through speaking at conferences, running workshops, et cetera. In addition the commission is using the research in principles of better complaints practice as part of a special project to review its own policies and procedures during 2004, so in effect the commission will be looking at those best practice guidelines to see how it can actually alter its own procedures to comply with those.

CHAIR: Once again, the Committee has employed the services of a consultant, Mr John Chan-Sew, to review the 2002-2003 annual report. A copy of that will be attached to or incorporated in our report to Parliament. There is a number of issues raised there which hopefully the new acting commissioner will be able to address in the next annual report, certainly around the non-compliance with annual reporting requirements as set out in Treasury guidelines.

Mr Grant, yesterday the interim report of the Special Commission of Inquiry into Campbelltown and Camden Hospitals was handed down by Mr Walker and I would like to point out for the record that in the Committee's report tabled in December, just after your appointment as acting commissioner, in the inquiry into procedures followed during investigations and prosecutions undertaken by the commission, the Committee pointed out that on 5 December 2003 - and this is in the Chairman's foreword - the Committee wrote to the Minister for Health and the Honourable Morris Iemma MP and requested that he consider funding an independent external review of the commission's systems for conducting investigations and prosecutions. The Committee believed that this type of detailed review was clearly outside the Committee's resources; however, the Committee felt that it was imperative that such a detailed review was undertaken as soon as possible. Throughout the inquiry the Committee has received more than enough information to raise concerns about how cases are being managed at the commission to warrant such external scrutiny and I think the Minister has acted on our request and certainly the interim report handed down yesterday by Mr Walker covers many of the areas of concern that the Committee had. I understand that the information you have tabled with us today on reorganisation and refocus of the commission's activities also addresses a number of those issues. Is there any other closing comment that you would like to make to the Committee?

Mr GRANT: Apart from the backlog reduction strategy which I tabled and the list of activities to be undertaken between now and the end of the year, which will of course now be reviewed and implemented as appropriate by the new acting commissioner, there were a couple of other matters which I did address during my time as acting commissioner. One of those was a legislative review, and that is being conducted by the Cabinet Office. My views have been fed in on that and, if I may say, my views were certainly influenced by the work that this Committee had done, including the work in their report which you mentioned in your introduction.

Another matter, of course, was the ongoing response to the Macarthur investigation and what I might call the Macarthur strategy has been implemented as well and is now in place and was commented upon by Mr Walker in his report yesterday. That involves bringing in outside legal expertise with senior counsel and junior counsel through the Crown Solicitor's Office, linking it up with investigators from the commission who had no prior involvement in the Macarthur investigation and combining that as well with increased medical expertise so that ongoing investigation work can

be conducted as expeditiously as possible in the interests of all the parties who have been involved in this exercise.

CHAIR: I appreciate you appearing before the Committee today and certainly for the changes implemented at the commission in the short period that you were there and I hope the Committee can continue to call upon your assistance in the future.

Mr GRANT: Thank you.

(The witnesses withdrew)

(The Committee adjourned at 11.00 a.m.)