

AH. 7

2nd April, 2002

The Director
Select Committee on Mental Health
Legislative Council
Parliament House
Macquarie St
Sydney 2000

Dear Sir/Madam,

re: mental health services in NSW

Attached is a submission to the Inquiry, from Whistleblowers Australia. As mentioned in the submission, a number of our members (including myself) have lost jobs and careers through blowing the whistle on problems within the NSW Department of Health; and it is only too clear from the Department's response to the Inquiry that this policy hasn't changed.

We would be happy to provide further information to the Inquiry, orally or in writing, if Members would like it.

Yours faithfully,

Cynthia Kardell, President NSW Branch
ph/fax 9484 6895

Shooting the messenger doesn't make bad news better

Whistleblowers Australia is a national incorporated body, founded in 1991. Its aim is to help promote a society in which it is possible to speak out without reprisal about corruption, dangers to the public and environment, and other vital social issues; and to help those who speak out in this way to help themselves.

Since 1991, health workers, along with occupational groups like police, teachers, transport, and communications workers, have formed a substantial group among the membership. Many have worked in mental health, employed by Health Departments, NGOs, or DOCS, all of which, for whatever reasons, over that period seem to have adopted the practice of 'shooting the messenger' rather than risk being forced to listen to bad news. That this practice is not confined to NSW is clear from the case of a psychiatric nurse in Tasmania (attachment 1); however the Inquiry will no doubt remember that while Australia's psychiatric bed/population ratio is spectacularly low by world standards, NSW is the lowest of all Australian states.

There is a pattern of response to whistleblowers that tends to be standard across government departments; and with minor changes is also the rule in the private sector, and in other countries. For the Committee's information, a summary article is attached (2): 'What happens to whistleblowers and why', which describes this.

In essence, all whistleblowers' stories are the same - change names, dates, and places, and there it is. What differs, however, is what is at stake - what a particular issue is costing the community, in money, injuries, deaths, and blighted lives.

We believe it has primarily been the culture of secrecy and intimidation within the NSW Health Department, hiding defects behind glossy PR, that has allowed mental health services to deteriorate to the point where this Inquiry is so urgently needed; the lack of financial accountability inherent in the Area structure having allowed the decline to accelerate unchecked. (We have a number of members who have worked as auditors for Area Health Services, where it seems almost anything goes - including any auditor rash enough to draw attention to the problems.)

We also believe that the consequences of the decline in services have been extremely serious; that some of these consequences in terms of preventable deaths have been known to the Department, but covered up in what may well amount to a criminal conspiracy. We trust the Inquiry will be able to use its powers to overcome the obstructions to finding the truth that have been put in others' way. We trust it will also take some action over what appears to us to amount to contempt of Parliament. The Health Department has responded to the Inquiry in a way that seems calculated to intimidate staff who would otherwise want to make submissions (attachment 3). That is, it has done everything possible to reduce negative input to the Committee, in the process depriving citizens who happen also to be employees, of one of their most fundamental democratic rights.

Situation leading up to the Inquiry

The culture of intimidation and secrecy within the Department has been steadily increasing since the health Areas were established in 1988. This coincided with ongoing budgetary restraints and cuts, which have continued ever since. Area CEOs, therefore, who were appointed on contracts, with the main performance indicator their ability to continue to provide essential services while remaining within budget,

had an overriding incentive (a) to avoid open criticism of services, which would indicate that they were failing the first criterion, and (b) to avoid scrutiny of financial arrangements, as it was imperative that they be able to divert funds from less sensitive services to meet shortfalls in potentially 'front page' areas. Mental health services, seldom of interest to the media, and always the health Cinderella, were an obvious 'soft' target to be plundered; and when their previously centrally administered funds were handed over to the newly-created Areas, the inevitable followed. It was necessary to suppress any criticism from within the system, that would draw attention to cuts in services, or raise questions about where the money was going.

Staff and NGOs gagged

Staff were told by their employers, now the Area Health Services, that public comment, even as private citizens, or union officials, was forbidden. Staff who broke that rule could be, and were, sacked. Non-government agencies, and consumer advocacy groups, who were and are expected to take up more and more of the slack, without adequate resources to do so safely, were told by the then Director-General of Health in 1993 that their funding was conditional on their 'not engaging in advocacy'. Such bodies currently have a clause forbidding criticism of the Health Department in their funding agreements.

The only people, therefore, who are now at least in theory free to speak, are patients and their carers. Patients with severe mental illness are almost always too disabled by it to do so; and their carers, struggling under the burden of trying to provide care in a system that has virtually abandoned them, seldom have the time or energy to complain effectively; and the consumer advocacy groups set up to advocate for them have been effectively muzzled by the restrictions mentioned above.

The climate for staff can be seen from this letter from a psychiatric nurse (anonymous for obvious reasons).

"Nurses are effectively silenced. You are correct when you state 'some staff at Central Sydney Area Health Service are terrified of speaking out'....I sustained [serious injuries] in an unsafe work place environment, left alone with homicidal and suicidal patients.....now not one nurse is allowed to speak to me. 'Terrified' is exactly the word I would use....Over 20 wards closed over the past few years; and nurses are not allowed to express any opinion as they are in fear of losing their jobs - as I did."

This communication, and many others along the same lines, is in stark contrast to the bland -and in our opinion dangerously meaningless - assertions from the Area management. The Deputy CEO stated last year, in response to the question:

Q. "What protection is there for whistleblowers within the health system? Are mental health workers, including those working for CSAHS, permitted to speak publicly, e.g. at the community consultation process [on Callan Park] on what they see as problems in the system? Are they permitted to disagree publicly with the CSAHS plan?"

A. "Staff are bound by the Code of Conduct and the Area's relevant policies and procedures. I would be pleased to meet with any member of staff who has a concern of any kind. If staff believe there are no avenues open to them to discuss their concerns after they have made every effort to engage management then the CSAHS policies and procedures detail how they might bring matters to the attention of the

CEO, Staff Representative, Board etc. If you are aware of any member of staff who has a concern I would be pleased to meet with them ant[sic] time. "

Q. "Nearly all mental health consumer bodies receive some state government funding. The then Director-General told them some years ago that continued funding was conditional on their not engaging in advocacy. Is this still the case? Or are they free to comment, without penalty, on problems in the system?"

A. "*The NGOs in CSAHS are free to bring any problems they perceive in the system to myself, or if they wish, to [the CEO]. given that none have done this I would be disappointed if they did not do so before publicly discussing any issue. As with all staff in the Area Health Service the staff of the NGOs are bound by the AHS's Code of Conduct and its policies and procedures. These documents make it clear how people should deal with issues of concern.*"

The degree of muzzling of NGOs was clearly seen at a 'community consultation' meeting about Callan Park on 18.6.01, where the person presented to the meeting as the 'community representative' for the NGOs spoke in favour of the CSAHS proposal, although as the Friends of Callan Park subsequently discovered, the majority of NGOs actually oppose the plan. However, nothing has been able to be said publicly by those NGOs to correct the impression given at the meeting. It should be noted that the impression was given although the contrary views of most NGOs had in fact been conveyed to the CSAHS beforehand.

WBA wrote to the Deputy CEO, Mike Wallace, with our concerns (attachment 4), receiving in our opinion a most unsatisfactory reply. The Inquiry should note that nowhere in that reply, or in the replies quoted earlier, did he see fit to mention the CSAHS obligations under the Protected Disclosures Act.

The Health Department and Minister's response to the Inquiry's call for submissions:

Before the Inquiry was advertised, WBA wrote to the NSW Health Department's Acting Director-General, Bob McGregor, asking for his support for staff who wanted to give evidence. (Attachment 5). Since we had not received a reply by mid-February, we rang his office to point out that with submissions closing on 4th April, the matter was becoming urgent. We were told our letter was 'being processed', and we should receive a reply 'in a few weeks'. Since this response was obviously unsatisfactory, we wrote to the Minister, Craig Knowles (attachment 6), asking him to offer the support for staff that Bob McGregor had so far failed to do. We have not received a response to that letter either. On 27th March, a week before submissions closed, we again wrote to Mr McGregor (attachment 7), stressing the urgency; and again have had no response.

The only response, therefore, to our requests to the Minister and the Acting Director-General, has been the intimidatory memo of 9th January (attachment 3).

This seems to us to be in contempt of the requirements of the Protected Disclosures Act; in contempt of Parliament, in clearly intending to undermine the efforts of a properly constituted Parliamentary Committee; and in contempt of ordinary human decency, when so many of our fellow citizens with mental illness are being left to rot on the streets or in jail; and an unknown number, but probably many hundreds, have been, and continue to be, left to die; their deaths apparently unnoticed by the system, except possibly as a bonus for economic rationalism.

What needs to be done:

We suggest that the issue of freedom of people within the system to speak out about problems is fundamental. Things would never have got so bad if the NSW Health Department had not been able to suppress comment for so long.

Actions the Inquiry could consider:

1. Censure and appropriate penalties for the Department for its refusal to allow, let alone encourage, staff to speak out on matters of concern, even to a Parliamentary Inquiry; including the appropriate penalty for contempt of Parliament.
2. Demanding prominent and public undertakings from the Department, and its Minister, that staff will be free to speak out in future; and that officers involved in taking reprisals against whistleblowers will be removed from positions where they have that power.
3. Including performance in protecting and encouraging whistleblowers in the performance appraisals of senior management, in line with the legislative provisions for SES managers. It should be noted in that policy, that changes in services should attract dissenting views; and if none are expressed, management can be safely assumed to be suppressing them.
4. Demanding prominent and public undertakings from the Department that they, like the NSW Police, will institute a system of formal recognition (along the lines of the Police Commissioner's awards) for staff who blow the whistle on matters of public interest and concern.
5. Considering ways of changing the incentives for managers, currently all favouring the suppression of whistleblowing. For example, specifying that Health Department land and other facilities could not be sold unless there was no possible further health use for them, including use by charities and other NGOs to provide services for people with mental illness, cluster housing, and the like.
4. If the Inquiry is able to establish that there has been a substantial increase in avoidable mortality in people with mental illness over the last 12 years, and officers of the Department have been actively involved in covering that up, then the Inquiry should consider recommending criminal prosecution of those officers.

Cynthia Kardell
Whistleblowers Australia
April 2002

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NSW HEALTH

DIRECTOR-GENERAL

M E M O R A N D U M

TO: Chief Executive Officers, Area Health Services
Chief Executive Officer, The Children's Hospital at Westmead
Chief Executive Officer, The Ambulance Service of NSW

FROM: Robert McGregor
Acting Director-General

SUBJECT: Select Committee on Mental Health

DATE: 26 January 2002

The Legislative Council has established a Select Committee on Mental Health. A copy of the relevant extract from *Hansard* is attached for your information together with advice from the Chair of the Select Committee, Dr Brian Pezzutti, including the terms of reference. The Select Committee has identified under each term of reference a detailed list of issues which it would like addressed in any submission NSW Health puts forward.

NSW Health will be making a submission. The Centre for Mental Health is preparing the major component of the submission but your Health Service is invited to contribute to the submission.

Although the closing date for submissions is 4 April, your input should be provided to Colleen Moyes, Manager, Parliamentary & Cabinet Support, Executive Support Unit (phone 9391 9328) by the end of February.

If officers from your Health Service intend making separate submissions to the inquiry, they are to be reminded these must be forwarded through the Department so the Minister can be informed and, in accordance with Premier's Memorandum No 98-33 *Agency Input to Statutory and Parliamentary Committees, "approve of the position being put..."*

A copy of the Department's guidelines for appearing before or making submissions to Parliamentary Committees is available at <http://internal.health.nsw.gov.au/ecsd/esu/protocol.html>


Robert McGregor
Acting Director-General