Submission No 1

REVIEW OF INQUIRY INTO COMPLAINTS HANDLING IN NSW HEALTH

Organisation: Health Care Complaints Commission
Name: Mr Kieran Pehm
Position: Commissioner
Telephone:
Date Received: 11/04/2006

Subject:

Summary

HEALTH CARE
COMPLAINTS
COMMISSION

The Hon. Patricia Forsythe MLC
Committee Chair
General Purpose Standing Committee No.2
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Forsythe

I refer to your letter of 27 March 2006 requesting a response to the terms of reference of the follow-up inquiry into complaints handling in NSW Health.

Please find enclosed the response from the Health Care Complaints Commission.

I would be happy to elaborate on the response at a later date.

Yours sincerely

Kieran Pehm
Commissioner

11 APR 2006

HEALTH CARE COMPLAINTS COMMISSION

SUBMISSION TO GENERAL PURPOSE STANDING COMMITTEE TWO

INTRODUCTION

In June 2004, General Purpose Standing Committee No. 2 (GPSC2) tabled its report, "Complaints Handling Within NSW Health". The report contained 19 recommendations. Recommendations 17 and 19 relate specifically to the Health Care Complaints Commission. The following discussion provides information regarding the implementation of those recommendations.

BACKROUND

The Health Care Complaints Commission is an independent statutory body that investigates and prosecutes serious complaints against health practitioners and health care organisations. The Commission also has a range of options available to it to help resolve less serious complaints that are not referred for investigation.

A number of changes were made to the *Health Care Complaints Act, 1993* (the Act) following the findings of the Special Commission of Inquiry (SCI) into allegations of inadequate patient care or treatment at Campbelltown and Camden Hospitals (the Macarthur matters), headed by Commissioner Bret Walker S.C. The legislative changes came into effect on 1 March 2005.

GPSC 2 RECOMMENDATION 17

> *"The Health Care Complaints Act 1993 and the Protected Disclosures Act 1994, be amended to protect the identity of whistleblowers when they require it and to provide protected disclosure safeguards for health practitioners, including nurses in both the public and private sectors"*

Prior to the amendments coming into force, the identity of whistleblowers and other complainants was kept confidential if there was a risk of harassment or intimidation for up to 60 days only. After this time, their identity was disclosed to the respondent. Under the legislative changes this time limit has been removed and the Commission is required to review its decision to keep the identity of complainants confidential every 60 days, subject to certain limitations. Section 16 (4) provides that the person against whom a complaint is made must be notified of the complaint except if it appears that the giving of notice will or is likely to:

(a) prejudice the investigation of the complaint, or

(b) place the health or safety of a client at risk, or

(c) place the complainant or another person at risk of intimidation or harassment.

Under section 96 (2) whistleblowers are also protected by the removal of liability for making a complaint in good faith.
These amendments ensure that protections which are available to persons who make protected disclosures in other areas, are also available to those who make a complaint to the Commission.

GPSC 2 RECOMMENDATION 19

> *"That the proposal to split responsibility for the investigation of systemic and individual complaints between the Clinical Excellence Commission and the Health Care Complaints Commission be reassessed following the release of the final report of the Special Commission of Inquiry into Campbelltown and Camden Hospitals."*

The following discussion will describe the responsibilities of the Commission and refer to the role of the Clinical Excellence Commission (CEC).

The current system empowers the Commission to investigate serious individual complaints as well as systemic issues that may arise from those individual complaints. The Clinical Excellence Commission is charged, amongst other things, with identifying issues of a systemic nature only, that affect patient safety and clinical quality in the NSW health system. It develops and advises upon strategies to address these issues.

Commissioner Walker found that the Commission's investigation into the Macarthur matters was deficient in its focus on systemic issues and in its failure to comply with legislative requirements to investigate the conduct of individual practitioners involved in the incidents of patient care which were the subject of the complaint. He determined that many of the shortcomings of the Commission were related not to the statutory framework itself but to the failure of the Commission to properly comply with those statutory obligations.

As part of the Commission's core statutory responsibility of investigating complaints about inadequate health care and treatment, investigations into systemic issues do arise, particularly in relation to serious complaints about health service organisations.

Under s.42 of the Act, after an investigation into a health organisation, the Commission must prepare a report and forward it to the respondent organisation and the Director General of the Department of Health if it is making any comments about the care provided and/or making recommendations for changes to systems and procedures.

Under section 44 of the Act:

(1) The Commission may request the Director-General to notify it of any action taken or proposed as a consequence of its report under section 42.

(2) If the Commission is not satisfied that sufficient steps have been taken within a reasonable time as a consequence of its report to the Director-General, it may, after consultation with the Director-General, make a report to the Minister.

(3) If the Commission is not satisfied that sufficient steps have been taken within a reasonable time as a consequence of its report to the Minister, it may make a special report on the matter to the Presiding Officer of each House of Parliament.

The Commission meets quarterly with the Director General of Health to discuss issues of mutual concern including the process of implementation of its recommendations. The Director-General is primarily responsible for systemic change in the health system to improve patient safety.

Discussions with the CEC to date indicate that its work is occurring at a very high level of data analysis. It also remains open to reference of investigation reports from the Commission. At this early stage of the development of the patient safety improvement program the Commission's investigation work complements the role of the Department of Health and the CEC.