The Hon Jillian Skinner MP
Minister for Health

INQ14/14

Ms Ronda Miller
Clerk of the Legislative Assembly
Office of the Legislative Assembly
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Miller Ronda

Parliamentary Committee on the Health Care Complaints Commission Report 4/55 'Review of the 2012-2013 Annual Report of the Health Care Complaints Commission'

Please accept the NSW Government's response to the Parliamentary Committee on the Health Care Complaints Commission Report 4/55 'Review of the 2012-2013 Annual Report of the Health Care Complaints Commission.

A copy of the response is enclosed.

Yours sincerely

Jillian Skinner MP

Encl.

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REPORT 4/55 REVIEW OF THE 2012-2013 ANNUAL REPORT OF THE HEALTH CARE COMPLAINTS COMMISSION

NSW GOVERNMENT RESPONSE

Recommendation 1

That the Commission and the Ministry of Health devise policies to enhance the capacity of the three per cent of Australia's medical workforce — which over the last decade accounted for 49 per cent of complaints — and thereby reduce the number of complaints.

NSW Health supports this recommendation in-principle and notes that NSW has in place policies and processes to identify and manage the stated 'three per cent of practitioners' who have accounted for a high level of complaints.

The NSW health practitioner registration system provides a number of programs that address matters relating to medical practitioners.

- *The Health Program* includes assessment of practitioners' fitness to practise. This program is designed to protect the public while maintaining impaired doctors in practice when it is safe to do so. The Program is notification based, and manages registrants suffering from psychiatric illness, problems with the abuse of alcohol or the self-administration of addictive drugs, and occasionally, physical illness.
- *The Professional Performance Program* including Performance Assessments. This program was specifically designed to support the performance and professional competence of practitioners. It provides an avenue for education and retraining where inadequacies are identified, while at all times ensuring that the public is properly protected. It is designed to address patterns of practice rather than one-off incidents unless the single incident is demonstrative of a broader problem.

In addition, NSW Health has a number of internal mechanisms for addressing risks regarding practitioners who may be subject to multiple complaints.

The key mechanism used by NSW Health agencies for reporting incidents when they occur is the Incident Information Management System (IIMS). This system provides for a standardised approach to investigation and management of incidents with appropriate action and lessons learned for the whole system. The IIMS has the potential for early recognition of issues of concern and Clinical Governance structures are used to facilitate earlier conversations with clinicians where there has been a concern or complaint. There are also performance indicators in all Service Agreements with NSW Health agencies to monitor compliance with this system.

As noted in the Committee's report, the Health Care Complaints Commission (the Commission) has been working with the Clinical Excellence Commission (CEC) and others to 'reinvigorate the open disclosure process'. A key part of this work has been the review of the NSW Health *Open Disclosure Polic*y, published on 2 September 2014. The Commission was represented on the working party for the development of this policy and contributed valuable advice on the revised policy and accompanying resources. A copy of the revised *Open Disclosure Policy* is available on the NSW Health website at
http://www0.health.nsw.gov.au/policies/pd/2014/PD2014_028.html

The revised *Open Disclosure Policy* will be accompanied by supporting resources, including:

- An Open Disclosure Handbook, which will shortly be available on the CEC website including specific sections addressing 'communication issues', e.g. apologising and saying sorry; the importance of good communication in open disclosure discussions; communicating with empathy; and support for staff. Perspectives of the patient and/or family member and health care staff are also represented

- Clinician Disclosure and Open Disclosure Advisor modules (in development), including lessons on the Clinician's perspective of Open Disclosure, the Patient and Family's perspective, Apologising and Saying Sorry; and the Clinician Disclosure STARS (a tool which has been developed to guide the disclosure discussion immediately following a patient safety incident).
- Checklists and planners for different stages of the open disclosure process, which include key points for good communication.

Of note, the CEC was invited to contribute to an education session organised by the Health Care Complaints Commission on open disclosure for health practitioners in November 2014.

The proactive engagement of medical practitioners in these processes is encouraged through communication skills training, appropriate supervision, change management skills for changing practice/care approaches, best practice compliance and accountability processes linked to employment.

The Health Education and Training Institute (HETI) has developed online modules that have been specifically designed to support clinicians, including medical practitioners. The suite of online lessons to be hosted by HETI Online, include a mandatory lesson "Introduction to Open Disclosure: Communicating after a patient safety incident". Modules aim to improve communication and collaboration, build team-based clinical care and embed inter-professional collaborative practice for safer patient-centred care. Designed to be part of a learning pathway over the first two years of practice, the modules cover aspects of inter-professional communication, communicating with challenging patients, families and peers, and working in culturally diverse contexts.

In addition to these resources, medical practitioners working within NSW Health have access through the statewide Learning Management System (HETI Online) to a range of modules which enhance communication skills and promote effective team work. The communication modules include training in the use of the structured communication tool ISBAR (Introduction Situation Background Assessment Recommendation) for Clinical Handover, Conflict Resolution, Critical Conversations in Healthcare and Supporting the Learner and the range of modules for team development include Team Processes and Team Work – Personalities and Flexible Team Interactions.

Mandatory training is a subset of the broader education, skills and competency requirements of NSW Health staff and supports the safety and quality agenda and the wellbeing of patients, staff and visitors through improved patient care. Compliance with NSW Health training requirements contributes to the maintenance of a safe and healthy working environment and enables staff to meet their obligations as an employee of NSW Health and perform their roles effectively. In addition to the 'all staff' training requirements, all medical practitioners are required to undertake training that includes modules such as Management of the Deteriorating Patient, Basic Life Support and Open Disclosure to support best practice compliance.

Clinical supervision is an important aspect of delivering excellent patient-centred care. HETI has developed *The Superguide: a guide for supervising doctors*. The aim of this publication is to ensure that supervision is recognised as an important relationship between junior and senior clinicians and helps supervisors deliver safe, quality care through performance monitoring to ensure learning opportunities for junior clinicians.

In addition, the Medical Board of Australia has mandatory continuing professional development registration standards which define the requirements that medical practitioners need to meet to continue to be registered. It is also understood that insurers provide advice and support to practitioners who are the subject of a number of complaints.

The Committee's recommendation is based on a research study by Dr Studdert et al[1]. As noted in the Committee's report, the study was supported by the Commission through the provision of data regarding complaints made about medical practitioners from 2006-2011. It should be noted that NSW data was not used in the part of the study quoted by the Committee as the data provided by the Commission only covered five years compared to other jurisdictions' ten year sample[2]. The Commission sought similar analysis of NSW data to that used in the study, which the researchers advised was comparable to the figures used by the Committee in making its recommendation.

Recommendation 2
That the Commission develop a system for obtaining feedback about the complaints it refers to other bodies for resolution and thereby ensure that each complaint is addressed.

The intent of the recommendation, to ensure complaints are addressed and complainants receive appropriate feedback, is supported.

Ensuring feedback to the Commission on complaints referred to bodies independent of the Commission and NSW Health poses some regulatory issues. For example, the Commission may refer matters involving possible over-servicing to Medicare Australia. Medicare falls outside the jurisdiction of the NSW Government, so it is difficult to envisage how an effective feedback loop could be created to enable the Commission to 'ensure' that Medicare provides feedback on how it addresses each complaint. Similarly the national health professional boards and the state health professional councils are not subject to oversight or direction of the Commission, but operate as separate elements of the regulatory process.

While the Commission has no basis to follow up matters referred to bodies outside its jurisdiction, the bulk of complaints referred are to NSW agencies. These include:

- Complaints raising impairment or performance issues regarding a registered health practitioner referred to the relevant state professional council.
- Complaints about public health organisations that do not raise significant issues of public health and safety referred back to the organisation to try to resolve the complaint locally.
- Complaints about non-authorised prescribing of addictive medications referred to the Pharmaceutical Service Unit of the Ministry of Health.

In 2012-13, the Commission assessed 4544 complaints. Of these, 1233 (27.1%) complaints were referred to another body for their management, comprising:

- 887 complaints (19.5%) referred to the relevant professional council to take appropriate action regarding a registered health practitioner.
- 252 complaints (5.5%) referred to the relevant public health organisations to try to resolve the complaint locally.
- 94 complaints (2.1%) referred to another more appropriate body for management.

At present, the Commission has obligations under s.28 and s.28A of the *Health Care Complaints (HCC) Act* 1993 to provide notice to complainants in relation to the decision made or actions taken following the assessment of a complaint. If a complaint is referred to a NSW Health Professional Council to be dealt with as an impairment or professional matter, the Commission's obligations apply in advising how the matter was assessed and not to how the matter was finally managed by the Council.

The obligations in the *HCC Act* 1993 to provide notice are not duplicated in the national law or the NSW regulatory provisions in that law. As a result, the powers of the NSW professional

[1] M. M. Bismark, M. J. Spittal, L. C. Gurrin, M. Ward, D. M. Studdert, Identification of doctors at risk of recurrent complaints: a national study of healthcare complaints in Australia, April 2014, p3.
[2] Ibid, p3

councils to provide feedback to a complainant about a matter referred to the council are less clear.

As a matter of administrative practice, the Health Professional Councils Authority (acting for the NSW professional councils) does provide feedback to complainants. Currently, this process is somewhat hampered by the lack of a positive statutory obligation, particularly where the additional information the Councils may wish to provide also involves the practitioner's practice or personal situation where privacy issues may arise.

The NSW Government has recently introduced legislation into the NSW Parliament (the Health Practitioner Regulation Legislation Amendment Bill 2014) which imposes an obligation on Councils to provide advice to patients in respect of the outcomes of complaints made to Councils, including where complaints are referred to other bodies by Councils. At the time of writing, the Bill has been passed by both Houses and is awaiting the Governor's assent.

In relation to complaints referred to public health organisations for resolution at the local level, the Commission and the NSW Ministry of Health will work together to establish procedures to ensure that local health districts and specialty health networks report back to the Commission with the results of actions taken to resolve any complaints referred for local response, following assessment by the Commission.

Recommendation 3

That the Commission conduct a cost/benefit analysis before accepting any request to support a research project, enhancing the value it receives for supporting these.

The Commission already conducts a cost benefit analysis regarding research proposals.

The Report indicated that the focus of this recommendation was the extent to which research projects supported by the Commission have been beneficial to the Commission. The Commission has supported projects which enable it to review handling of complaints or allow for benchmarking against other jurisdictions.

For example, when complete, a research project underway with the University of Sydney into the implementation of recommendations will provide the Commission with an independent assessment of the rate and effectiveness of its recommendations and will complement the Commission's own random audits. This study compares the NSW complaint handling system to the national system and will assist the Commission to benchmark handling of complaints with other jurisdictions and provide independent feedback on complaint handling from complainants.

While some of the projects that have been supported by the Commission may not have had a direct benefit to the Commission in handling health complaints, these projects did contribute to broader clinical governance improvements.

Since late 2012, the Commission has received four requests to support research projects. In evaluating these proposals the Commission did not believe there was significant benefit and opted to provide basic reporting and commentary on publicly available information.

Recommendation 4

That the Commission explore options for creating a user-friendly method for collecting data on the profile of customers and professionals who access its webinars, in order to better target and enhance its promotional work.

The recommendation is supported and has been adopted by the addition of new data fields that record postcode and profession when participants register for a Commission webinar.

Invitations for webinars are sent out via email to all health professional councils, health professional colleges, the Health Education and Training Institute and the clinical governance

units of the local health districts and specialty health networks, to distribute through their networks. In addition, email invitations are directly sent to people who have registered their interest for webinars on the Commission website (or who had registered for a webinar in the past) as an 'opt out' service. In addition to the usual emails to the professional bodies, there were 700 individuals on the invitation list as at September 2014.

The email invitation includes information about the upcoming webinar, topic, background, speaker and time, as well as a link to register. If a person wants to participate, they register online and enter their name, email address, postcode and profession (all mandatory fields). The Commission summarises registrations and provides information about the audience to the relevant speaker to tailor their presentation.

Immediately after each webinar, participants receive an online survey asking for their feedback and providing the opportunity to nominate further topics of interest.

Recommendation 5

That the Commission outline the rationale for a wider application of the recommendations it makes to a Local Health District when reporting these to the Department of Health, in order to address the same policy issues, which may be present in other Local Health Districts.

Where the Commission completes an investigation and identifies that systemic improvements should be made, it has the power to make recommendations to the health organisation concerned. The Commission also provides recommendations to the Secretary of NSW Health and the Clinical Excellence Commission to inform work in improving health services. This enables these organisations to assess broader state wide application.

The Ministry of Health has processes in place whereby all findings from investigations conducted under s42 of the HCC Act are shared across the Ministry and Pillar organisations of NSW Health, including the Clinical Excellence Commission. These findings are used to inform policy development and flag specific areas of concern that may benefit from analysis at a system wide level. The Clinical Excellence Commission provides investigation findings for consideration by the local health district Directors of Clinical Governance.