

Carmel Tebbutt MP

Deputy Premier | Minister for Health

3rd December 2010



Mr Russell Grove
Clerk of the Legislative Assembly
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Dear Mr Grove

I refer to your request for advice in respect of Report No 7/54 of the Committee on the Health Care Complaints Commission – “Operation of the Health Care Complaints Act 1993: Final Report”

Please find enclosed the Government’s response.

The person to contact at NSW Department of Health for further information or assistance is Ms Deborah Oong, Acting Director, Corporate Governance & Risk Management on telephone 9391 9654.

Yours sincerely

A handwritten signature in black ink that reads "Carmel Tebbutt".

Carmel Tebbutt MP
Deputy Premier
Minister for Health

NSW Health

Response to the Parliament of NSW
Committee on the Health Care Complaints Commission
Report No. 7/54 June 2010

Operations of the *Health Care Complaints Act 1993*

C. Ansell
2/12/10

OVERVIEW:

Contained within the report of the 2008 Inquiry into the conduct of the Health Care Complaints Commission (HCCC) in investigating complaints against ex-medical practitioner Graeme Reeves was a recommendation that the *Health Care Complaints Act 1993* be reviewed to identify any unnecessary complexities in the NSW health care complaints system. At this time the then Health Minister (Reba Meagher) advised the Committee that the National Registration and Accreditation Scheme for Health Professions (proposed for July 2010) was to include a national complaints handling scheme.

Concerned that the time frame might lose momentum for change at the state level, the Committee decided to hold its own inquiry. The inquiry was advertised, submissions called for and twenty-seven (27) were received. Momentum for the national complaints handling scheme grew so the Committee deferred the conduct of its own inquiry, in order to establish whether or not NSW would retain its co-regulatory system.

In May 2009, amendments to s 21A and s 34A of the Act (adopting recommendations made by the Hon Deidre O'Connor) came into force. These amendments gave the Commission additional powers to require any person to provide information in regard to the investigation of a complaint, to consider associated complaints and to re-open old cases closed due to insufficient evidence.

In June 2009 the Minister for Health (John Della Bosca) announced the retention of the NSW HCCC as a component of the national Scheme. The Committee considered it important to highlight the issues raised in the submissions received earlier. Consequently a Discussion Paper was tabled in September 2009 incorporating twenty-nine (29) issues for discussion. Further submissions were called for and an additional twenty-two (22) submissions were received. A public hearing was held in March 2010 and 17 witnesses (individuals and representatives of organisations) gave evidence.

The report is structured into four (4) chapters providing details of the background to the Committee and the Inquiry, the complexity of the health care complaints system, the assessment and investigative powers of the HCCC and information sharing. The commentary in the report provides some insight into the approach taken and the processes employed and the appendices offer more detail on the extent of the inquiry.

Response to Recommendations

Recommendation 1

That the *Health Care Complaints Act 1993* be amended by adding a new s 3A (5A) in the following terms:

The exercise of roles under this Act by the Commission and the related government agencies shall be governed by the following principles:

- **Accountability:** Decision-making authorities must be accountable to the NSW community in carrying out their statutory functions,
- **Transparency:** Decision-making processes should be open, clear and understandable for both the consumers and the professions,
- **Fairness:** Decision-making authorities should maintain an acceptable balance between protecting the rights and interests of patients and those of the practitioners ,
- **Effectiveness:** The regulatory system should be effective in protecting the public from harm and supporting and fostering equity of access and the provision of high-quality care,
- **Efficiency:** The resources expended and the administrative burden imposed by the regulatory system must be justified in terms of the benefits to the NSW community,
- **Flexibility:** The regulatory system should be well equipped to respond to emerging challenges in a timely manner, as the health system evolves and the roles and functions of health professionals' change.

Supported in principle

The principles identified in this recommendation capture the elements that underpin good practice in organisational methods, procedures and processes.

Recommendation 2

That the HCCC continue to monitor the effectiveness of its communication with persons who are the subject of a complaint, seeking the input of agencies such as registration authorities, AHS, DoH and Avant

Supported

Effective communications are critical to every aspect of the functions of the HCCC and performance evaluation is supported as both an essential undertaking and a core activity.

Recommendation 3

That the statutory remit of the JPC on the HCCC be expanded to monitoring and reviewing the exercise of the functions of the NSW Health Professional Councils

Not supported

Whilst the JPC report provides evidence of some support for this recommendation, there is no clear rationale for it nor is there any evidence to support the contention that there is a lack of accountability within the smaller Councils.

Recommendation 4

That the *Health Care Complaints Act 1993* be amended so that the HCCC can conduct investigations of its own motion, where such investigations relate to an issue of public interest or public safety that relates to the function of the Commission

Not supported

It is noted that there is general support identified in the Final Report for this recommendation. However, there does not appear to be any evidence that matters necessitating investigation have failed to be investigated due to an absence of the power to instigate own motion investigations. It is considered that the existing mechanisms are adequate.

Recommendation 5

That the Note to Division 5 of the *Health Care Complaints Act 1993* be amended by the deletion of the second sentence

Supported

(The note may be amended editorially as it does not form part of the Act and legislation is not required)

Recommendation 6

That s 22 of the *Health Care Complaints Act 1993* be amended to provide that, in "exceptional cases", at the expiry of the 60 day period the HCCC may review the progress of an assessment, defer the decision if it is considered appropriate in the circumstances, and advise the complainant of the reasons for doing so

Supported in principle

An extension of 30 days is supported subject to a further canvassing of the views of stakeholders. It is suggested that the number of cases requiring an extension of time be reported in the HCCC Annual Report as a measure of performance.

Recommendation 7

That the *Health Care Complaints Act 1993* be amended to provide for the mandatory provision of written reasons by the HCCC for assessment and post-investigation decisions to both the complainant and the respondent

Supported in principle

The suggested amendment is supported in the interests of procedural fairness and transparency. It is noted that written reasons are already provided, however mandating this responsibility as good practice is endorsed.

Recommendation 8

That the HCCC work with the NSW DoH and the CEC to establish and publish a knowledge database providing the outcomes of investigations to assist in the improvement of health systems

Supported (with the following caveats)

NSW Health supports the concept of working with the CEC to establish a database that will provide outcomes of investigations that can be invested in health system improvements. The database could include appropriate RCA reports or issues where recommendations identified by expert committees provide opportunities for achieving improvements in patient care and safety. It should be noted that:

- Including all RCAs would be counter-productive due to the volume (>600 p.a.) which would adversely affect the likelihood of clinician access and review
- NSW Health & the CEC will collaborate with the HCCC once the database is established
- There are implications for IT&M resources and for ensuring ongoing site maintenance and expert IT and website advice will be needed

Recommendation 9

That the *Health Care Complaints Act* 1993 be amended by a new s 16(5A) in the following terms:

The Commission must give notice of the making of a complaint to the current employer of the person against whom the complaint has been made if the Commission considers on reasonable grounds that the giving of the notice is necessary to investigate the matter effectively or it is otherwise in the public interest to do so

Supported in principle

However, it should be recognised that staff of the public health system are employed by the Crown and in the drafting of any amendments that are approved and developed care should be taken to ensure that notice is given to the employer or the general manager of the health service / facility at which the person provides health services.

Recommendation 10

That, on receipt of a request from the HCCC for information relating to a complaint against a practitioner employed by, or contracted to work for, an Area Health Service, the AHS supply to the HCCC only that information which is both sufficiently recent and reasonably relevant to the investigation of the current complaint

Supported

However, care needs to be taken to ensure a proper balance is struck between the interests of the respondent to the complaint and the needs of the investigation. It is also noted that the Committee commented on the need for the HCCC to target its requests to relevant and current information. Given this, the Department of Health will work with both the HCCC and stakeholders to implement this recommendation.

Recommendation 11

That the *Health Care Complaints Act 1993* be amended to provide that:

- An AHS must report to the HCCC all incidents classified as SAC 1 under the Department of health's Severity Assessment Code; and
- The Commission must assess each such incident with a view to establishing whether it is to be investigated by the Commission and report back to the AHS on the results of its assessment in a timely manner

Not supported

This recommendation appears to be based upon the premise that SAC 1 events are not investigated.

All SAC 1 events are thoroughly investigated - refer to NSW Health Policy Directive *Incident Management* (PD2007_061).

The objective is to ensure health services establish processes that comply with the legal aspects of health care incident management including amendments to the Health Administration Act 1982 for SAC 1 reportable incidents, and RCA investigations as well as the management of Reportable Incident Briefs (RIB) submitted to the Department.

The PD requires the reporting all SAC1 incidents to the Department within 24 hours of conducting privileged RCAs on clinical SAC 1 incidents in accordance with Part 6C of the Health Administration Act 1982 and

- For conducting a detailed investigation of all corporate SAC 1 incidents
- For providing Clinical SAC 1 RCA reports to the Department within 70 calendar days of the incident notification in IIMS
- For providing key findings from Corporate SAC 1 investigations within 70 calendar days to the Department
- For undertaking local actions to ensure appropriate incident management and preventing recurrence of incidents
- For reporting of trended incident data and outcomes of RCAs and Corporate SAC 1 investigations to relevant groups within health service
- For ensuring appropriate resources are available for effective incident management and patient safety initiatives
- For implementing policies and local practices that support staff, including staff training on incident management and encouraging an environment where incident notification and active management of incidents is fostered.