1. Summary and Recommendations

1.1 Decision

This report details the information gathered during my investigation into the provision of amputee services in Northland and Auckland. As a result of my investigation to date I have decided, in accordance with my discretion under s37 of the Health and Disability Commissioner Act 1994, to take no further action and conclude this investigation. In my view it is inappropriate to continue to investigate for the following reasons:

- The matters under consideration have been subject to a number of reviews over the last three years
- Rehabilitation Management Limited (RML) is no longer providing service having ceased operating in July 1999
- New Zealand Artificial Limbs Board (NZALB) signed a national three year contract with the Health Funding Authority (HFA) in October 1999
- No benefit can flow from any additional action on the part of the Commissioner

However, it would be inappropriate for the Commissioner to conclude this investigation without making some comment on the matters affecting the Rights of amputees arising from this investigation and making suggestions to ensure such events do not recur. It is particularly important for people with disabilities that the services upon which they are dependent are not disrupted in any way.

1.2 Report Content

The following report details the background of amputee services in the context of applicable legislation and the events which led to the complaints. The parties involved all put a different slant on those events. My report independently details the views of those involved and matters as they unfolded from the time of the introduction of the Health and Disability Services Act 1993. It is important that these details be reported publicly to show how the communication between parties broke down and how this affected the quality of service to consumers.

There is no doubt that services to amputees suffered as a result of combinations of the actions and inactions of many parties. This report indicates that everyone involved must take some responsibility for the outcome and the effect it had on services in the region.

1.3 Actions

Consultation and Compromise

In March 1997 North Health ceased purchasing prosthetic services from NZALB and entered into a contract with another provider RML. The resulting outcry shows the need for consultation with consumers and all interested parties prior to restructuring any basic service.

Amputees rely absolutely on their provider of prosthetic services for their independence. Where dependency exists, the environment is fraught with difficulties. In New Zealand amputees have no choice of state funded service. The only exception was the five month period from 1 February 1999 to 30 June 1999 in the Northern region when both RML and NZALB were state funded.

Recommendation 1:

As the Government addresses restructuring in the health sector, it should ensure that any major change in services to people with disabilities is not undertaken without full and documented consultation with all parties and individual consumers. Such consultation should commence with a statement setting out the reasons for considering change and the objectives. Wherever possible, people with disabilities should be given a choice of service provider.

Conflicting Legislation

There is no doubt the purchaser (North Health) entered the contract with RML to try and obtain the best service for the best price to amputees. The decision to go to tender in part reflected its inability over prior years to obtain statistics and measure the outputs and performance of NZALB’s operations. This was reflected in North Health’s calling for a review of NZALB in 1995. Two agencies, the Health Funding Authority under the Health and Disability Services Act 1993 and the New Zealand Artificial Limbs Board, under the Social Welfare (Transitional Provisions) Act 1990, established by statute and acting within the confines of their own governing legislation, came into conflict.

Recommendation 2:

The role of NZALB should be reviewed immediately in relation to the current and proposed structure of health delivery. Consideration should be given to whether NZALB continues to operate under the Social Welfare (Transitional Provisions) Act 1990 or whether it should be put on the same footing as all other Crown Entities delivering health and disability services.

Best Practice and Monopoly Provision of Disability Services

North Health awarded the contract to RML in January 1997 for reasons which included a desire to purchase modern methods of design and delivery. Additionally North Health preferred delivery within a holistic approach to not only ensure functionality but also to meet consumers' cultural, cosmetic and other needs.

Recommendation 3:

In all public services provided in a monopoly situation the HFA or Ministry of Health should put in place mechanisms to ensure that quality of service is appropriate and reflects modern international techniques. This is particularly important where service is to people with disabilities, who are wary of complaining where they have no other choice and where they cannot necessarily know the current world trends. Consumer surveys should be undertaken to determine satisfaction, and should clearly distinguish between quality and quantity issues so the two can be separately assessed. The Ministry should also compare services with other providers to ensure services are in line with international quality and technology.

New Suppliers

The contract with RML was signed on 17 January 1997 with a commencement date of 1 March 1997. This meant that the company had only six weeks to prepare for and finalise all arrangements to commence business. While the contract was confirmation of an earlier letter of intent in November 1996, as a commercial company RML was not prepared to take the commercial risk of starting activity until the contract was signed. To add to the problem of such short timeframes, the final records of consumers including consumers' past prosthetic and medical history in detailed form was not made available to RML until 1 May 1997. Within these constraints RML was unable to meet its desired objectives and contractual obligations which resulted in a large number of complaints which RML was unable to address.

Recommendation 4:

When a contract or agreement is awarded to a new service provider, the HFA or Ministry of Health must ensure the contract allows sufficient lead time to establish the service prior to the date of commencement of service. The previous supplier can be and must be required to transfer its relevant records at an appropriate time to enable contact to be made with consumers and to ensure continuity of service. The purchaser must show commitment to its decision and should remain actively involved to facilitate such smooth transfer. The terms of transferral of all aspects of care should be clearly documented and where possible this should be included in all future agreements. In all circumstances the agreement should refer to the Code of Health and Disability Services Consumers' Rights which requires providers to co-operate under Right 4(5).

Accountability

With the introduction of the Health and Disability Services Act 1993 RHAs were required to purchase services and monitor the performance of providers. Additionally under the Public Finance Act, Crown Entities are obliged to establish service performance measures and report on such performance. In 1996, when tendering for amputee services and setting purchasing requirements for a new contract, including setting measurements for standards and outputs, the RHA was limited in its ability to be precise due to a lack of available historical data. The contract which it signed with RML did set defined outputs and fixed prices, but these were subject to variation over the term of the contract as service requirements were more accurately determined from experience.

In completing this investigation I attempted to review the prices paid for amputee services over a five year period in order to compare this to the current contract. Unfortunately the Health Funding Authority has not been able to provide pricing information on which to undertake this comparison. The new contract signed with NZALB in 1999, while establishing reporting requirements, priorities and turnaround times within those priorities, does not establish quantity and quality minimums.

Recommendation 5:

I suggest that in future the HFA or Ministry of Health when purchasing or funding services with suppliers should include specific minimum outputs and quality measures. This will assist in

ensuring the providers deliver quality services and are accountable to the public. Comparison should occur regionally to ensure equity of service.

Co-operation

In gathering information on this complaint, it was clear that all parties were committed to their own belief about the best way to deliver artificial limb services. Some parties came with the view that the past was best and no change at all was required, others were determined that new services should be in line with international practice and meet the obligations of the Health and Disability Services Act. As time progressed each party became more fixed on its viewpoint; there was little compromise and conflicts inevitably arose. There appeared to be little concern for the potentially detrimental effect of this conflict on consumers.

Recommendation 6:

The fundamental objective for both purchaser and provider must be "to deliver quality services to amputees". Within the context of the legislative framework (i.e. the Health and Disability Services Act 1993, and the Social Welfare (transitional provisions) Act 1990), parties must co-operate. NZALB believed, and still believes, it is the best agency to deliver services. The HFA was and is required, to purchase the best service for the best value. The HFA must also operate within funding restrictions set for health as a whole. Within this context I recommend that all future artificial limb purchasing agreements be developed with consumer input to ensure the focus remains on quality service to international standards. It is imperative that a co-ordinated team approach occurs across a range of services to deliver the best outcomes. This would include the use of overseas tertiary-educated prothetists as New Zealand does not provide this qualification.

Recommendation 7:

I also recommend that the Health and Disability Services Act and the Social Welfare (transitional provisions) Act be amended to eliminate conflicts between the functions of NZALB which is a Crown Entity.

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2. The Commissioner's Investigation

2.1 Rehabilitation Management Limited

On 30 April 1997, under the Health and Disability Commissioner Act 1994, I decided on my own initiative to investigate matters relating to Rehabilitation Management Limited's standard of services under s35(2) of the Health and Disability Commissioner Act 1994. The investigation resulted from complaints I received directly as well as 11 complaints sent to Mr Jim Anderton, Leader of the Alliance party and forwarded to the Commissioner.

Specific complaints were received about:

- premises and facilities being ill suited, ill equipped, and lacking in privacy
- staff qualifications and staff numbers
- the length of time taken to deliver services
- the appointment booking system
- repairs and quality of workmanship
- the attitude of staff
- the absence of an orthopaedic surgeon's involvement in the process
- the tendering process used by North Health
- the decision to change the service provider from the Artificial Limb Centre to Rehabilitation Management Limited.

A total of 40 individual complaints were received during 1997 and 1998. Of these complaints 6 were resolved by advocacy, mediation or agreement. Additionally one case was closed with a finding that no breach of the Code occurred.

2.2 New Zealand Artificial Limb Board

As a result of information received during the course of my investigation into RML's services, on 18 July 1997 I extended the investigation into services provided by the Artificial Limb Centre operating at Mt Eden, Auckland under the management of the New Zealand Artificial Limb Board.

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3. The Investigation Process

3.1 Abbreviations

Throughout this report the following abbreviations are used:

- NZALB for the New Zealand Artificial Limb Board;
- RML for Rehabilitation Management Limited;
- ALC for the Artificial Limb Centre (also known as the Auckland Limb Centre);
- ASAN for the Amputee Society of Auckland and Northland; and
- North Health for the Northern Regional Health Authority. From 1 July 1997 a division of the Transitional Health Funding Authority and from 1 January 1998 as the Health Funding Authority.

3.2 Interviews and Information

Information was submitted and/or obtained from over 60 consumers who received service from RML or ALC. Consumers from other regions also submitted information. Staff and officers from RML and ALC were interviewed and visits were made to their premises. Consumer records have been considered where appropriate. Documents received include contracts, correspondence, annual reports, invoicing data, productivity data, and policy documents.

Information was submitted on behalf of NZALB, ALC and other interested parties. Interviews occurred with the current NZALB Chairman, orthopaedic surgeons, physiotherapists of ASAN, North Health management and the leader of the ALC.

A large amount of material was reviewed as part of the investigation including:

- The Artificial Aids Notice, pursuant to the Social Security (Hospital Benefits for Outpatients) Regulations 1947
- Section 22F of the Health Act 1956
- Social Welfare (Transitional Provisions) Act 1990, sections 42-51 and Third Schedule
- Health and Disability Services Act 1993
- Coopers and Lybrand Review of NZALB, December 1995
- Policy Guidelines for Regional Health Authorities 1996/1997

- Disability Support Services Managing Growth January 1997 -Policies adopted by North Health in December 1996 and Service Priority Guidelines
- Results of ASAN Survey, September 1997
- Request for Proposal of prosthetic services, North Health
- Draft Audit of Rehabilitation/Prosthetic Services for the Northern Division of the Health Funding Authority, April 1998]
- Audit New Zealand Reports

4. Background to the Investigation

4.1 The History of Prosthetics in New Zealand

Until North Health's contract with RML, NZALB with its predecessors had been the sole provider of prosthetic devices in New Zealand for approximately 50 years. NZALB evolved from the Disabled Servicemen's Re-establishment League which was set up by the Government to provide free prostheses for ex-servicemen after World War II. Prosthetists underwent apprenticeship training and worked in facilities purpose built for the provision of prosthetic services. Their work was usually scrutinised by an experienced "*limb fitting surgeon*".

Since World War II, the client population for prosthetics has changed. Consumers are now predominantly civilians who are older and have more health problems than veterans. In Australia, where the development of the prosthetic industry was similar to New Zealand until the last decade, the public sector scheme has been progressively dismantled and redeveloped with a move to an integrated service model. Similar changes have occurred overseas, with many countries advocating the integration of prosthetic manufacture with rehabilitation.

In February 1997 North Health awarded the contract for the provision of prosthetic services to RML, a private company. This move resulted in complaints and criticism of both North Health and RML.

4.2 The New Zealand Artificial Limb Board and the Social Welfare (Transitional Provisions) Act 1990

The Social Welfare (Transitional Provisions) Act 1990 came into force on 1 April 1990. Part III of this Act established NZALB. The functions of the Board are drafted as being:

- to manufacture, import, export, market, distribute, supply, fit, repair and maintain artificial limbs and similar devices
- to provide rehabilitation and other services to persons in connection with artificial limbs and similar devices
- to carry out research and development in relation to artificial limbs and similar devices

- to advise the Minister of Social Welfare on matters relating to artificial limbs and similar devices.

This Act also provides for the membership of NZALB and requires it to comply with Government policy notified to it.

Under s48 of this Act, NZALB was required to review its operations after the expiry of three years from 1 April 1990 and then at intervals of not more than five years.

NZALB is a non-profit making body responsible for the management of regional limb manufacturing centres. It operates under the Social Welfare (Transitional Provisions) Act 1990 and reports to the Minister of Social Welfare. In exercising its functions NZALB must comply with any directions relating to the policy of the Government given by the Minister of Social Welfare. This is in contrast with other health and disability sector legislation which requires reporting to and complying with directions from the Minister of Health. NZALB is a Crown Entity for the purpose of the Public Finance Act 1989. This Act imposes financial reporting obligations on Crown Entities.

To meet service obligations to amputees, NZALB established five limb centres in Auckland, Hamilton, Wellington, Christchurch and Dunedin (known as Limb Centres). Its administrative base is in Wellington. NZALB manufactures stump socks at Christchurch. It also imports socks to suit consumers.

Prior to the 1993 changes in the funding of health services, the Limb Centres could provide prosthetic services to all amputees with the assurance that services would be paid for by either the Department of Social Welfare in the case of war veterans or the Ministry of Health in the case of others.

The Limb Centres are resourced with componentry (and other ancillary requirements) and between them have the manufacturing equipment necessary to carry out the servicing and manufacturing of artificial limbs. All Limb Centres are staffed with qualified prosthetists,

technicians and support staff and have surgeons' clinics and physiotherapists available on site as required.

NZALB established a two year course for the training of prosthetic technicians and was involved in efforts to establish a Bachelor of Health Sciences (Prosthetics) Degree with the Central Institute of Technology. NZALB maintains a significant technical library.

When North Health entered into a purchasing contract with RML in March 1997 NZALB ceased to be the sole service provider for the whole of New Zealand. For those consumers in the North Health region who are not war veterans, RML became the state funded provider of services.

4.3 Auckland's Artificial Limb Centre

The Limb Centre in Auckland (ALC) was the sole provider of prosthetic services to consumers in the North Health region until March 1997. It is the largest of the five Limb Centres managed by NZALB.

The ALC continued to function throughout the period of RML's contract. During that period it provided services to war veterans, overseas visitors to New Zealand from countries with which New Zealand has reciprocal agreements, as well as to consumers who chose to pay for services rather than use publicly subsidised services.

4.4 North Health

The Health and Disability Services Act which came into effect on 1 July 1993 changed the method of funding and provision of health and disability services.

It created Regional Health Authorities (now a single national Health Funding Authority) whose functions were to:

- monitor the need for public health, personal health and disability services for the people described in their Funding Agreements;
- purchase such services for those people; and

- monitor the performance of providers with whom the Regional Health Authority entered into Purchase Agreements.

Section 34 of this Act sets out the Regional Health Authority's obligation to consult on matters relating to the purchasing of services with individuals and communities who receive or provide health or disability services and any other persons, including both private and voluntary agencies, Government departments and councils and territorial authorities.

North Health was one of the then four Regional Health Authorities. North Health was responsible for purchasing disability support services for people who normally reside within the North Health region, being the region from Cape Reinga to the southern boundary of the Franklin District Council.

The North Health policy for disability support services adopted in December 1996 and set out in the January 1997 document entitled "*Disability Support Services: Managing Growth*", provided for a new framework for the delivery of disability support services. The major policy change was from access to support services based on entitlement, to access based on the level of support the consumer needed in order to attain or maintain any level of function and independence. Under that policy to be eligible for disability support services a person was required to have a disability which met all of the following criteria:

- A physical, psychiatric, intellectual, sensory or age related disability
- A disability likely to continue for a minimum of six months
- A disability which reduced independent function to the extent that ongoing support is required.

Section 51 of the Health and Disability Services Act provides for Regional Health Authorities to issue notices setting out the terms and conditions that apply to persons or organisations receiving funds for the provision of health and disability services. Pursuant to a s51 notice North Health contracted with NZALB from 1 November 1996 to 31 May 1997 for the:

- provision and fitting of artificial limbs,

- repair and maintenance of artificial limbs, and
- supply of stump socks

to persons in the Northland and Auckland regions.

In March 1997 North Health reviewed its strategies for purchasing disability services and entered into a purchasing agreement with RML for provision of prosthetic services.

The other three Regional Health Authorities continued to purchase prosthetic services from NZALB. None of these contracts included the purchase of services for war veterans. Such services were funded by the Department of Social Welfare. At the time North Health decided to purchase from RML rather than NZALB, the Department of Social Welfare continued to contract with NZALB to provide services to war veterans in the Northland/Auckland region.

4.5 Amputee Society of Auckland and Northland

There are nine district amputee societies covering New Zealand. Together they form the national body known as the Amputees Federation of New Zealand. One position on NZALB is filled by a person nominated by the Amputees Federation of New Zealand.

The Amputee Society of Auckland and Northland (ASAN) represents approximately 400 amputees in the Auckland and Northland region. On behalf of its members ASAN's secretary complained to the Commissioner about the lack of consultation by North Health with ASAN as a representative group regarding North Health's purchasing decision not to award a contract to NZALB.

In September 1997, six months after RML had commenced service, ASAN sent out a questionnaire to its members. The questionnaire related to "*waiting times between making appointment*[s] *and service, also how long it took for parts to arrive, quality of service, workmanship, staff and facilities/premises*". ASAN reported that 130 members (32.8% of its total membership) responded. Of those, 57 (43.8% of those who responded) had not attended

RML. Consumers who had utilised RML's services and also those who had not, scored RML's performance. The results reflect support for the services members received from NZALB.

The survey results were submitted to the Commissioner by ASAN as evidence that RML was not providing adequate services. However in my view the results are influenced by the low numbers responding and the high numbers who commented based on hearsay.

4.6 Discussion between the Ministers of Social Welfare and Health

Throughout 1995 North Health and NZALB had disagreements about the level of funding NZALB should receive for the provision of prosthetic services to consumers in the northern region. In August the matter came to the attention of the Ministers of Health and Social Welfare. A letter from the Minister of Social Welfare to the Minister of Health in August 1995 drew attention to the need for NZALB to "*take a more constructive approach to the relationship and deal with North Health direct, rather than through Ministers*."

4.7 Coopers&Lybrand Review - December 1995

In a letter dated 4 July 1995 North Health advised the General Manager of NZALB that NZALB's legislative review requirements had not been met. North Health stated that:

> *"Pursuant to Section 48 of that Act [Social Welfare (Transitional Provisions) Act 1990] the Board was to have reviewed its operations as soon as possible after the expiry of the period of 3 years beginning on the date of commencement of the Act. The Board should therefore have reviewed its operations in 1993."*

In December 1995, NZALB initiated an independent review of its activities (the Coopers&Lybrand Review). This Review was a separate initiative from NZALB's legislative obligation to review its operation. Its aim was to report on the efficiency of NZALB's service provision, its performance with regard to consistency with Government objectives and other relevant matters relating to NZALB's economic and administrative performance. This Review was endorsed by the Department of Social Welfare. Commenting on the legislative requirements for review the Coopers&Lybrand Review states:

> "*NZALB completed the first review of its operations in 1993 and reported back by way of its 1993 Annual Report. The report explained how NZALB had met its outputs and was supported by financial statements which indicated effective management of the five limb centres. In a letter to the Minister of Social Welfare in early 1994, the Chairman recommended that NZALB be retained on the basis of this performance. He also requested that consideration be given to formalising in legislation the function that NZALB already performs as the arbiter of prosthetic standards. The Minister agreed that the Board should be retained for the time being and welcomed the Board's proposal that an independent review should be undertaken once the transfer of Disability Support Service to the Health Sector had been completed.*" (page 13 Coopers&Lybrand review).

The December 1995 Coopers&Lybrand Review was undertaken in the context of North Health expressing disquiet that NZALB's regulatory basis and mode of operation was inconsistent with the 1993 health reforms and because other health sector participants including public hospital financial and clinical managers were required to "*justify direct and related services provided to those requiring artificial limbs*". The technical aspects of the review were undertaken by Professor John Hughes of Strathclyde University, an internationally recognised practitioner and educator in the field of prosthetics. The administrative aspects of the review were undertaken by Coopers&Lybrand.

The Review concluded that NZALB:
- carried minimal overheads, provided its services very cheaply when compared internationally and was therefore administratively efficient;
- provided good quality service and "*more than satisfied most of its patients*";
- failed to communicate its strengths to, and build solid relationships with, key stakeholders within the reformed health sector;
- could be more proactive in setting a future path consistent with the demands of the reformed health sector;
- would find greater support if it developed a modified structure as it had conflicting roles as manufacturer, rehabilitator, government adviser and researcher. Additionally consumers see

NZALB as a patient advocate, therefore it is more difficult for NZALB to satisfy external agencies; and

- needed to modify its structure to suit a more contestable health sector environment

The report also stated that although NZALB had demonstrated that its current services were of a reasonable quality and were being provided at a fair price, it could not provide a *"...guarantee of ongoing service improvement in response to changing future needs and service techniques*."

The Coopers&Lybrand Review encouraged NZALB to:

(a) initiate a communication plan with external agencies incorporating a regular reporting process and a process of regular direct consultation between Regional Health Authorities and itself;

(b) continue its review of training options at both the technical and administrative level;

(c) take a proactive role in advising the Minister of a preferred new structure; and

(d) prepare a strategic business plan.

4.8 The Tendering Process for Prosthetic Services

Communication between North Health and NZALB

Prior to 1993, Limb Centres were paid on a fee for service basis. In 1993, the funding position changed and North Health attempted to negotiate a capped contract with NZALB. Meanwhile it continued to purchase services on a fee for service basis by way of temporary "Section 51 Notices".

In March 1994, North Health wrote to NZALB and advised that North Health would not continue to contract for services on an uncapped basis. It stated that as they had been unable to reach agreement on the amount to be paid for the provision of prosthetic services in the North Health region, North Health would be issuing a Request for Proposal to other providers for some or all of the work undertaken by NZALB. In addition, North Health informed NZALB of its concerns that the ALC's labour charge out rate was higher than indications received from other potential providers.

In February 1995 NZALB proposed an amount of $960,000 as a realistic figure for the purchase of its services. This was rejected by North Health as being excessive. In its response North Health explained that it was not, as NZALB suggested in its letter, *"...a funder of your services..."* and that there was a difference between being a purchaser of services and a funder. North Health wrote *"...we are a purchaser of services and as such will determine on a commercial basis from whom we purchase them*". North Health indicated that it would like to maintain a relationship with NZALB but that this could only be achieved within an acceptable commercial arrangement.

NZALB sought clarification of the reasons its figure had been rejected, and North Health's calculations. NZALB explained to North Health that the figure North Health had arrived at would require significant reduction or elimination of services. NZALB felt that North Health should clarify or indicate the services it wanted NZALB to eliminate or reduce. The Chairman of NZALB commented that research and development were examples of services North Health did not want to purchase. NZALB appeared to want to understand the basis for the decision so they could address the matter in further negotiations with North Health.

NZALB wrote to North Health on 28 March 1995 "...[the Board's] *responsibilities require it to meet the needs of amputees to the level it deems appropriate. Commercial prudence cannot allow this Board to continue providing a service it seems it may not be paid for..."*. NZALB expressed its concern that services to amputees in the Auckland area would be reduced and standards lowered if it was expected to manage service delivery within the amount being offered by North Health.

On 14 July 1995 North Health advised NZALB that it would not accept NZALB's offer for the 1995/96 year and would continue to make payments at current rates for the period 1 July 1995 to 30 September 1995. At the same time North Health reminded NZALB of its obligations under the Social Welfare (Transitional Provisions) Act 1990 to review its operations and report its findings to the Minister and raised its concern that this review had not been undertaken.

It appears there was little verbal communication between the parties and most of their communication consisted of written correspondence. NZALB attributed the lack of agreement to personality conflicts between personnel at NZALB and North Health at the time and philosophical differences between the two organisations. According to NZALB, the communication problems with North Health were caused by "*...North Health's view of themselves as a purchaser, while not really knowing the nature of what they were purchasing and the Board seeing itself as holding a responsibility to provide a service for amputees and taking its obligations to amputees very seriously*". NZALB also commented that neither side listened to the other.

Request for Proposal Document

North Health sent the Request for Proposal (the "RFP") to NZALB and other interested parties in December 1995 with a closing date of 1 February 1996. The RFP was publicly advertised on 21 December 1995.

The RFP stated that "*Responding to the RFP does not guarantee the respondent an agreement with North Health*" and explained the process by which a provider was to be selected and a contract developed. In particular the RFP provided "*All proposals will be evaluated by North Health and North Health may approach Respondents to ask for further information or for an amended proposal to be submitted. North Health will then select a Respondent and work in co-operation with the Respondent to further define the services and the way in which North Health's requirements will be met. A contract will then be developed.*" The RFP set out the type of service that North Health wished to purchase within the region and sought an indication as to how those requirements could be met.

North Health received two responses to the RFP. One from ALC on behalf of NZALB, and a joint proposal between Nurse Vision Care Services Limited and Rehabcare Group Limited (referred to in this report as the Nurse Vision). The correspondence shows Nurse Vision resubmitted its proposal by letter dated 29 February 1996.

NZALB claim it was advised by North Health that price was *"...not the issue in respect of the RFP...."* North Health's correspondence indicates that both parties were asked for clarification on price in March 1996.

On 19 April 1996 North Health considered both proposals. The minutes of that meeting indicate the issues used to compare the two proposals included:

- Nurse Vision's proposed use of Computer Assisted Design to provide prosthetics;
- each party's approach to service provision. Nurse Vision's service provision was seen as *"...more holistic and linking with other services..."*,
- Nurse Vision's consideration of Treaty of Waitangi issues, including the use of a Maori cultural advisor. NZALB failed to provide any evidence of policies which in any way acknowledged or implemented the principles of the Treaty of Waitangi in its service;
- Nurse Vision's sensitivity to consumers needs and its proposed establishment of a consumer group;
- the lower price submitted by Nurse Vision;
- financial risk was less if NZALB was chosen.

Despite this last point North Health preferred Nurse Vision's proposal. North Health resolved to advise Nurse Vision that they were the *"...preferred party for negotiations..."*, subject to clarification of set up costs, confirmation of financial viability and that the price proposed was for all services outlined in the RFP.

Announcement of the preferred provider

In April 1996 NZALB was informed by North Health that it would be contacted later that month concerning the RFP. This did not occur and until November 1996 NZALB were not aware that North Health were entering into negotiations with an alternative provider. Apart from a meeting that took place in an office area at the ALC, North Health representatives did not inspect the premises at the ALC during the tendering process. The Chairman of NZALB stated that as a result North Health did not have any perception of the facilities that would be lost to consumers of North Health's region.

NZALB was advised by letter of 21 November 1996, that North Health's arrangement with NZALB under the Section 51 Notice for services to the end of May 1997, were to conclude on 28 February 1997.

In addition North Health advised the Amputees Federation of New Zealand Incorporated, the Director General of the Department of Social Welfare, and the Chief Executive of Accident Rehabilitation and Compensation Corporation of the decision to award the contract to an alternative provider.

Rehabilitation Management Limited (RML)

RML, a New Zealand company, was incorporated on 20 December 1996. Its shareholders were originally Rehabcare Group Limited and Nurse Vision Care Services Limited. RML stated that Orthopaedic Techniques Pty Limited became a one third shareholder. On 17 January 1997 RML signed a purchase agreement contract with North Health. Under the contract RML was to provide prosthetic services to consumers in the North Health region from 10 March 1997.

North Health Consultation Process

A number of complaints identified North Health's lack of consultation prior to the contract being awarded to RML as inappropriate and illegal. No formal consultation with consumers of prosthetic services was undertaken in the lead up period to the contract being awarded to RML. North Health assert that consultation opportunities existed in relation to its intent to consider contestability. North Health advised that:

> "*North Health undertook discussion and consultation with the Artificial Limbs Board over many months, the ALB participated in shaping the RFP document, and in the tender process itself.*
>
> *The Amputees Association was specifically advised of the RFP and sent a copy during December 1995.*
>
> *More generally, the RFP was signalled in our 1995/1996 Purchase Plan - a public document and discussed at public meetings.*

The RFP was also advertised in the media and invitations made to contact North Health for "further information"."

A Vice-Patron of the Amputees Federation of New Zealand advised the Commissioner that as at 26 January 1997, the Amputees Association had not received a copy of the RFP, and that although he had obtained a copy "*it was certainly not given to him on behalf of the Amputees Association*".

Section 34 of the Health and Disability Services Act 1993 requires Regional Health Authorities to consult in accordance with its statement of intent

1. "…on a regular basis consult about its intentions relating to the purchase of services with such of the following as the Authority considers appropriate:

(a) Individuals and organisations from the communities served by it who receive or provide public health services or personal health services or disability services:

(b) Other persons including voluntary agencies, private agencies, departments of State, and territorial authorities."

North Health did not believe it was under any obligation to consult pursuant to Section 34 of the Health and Disability Services Act as no significant change in service was to occur. Not all agreed. For example one complainant to the Commissioner alleged that because RML's contract contained no provision for clinical service by orthopaedic specialists or physiotherapists, the proposed service was "*quite different from the previous service*."

Consultation with consumers in the form of regional meetings following the appointment of RML was abandoned by North Health as a result of the high level of conflict at these meetings.

The Contract

The contract between RML and North Health was signed on 17 January 1997. It required the provision of a service equivalent to that previously provided by NZALB. It stated that RML was

obliged to "*...provide the existing services on the terms set forth in this agreement...*" for a fixed sum. This fixed sum covered the "*Standard Clients Services*." "*Standard Client Services*" is listed in the contract as services to clients, both adults and children, who have continued to receive NZALB services but excluding anyone who had not received services for more than one year from NZALB and new clients who had never received services. "*Additional Client Services*", which related to services to waiting list consumers and overseas and private consumers, were not included in the capped amount. The contract specified that the purchasing of additional services would be "*dependent on funding constraints that North Health has from time to time*."

The contract provided for a personalised letter and questionnaire to be sent to current consumers of the ALC by RML by the end January 1997, and press releases and meetings with NZALB and the Amputees Federation of New Zealand Incorporated to be completed by 31 December 1996. The contract acknowledged that certain elements of the provider's service delivery were based on the receipt of data from NZALB. If this information was not available by the dates indicated in the contract, then the performance dates and commencement of service would be extended.

The contract, signed on 17 January, specified the services required in progressive periods:

- pre-service start up activities - 1 December 1996 to 28 February 1997. These included consumer consultation and the completion of a development framework;
- Year 1 Service provision - 1 March 1997 to 30 June 1997;
- development of a Health Framework to address staff culture and retraining
- from 1-9 March 1997 no service to consumers to be given
- from 10 March 1997 consumer services to be provided including:
    - provision and fitting of artificial limbs (including individual consumer assessments, fabrication of limbs, follow-up of services)
    - repair and maintenance of artificial limbs (including Hydra-Cadence devices)
    - supply of stump socks and other specified services.
    - the term of the contract expired on 30 June 1999.

Waiting list consumers were identified in the contract as "*Adult/Children clients who have been identified prior to the contract commencement but have not been provided a service (may have had an initial assessment or are previous children clients with inactive registration for a period of over 12 months without service from the Artificial Limbs Board)*". As stated services for these consumers were outside the capped price agreed.

North Health stated in a letter dated 25 February 1997 to Mr Anderton, MP that it was confident its decision to contract with RML would mean: "*a better prosthetic service to amputees in the northern region"* and in particular "*that RML's use of new technology will ensure that clients are fitted with limbs within 1-2 weeks of assessment and their client care mobility and rehabilitation plan commences immediately"*.

A consumer's letter to North Health (7 March 1997) puts the opposite view. "*In over 30 years I have never once been let down or lost a days work through a failure of the Auckland Limb Centre to deal with a problem when it arose. It appears that we now have a situation where the Auckland Limb Centre will lose 90% of its patients to an entrepreneur who will now set up his own clinic. What a waste of time and money to duplicate an existing facility. North Health's actions could result in the closure of an excellent facility with a proven track record. I fear that this is the start of a rationing system, when the money runs out we will not be able to get our limbs repaired and will then be cast aside by some grubby little accountant who has profit as his primary concern.*"

This view was reflected by NZALB, whose Chairman wrote to the Commissioner "*Quite frankly, the Board believes that a monumentally bad and unlawful decision was made by North Health when it gave the contract for services to amputees to an ill-resourced provider on the basis of inadequate enquiry into the provider's credentials and insufficient knowledge of the scope of the limb service"*

Transitional Arrangements and Work in Progress

With the contract awarded to RML, North Health began to make arrangements with NZALB to ensure that the transition of services between the date the contract was signed and the date of commencement of services would result in minimal disruption to amputees. In response to a

request for a meeting, NZALB advised North Health on 16 January 1997 that because it did not accept that its contract had been lawfully terminated or that "*the new contract has been lawfully let to the new provider, it would be quite inappropriate to meet with North Health to discuss a transition plan*". However on 19 January 1997 the two parties did meet to discuss transitional arrangements. The arrangements agreed were as follows: The ALC would continue to provide services after 1 March 1997 to consumers for whom assessments had been completed or for whom the ALC had commenced work prior to 1 March 1997. This work was referred to as "Work in Progress". This category did not include consumers who had been assessed, but whose work had yet to commence and for whom componentry had not been ordered.

Prior to 1 March 1997 an 0800 information line was established by RML and advertised with the purpose of answering questions, addressing concerns and reassuring consumers about the future level, nature and quality of prosthetic services in the northern region. At this time RML did not have any information on the consumers whom it would be providing service to (discussed further below).

The Arthur Andersen Review and the Waiting List Issue

When North Health announced its intention to terminate its arrangement for services with NZALB, it agreed to pay NZALB for completion of the work in progress at 1 March 1997 which required completion. In July 1997 North Health commissioned Arthur Andersen to conduct a review of NZALB's invoices for such services. The review determined the amount payable by North Health for work-in-progress and found no significant issues of eligibility, duplication of service with RML or clerical inaccuracy.

4.9 Protest March and Rally - May 1997

North Health received complaints from consumers of prosthetic services about RML taking over as the provider of prosthetic services prior to it actually commencing service. In May 1997 Mr Jim Anderton invited members of the Auckland Amputees Association to join in a protest march and rally to "*protest North Health's decision to transfer amputee services to private provider, Rehabilitation Management Ltd*".

4.10 Variation of Contract

On 21 May 1997 RML and North Health agreed to a variation of their contract. The variation gave RML further money to:

(a) pursue a stump management trial;

(b) undertake endolite knee replacements and replace non-prosthetic parts to address concerns raised about safety by expert reports;

(c) reduce waiting lists.

4.11 RH Penny Ltd Review - June 1997

In June 1997 North Health commissioned R H Penny Ltd, a private independent auditor, to undertake a review of the service delivered by RML during its first three months of operation. This review was undertaken to measure RML's performance against contractual compliance. Clinical quality was not formally assessed as part of the review which concluded that RML were seriously in breach of their contract. On 9 July 1997, as a result of this review, North Health put RML on notice to remedy its non-compliance with the contract.

RML's solicitors advised North Health that the review report contained "*manifest inaccuracies and inappropriately drawn conclusions*" and prepared an itemised response to matters contained in the report.

North Health noted the "*difference in opinion between RML and the reviewer*" and met with RML to discuss its response to the review. Subsequently North Health visited RML's premises to verify its progress in complying with outstanding matters. In August 1997 North Health acknowledged it was satisfied RML was complying with the contract and withdrew the notice.

4.12 Clinical Audit of Amputee Rehabilitation/Prosthetic Services for North Health - April 1998

In April 1998 North Health commissioned two independent physicians to undertake a clinical audit of the amputee rehabilitation services in the northern region and the operations of RML (the 1998 Clinical Audit). The auditors were asked to review the status of amputee rehabilitation

in Auckland and to make recommendations about future development. The auditors visited RML's facilities, interviewed staff and observed clinical, technical and administrative procedures. Questionnaires and focus group meetings were used to obtain feedback from consumers and other interested parties. The auditors made recommendations for RML, for the development of amputee rehabilitation in Auckland and for the prosthetics industry generally.

The 1998 Clinical Audit Report found that RML complied with most of the key requirements of its contract with North Health. The auditors stated:

> "*RML has over-achieved on a number of production targets and is competitive when compared to international benchmarks on some financial and technical parameters. These are commendable achievements for an operation in its first year. RML employs prosthetists who have a University level of qualification. The company has promoted the use of innovations in amputee management including stump shrinkers and the use of modular "preparatory" limbs. An international benchmarking survey conducted by the authors identified such techniques as best practice. The Auditors believe that RML has the core competence to conduct a prosthetic manufacturing facility of an internationally acceptable standard*".

However the auditors also identified the following issues of concern and said these needed to be addressed urgently:

- consumer management systems;
- business plan development;
- communication with consumers and referrers;
- facilities; and
- the time for delivery of prostheses, particularly "*preparatory limbs*".

Improvements in these areas were found to be "*essential for RML to be able to improve upon the current unacceptably low level of satisfaction amputees and referrers have with the service*."

The auditors made the following recommendations to assist North Health to promote the development of *"integrated, multidisciplinary teams"*:

- improving the local skill base through education programmes;
- recruitment of skilled personnel where necessary, particularly a rehabilitation physician, to co-ordinate the development of the amputee rehabilitation service and to complement existing medical expertise;
- development of consistent clinical protocols for amputee management; and
- development of specialist amputee rehabilitation units.

The auditors suggested establishing an advisory committee comprising amputees, surgical and rehabilitation staff, prosthetic providers and North Health but noted that developments such as this "*will only proceed if the current "political" tensions are defused*." They stated that one way of doing this would be to allow amputees to have a choice of prosthetics manufacturer.

In respect of the prosthetic industry, the auditors were concerned about prosthetic training and the regulation of standards, matters which they noted had been considered in the 1995 Coopers&Lybrand Review.

4.13 Amputees Given Choice of Supplier

In January 1999 the Health Funding Authority announced that from February 1999 all amputees in the Northland and Auckland region would have a choice of supplier.

RML had worked proactively with the Health Funding Authority to achieve this outcome as they recognised that a choice of provider was in the best interests of consumers. RML cooperated to ensure a smooth transition for those consumers who chose to return to NZALB. The HFA informed me that approximately 50% of consumers chose to stay with RML.

4.14 Expiry of RML Contract

In April 1999, the HFA sent RML notification of an extension of its contract for an additional 3 months to 30 September 1999. RML became very concerned at its ability to continue to operate beyond 30 June 1999 with unspecified terms. The HFA had informed RML it was considering tendering for a national contract which RML was unable to provide.

On 1 June 1999, with no further advice on the interim contract or the HFA's further intentions, RML gave notice to the HFA that it would cease to provide services beyond 30 June 1999. *"With less than 30 days to the end of our contract from a commercial point of view this position is untenable."* RML completed its contract volumes at that date and had no further obligations outstanding. RML cooperated in the smooth transferral of information and records to NZALB and ceased operating at 30 June 1999.

4.15 New National Contract

In October 1999 the HFA completed its negotiations and signed a new contract with NZALB for the provision of national services to amputees. From 1 July 1999 NZALB has been the only provider of State funded services to amputees in New Zealand.

Under the original contract signed with RML in January 1997, RML was paid a monthly figure of $56,583.33. This amount was amended by variations to the contract over time and subject to audit by the Office of the Auditor General following a request by Mr Jim Anderton. For the last year of its contract RML was paid $80,020 per month. The new contract with NZALB from 1 October 1999 includes a monthly payment of $96,660.00 for services to the Northern region. On 14 January 2000 I requested the HFA compile information regarding the comparative costs for the past five years by region. Unfortunately at the date of this report the HFA had been unable to supply such figures.

4.16 Chronology of Events

1947-1997 NZALB sole provider of prosthetic limbs in Northland and Auckland.

01-04-90 Social Welfare (Transitional Provisions) Act 1990 comes into force.

01-04-93	NZALB required to review its operations under s48, Social Welfare (Transitional Provisions) Act 1990. Subsequent reviews at intervals of not less than five years.
01-07-93	Health and Disability Services Act 1993 changes funding and service provision methods. North Health attempts to negotiate capped rate with NZALB.
Early-94	Chairman of NZALB recommends to Minister of Social Welfare that NZALB be retained as provider and requests formalising of arrangement. Minister agrees for time being.
March 1994	North Health advises NZALB by letter that it will not continue contracting for services on uncapped basis, that it would be issuing Request for Proposal for NZALB work.
1995	Disagreements between North Health and NZALB on level of funding required for provision of prosthetic services in northern region.
Feb 1995	NZALB proposes capped rate of $960,000 ($80,000 per month). North Health rejects offer.
14-07-95	North Health advises NZALB that it will not accept NZALB offer, and that it will continue funding at current rates from 1 July 1995 to 30 September 1995. North Health comments that NZALB's legislative review requirements have not been met.
Aug 1995	Letter from Minister of Social Welfare to Minister of Health, "NZALB needs to take a more constructive approach to the relationship and deal with North Health direct, rather than through ministers".
Dec 1995	Request for Proposal (RFP) for prosthetic services sent by North Health to NZALB and other interested parties. NZALB begins independent review of its own activities through Coopers&Lybrand. RFP publicly advertised.
Feb 1996	Closing date of RFP. Two proposals submitted, from ALC on behalf of NZALB and from Nurse Vision.
March 1996	ALC and Nurse Vision asked for clarification on price.
April 1996	Proposals considered by North Health. Nurse Vision chosen.
13-11-96	North Health signs section 51 Notice to NZALB for period 1 November 1996 to 31 May 1997.
21-11-96	North Health announces decision to award contract to RML.

21-11-96	NZALB advised by letter from North Health that s51 Notice arrangement would conclude 28 February 1997.
01-12-96	Beginning of pre-service start-up period for RML under draft contract.
20-12-96	RML incorporated.
25-12-96	Requirement on RML that personalised letter and questionnaire be sent to ALC (NZALB) consumers by this date under draft contract.
31-12-96	Requirement on RML that press releases and meetings with NZALB and Amputees Federation of New Zealand Inc be completed by this date under draft contract.
16-01-97	Letter from NZALB to North Health denying that contract has been lawfully terminated.
17-01-97	Contract signed between North Health and RML for purchase and provision of prosthetic services for Northern Region ("the contract").
19-01-97	NZALB and North Health meet to discuss transitional arrangements, agree that ALC will continue work in progress.
Feb 1997	NZALB agrees to compile Client Profile List, to be available to RML by 28 February 1997.
28-02-97	End of RML's pre-service start-up period under contract.
01-03-97	Contract between North Health and RML commenced. Services not required to start until 10 March.
10-03-97	RML's services to consumers begin.
17-03-97	RML requests patient information be provided by NZALB within seven days pursuant to s22F Health Act 1956.
20-04-97	NZALB responds with computer disk and letter, suggesting that it was only obligated to respond to provider, rather than funder.
14-04-97	RML complains that disk sent 20-04-97 is unreadable and insufficient in any case.
17-04-97	NZALB denies RML complaint of 14-04-97 and offers assistance.
21-04-97	RML advises NZALB that information is incomplete.
30-04-97	NZALB agrees with 21-04-97 communication, apologises.
30-04-97	Health and Disability Commissioner begins investigation of RML's standard of services pursuant to s35(2) Health and Disability Commissioner Act 1994.

01-05-97	All consumer records made available, to RML including medical and prosthetic histories. Protest march and rally instigated by Jim Anderton.
21-05-97	RML and North Health agree to variation of contract, providing RML with more money for various purposes. Jim Anderton asks North Health questions regarding RML/North Health contract.
June 1997	RML commissions RH Penny Ltd to review RML's services during first 3 months of contract. As a result of review, North Health puts RML on notice to remedy its non-compliance with the contract.
18-07-97	Health and Disability Commissioner begins investigation of NZALB's standard of services pursuant to s35(2) Health and Disability Commissioner Act 1994.
00-04-98	North Health commissions clinical audit of RML by two independent physicians.
Sept 1998	Office of the Controller and Auditor General issues draft reports on contractual payments to RML.
01-02-99	North Health contracts with NZALB as alternative provider. Public choice available for 5 months to 30 June 1999.
01-06-99	RML gives advice that it will cease trading on 30 June 1999.
30-06-99	RML ceases operating.
01-10-99	NZALB signs national three year contract with HFA at an annual price of $3,600,000. The Northern Region price being $96,660 per month.

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5. Rehabilitation Management Limited

5.1 Recruitment and staffing

Despite being confirmed as the preferred provider by North Health in November 1996, the contract between North Health and RML was not signed until 17 January 1997 with services to commence on 1 March 1997. As a result of unrest following the announcement that NZALB had lost the contract, RML felt uncertain that a contract would be ratified and made a decision that it was not advisable to begin preparation for the provision of services until the contract was signed.

RML state this left them less than two months to locate and set up premises and recruit staff. Consequently, during the period March 1997 to April 1997, apart from the director and the manager, RML employed no permanent staff. To provide cover during this time RML employed locum prosthetic staff from Australia.

Initially, RML had decided that it was commercially viable to only offer positions to New Zealand prosthetists and technicians. However in April 1997 RML decided not to recruit exclusively from New Zealand and following this decision appointed two overseas clinical prosthetists. Additional appointments included two technicians and two administrative staff members from New Zealand. The two prosthetists were trained in prosthetics and orthotics to degree level overseas. Staff members include an amputee and consumers had the choice of either a female or male prosthetist. There was no limb fitting orthopaedic surgeon employed by RML nor a physiotherapist. RML's contract with North Health did not cover such services.

The 1998 Clinical Audit Report stated that although the prosthetists were "*skilled and dedicated clinicians and competent technicians*", the ratio of prosthetists to consumers was low.

5.2 Waiting List and delays

RML attributed the delays in service to the waiting lists that arose after the service started in March 1997. RML dispute NZALB's statement that all work in progress was completed and that it did not transfer a waiting list to RML. When North Health asked RML and the ALC at the time of hand over to define a waiting list there were obvious differences.

RML included any consumer assessed by RML as being in need of a prosthesis or prosthesis repair irrespective of whether the consumer had been seen by NZALB. In RML's opinion, overdue maintenance of prostheses existed within the group of previous NZALB consumers. Together with the number of limbs RML considered unsafe, the services to be provided by RML under the contract were substantially greater than anticipated. According to RML, the difference between the services anticipated and the actual consumer demand resulted in the "waiting list".

NZALB on the other hand classed waiting list consumers as referring to only those consumers that NZALB had assessed as needing either prosthesis provision or repair. This did not include those who were in need of a limb or repairs which had not yet been assessed by the ALC.

NZALB maintained "*there were no amputees on a "waiting list" which were passed over to RML. At best there may have been a couple of telephone enquiries in the day or two before the changeover who were told that they should present to RML the following week*." It gave RML "*...a completely clean slate to start from.*"

RML stated this was contrary to data extracted and analysed from the patient records it received from ALC. RML used ALC's data to review demand and frequency of services and to establish the manner in which consumers were using resources. RML analysed the frequency of visits of consumers to the ALC and recorded 60 individuals, of the approximate 1900 on the database, who each exceeded more than 50 visits over a five year period, RML concluded there were many people who were not receiving services and a disproportionate few who consumed many resources.

In accordance with the terms set out in their contract, at the beginning of March 1997 RML sent out a questionnaire to consumers to identify consumer needs. One purpose was to identify the waiting list. From the survey and discussions with consumers seen by RML during March 1997 and Northland consumers who had telephoned, RML were able to identify consumers who required new limbs.

On 21 May 1997 Mr Jim Anderton, leader of the Alliance Party, asked North Health a number of questions relating to the contract between RML and North Health. In answer to a question about waiting lists North Health replied:

> "*The Artificial Limbs Board would not supply this information to North Health or RML. However North Health has been informed by RML that to date they have identified 109 people in Northland and 120 people in Auckland who have self identified as waiting for a service. Most will be waiting for repairs or replacement limbs but the detail will not be known until assessments have been undertaken*."

RML reported that many people who replied to the questionnaire said they had been waiting for services from NZALB. NZALB advised the Commissioner that extended waiting times were due to "*North Health's financial constraints*."

RML classified its consumers on a priority system which included factors such as employment and dependency. It produced statistical data showing that as at the end of October 1997 it had assessed more people and issued more prescriptions, than the number North Health and RML had budgeted for. Of those who had been seen, 240 had had castings made, and approximately 100 people were awaiting castings.

The 1998 Clinical Audit analysed RML's output in two separate months and noted there was an improvement in the time from assessment to casting in the later month. According to the auditors productivity was "*comparable to the previous provider*."

RML advised the Commissioner that in July 1997 when it "*finally cracked into the data base*" provided by NZALB, it discovered that NZALB's productivity was "*no where near as high as represented*." RML then sought to renegotiate the volumes and productivity requirements of its contract with North Health at the same time it was disputing being put on notice following the RH Penny Ltd Audit of July 1997.

5.3 Facilities

RML operated from the Laura Ferguson Trust premises at 224 Great South Road, Remuera, Auckland. This is a rehabilitation and residential facility for a wide range of consumers with disabilities. The company used a prosthetics laboratory in Melbourne, Australia for some aspects of prosthetic fabrication.

RML's prosthetic consulting rooms were located in the main building adjacent to the front door. There was one general reception area which served all who visited the Laura Ferguson Trust premises and a cafeteria on site used by both consumers and visitors. RML stated it had access to the gymnasium if a greater exercise area was required.

The 1998 Clinical Audit reported that consumers were concerned about the lack of a suitable area for gait observation or access to rails and other gait training facilities. The auditors noted that a shared corridor was used for this purpose with the amputee in full view of other people using or visiting the centre.

Stock and componentry was stored and serviced in an area away from the consultation rooms. When adjustments to componentry were necessary, the technician or the prosthetist left the consultation room and walked out of the main building to the stock and service area.

Consumers were seen on a one to one basis. Some consumers complained that their privacy was not respected because they were seen with the door to the fitting room left open to the public waiting area. There were occasions when consumers complained of the heat and the fitting room door would be left open.

Complaints about the absence of crutches in the consulting room were also received. RML rectified this and accepted this was an initial oversight on its part.

5.4 Repairs

The technicians and prosthetists employed by RML carried out repairs to limbs as they were received. However there were some devices RML was not able to repair immediately as it did

not have the necessary components in stock. If the component was ordered from overseas delays occurred. On occasion, the age or condition of prosthesis caused delays because sourcing parts proved difficult. According to RML, another source of delay resulted from RML's problems developing commercial relationships with suppliers who also supplied NZALB.

RML estimated 97% of its repairs were carried out in Auckland. The remaining 3% by sent either to Australia or the United States. RML stated it has a 1.5 day average turnaround for major repairs and same day turnaround for minor repairs. RML maintained 92% of repairs were complete on the day that the consumer booked in and reported to North Health that in its second month of operation it exceeded the expected volume and turnaround time for repairs. The 1998 Clinical Audit revealed that RML provided routine appointments in approximately two weeks and that urgent repairs were carried out on the same day.

5.5 Production and Replacement

Casting for new limbs was completed on site. Lower limbs were centrally fabricated in Melbourne and upper limbs made by a United States supplier. Casts were sent to the manufacturer for assembly and returned to RML. The limbs were finished at RML once the prosthetist and consumer were satisfied with their fit. According to the 1998 Clinical Audit the time from prescription to satisfactory completion of a limb was found to be approximately 8-12 weeks. The auditors suggested RML explore options to minimise delays in the manufacture and supply of prostheses.

The decision to use a particular component was made by the prosthetist in consultation with the consumer. RML developed a list of categories to define the type of limb appropriate for a consumer according to his or her level of mobility or prosthetic usage.

At the time of the 1998 Clinical Audit RML was investigating the potential use of CAD/CAM (Computer Aided Design / Computer Aided Manufacture) techniques for prosthetic production. RML's contract with North Health provided for the use of such technology in Year 3.

5.6 The Provision of Second Limbs and The Artificial Aids Notice

During the investigation there were consumer complaints of significant delays in making appointments, carrying out repairs and arranging new limbs by RML. In some cases consumers reported waiting in excess of five months from assessment to collection of their fitted limb. The creation of a waiting list by RML meant consumers were put in order of priority. Those with a spare limb were classified as having a less urgent need. Similarly, consumers with a limb that did not require repair or replacement, who expected RML to provide them with a second limb, were classified as a lower priority.

On occasion RML queried whether the limb presented for repair or replacement was a second or "spare" limb. The Chairman of NZALB advised the Commissioner that he doubted that consumers would fail to disclose whether a limb was "spare" but said it was the consumer's prerogative to have the situation resolved. NZALB also stated that whether consumers get an extra or spare prosthesis as a matter of course, depended on when they presented

The Artificial Aids Notice dated 1 September 1964 was promulgated pursuant to the Social Security (Hospital Benefits for Outpatients) Regulations 1947 and provided for government funding for the supply and repair of artificial aids. The Notice prescribed the types and quantity of aids and appliances that consumers could receive through public funding. This included funding a second limb to consumers, on the recommendation of an orthopaedic surgeon that a second limb was necessary for the consumer in his or her employment. This legislation was revoked on 1 July 1993. During the time of RML's contract there was no government funding for the provision of a second limb.

I refer to the Notice as some consumers complained during this investigation that they were being denied their right to a second limb by RML.

NZALB wrote "*Many amputees have a second limb but this is not necessarily a specifically prescribed second limb. The "second limb" is commonly a limb considered by a surgeon to be no longer appropriate or beyond economic repair, but which with minor modification or*

maintenance can be kept by the amputee as a standby, able to be used for a short period while their main limb is being repaired or maintained."

NZALB noted when interviewed by the Commissioner, that North Health did not understand NZALB's practice in relation to its prescription of second limbs. NZALB thought North Health believed:

> "*…that amputees should book in, but this is not always satisfactory for amputees especially those in work where they are virtually immobilised. That is why most amputees had two limbs. The emergency limb was usually of lesser quality but in working order, so that they were at least mobile. It needed some knowledge of the amputees* [sic] *situation to appreciate the need for this emergency prosthesis*."

The new contract signed by NZALB with the HFA commencing 1 October 1999 established four priorities for service. The fourth priority states: *Priority Four – Access to prosthetics services when funding permits - New second limbs for clients for vocational (employment) or educational needs for whom the need has been established at assessment. These clients will always take priority over those clients who are assessed as requiring a new second limb for recreational use.*

5.7 Stock

RML acknowledged it did not have the stock required to provide services on the same day consumers visited its premises for at least the first six weeks of the contract period. RML stated this was caused by the short period between the signing of the contract and the commencement of services, and its difficulty in sourcing supplies. RML asserted that exclusive arrangements between NZALB and certain suppliers prevented it sourcing stock. NZALB stated that as the Board had been operating for some 50 years it had established arrangements for supply in place.

Several complaints about the lack of availability of stump socks were made by consumers. RML did not stock the stump socks manufactured by NZALB. RML advised the Commissioner it attempted to negotiate the purchase of stock from NZALB but stated they were unsuccessful as the price was not commercially acceptable and similar socks could be sourced at a more

competitive price overseas. NZALB's response was that RML "*...mentioned in passing...*" its difficulty with supply, asked for assistance and were told by NZALB to "*give us details of RML's requirements and I would certainly see what we could do. Nothing further has been heard from RML*".

5.8 Appointments

RML provided an "*appointment only*" service.

Appointments were scheduled to allow for urgent repairs. The availability of appointment times was affected by the size of the waiting list. Consumers were not always given a follow up appointment at the end of an appointment and consumers found this frustrating.

RML operated from 9.00 am to 5.00 p.m. weekdays and after hours appointments were made by arrangement. Emergencies were dealt with as a priority which had the potential to put other work orders behind.

If consumers had been previously seen and required stump socks, then an appointment was not necessary. The staff member either provided the sock or placed an order if stock was not available.

The 1998 Clinical Audit found that aspects of RML's consumer management system were under development but had not been completed. The auditors suggested the system should be developed as a priority.

5.9 RML's Northland Service

RML was contracted to hold three clinics per year in Northland. After commencing its service, RML found that the volume of consumers waiting to be seen was disproportionately higher in the Northland region and that more clinics were required.

The 1998 Clinical Audit noted that consumers living in Northland were "*on the whole, more satisfied with the service from RML, although still frustrated with delays*".

6. New Zealand Artificial Limb Board

6.1 Transitional Arrangements and Transfer of Patient Records

While NZALB was unhappy about not successfully securing the contract from North Health, NZALB maintain the Board *"...made every effort to ease the transition...."*. It did not discuss with RML the possibility of transferring its premises, staff or stock as the ALC was to continue to provide services to war veterans and consumers not covered under the North Health contract (for example, consumers from other regions and private paying consumers).

The transitional arrangements, agreed between North Health and NZALB, set out the process for the transferral of patient information to RML by 1 March 1997. The ALC had two sets of patient records: a card index system, for quick reference and a computer database. In anticipation of the handover of prosthetic services to RML, NZALB was requested by North Health to forward to RML health information about consumers to whom it had provided services.

In February 1997 NZALB agreed to compile a Client Profile List which would be available on the 28 February 1997 (the "*transition date*"). NZALB maintained consumer permission was required for the transfer of consumer files to RML and on it wrote to each of its consumers seeking consent to release their files to RML.

North Health advised NZALB that if a:

> *"…client intends to access the publicly funded service and requests that the Board not release his/her profile to us then that will necessarily have a detrimental impact on the ability of Rehabilitation Management Limited to provide a quality service to that client.*"

North Health also pointed out that specific instructions may have no effect on NZALB's obligation under Rule 10 of the Health Information Privacy Code, Section 22F of the Health Act and the provision of the Section 51 Notices, to transfer these records.

Section 22F of the Health Act 1956 provides for the transfer of consumer records from one health provider to another, at that other provider's request. A health provider may refuse to

supply such information if, amongst other things, the person about whom the information relates refuses to consent to such transfer.

On 17 March 1997, RML requested patient information from NZALB pursuant to Section 22F of the Health Act 1956. NZALB had not had any communication directly from RML prior to this date. The letter from RML requested the information within seven days. NZALB responded on 20 March 1997, enclosing a computer disk and stating:

> "*As you will be aware, Section 22F of the Health Act 1956 is triggered by a request from either the individual about whom the health information is held... or... any other person that ... is to provide, health services or disability services to the individual client. In your letter of 17 March 1997 we have had the first request from the future provider... as opposed to the funding body (Northern Regional Health Authority).*"

The computer disk was said to hold the names and addresses of consumers and a history of the services they received from NZALB. On 14 April RML wrote to NZALB stating that the disk was unreadable and expressing concern that the information sent was merely patients' names and addresses. NZALB replied on 17 April and maintained all its information was on the disk and offering to assist RML in accessing the information.

On 21 April 1997 RML advised NZALB that the information on the disk had now been accessed, and that it did not contain all the patient information NZALB stated had been sent. In a letter dated 30 April 1997, NZALB apologised and acknowledged that RML was correct. No explanation of how this had occurred was given, although NZALB's Chairman advised RML that the disks were dispatched "*with the confidence of an assurance that all material was included on the discs supplied*." Consequently, RML did not receive any consumer information containing patient history until 1 May 1997, two months after it had been in service.

NZALB’s chairman commented:

> “*…Board staff and others have had numerous reports of statements by RML staff that various repairs and replacements could not be attended to because of lack of records from the Board, when in fact the instances were unrelated to records and simply demonstrated a lack of knowledge or an inability to deal with a problem.*”

Conversely RML asserted the lack of records resulted in RML spending a longer time with each consumer collecting information of a personal and medical nature for its records.

6.2 Complaints and the Code

From the commencement of this investigation NZALB has maintained that “*…the Auckland Limb Centre has had no complaints from amputees and there are no other matters which have been drawn to the Board’s attention by other parties which have not been responded to fully and properly.*”

NZALB’s annual report for the year ended June 1996, closes with the following reference to the Code of Health and Disability Consumers Rights:

> “*The advent of the new Health and Disability Code of Consumer Rights (with its intriguing statement that ‘consumers have rights and providers have duties’) is unlikely to upset the existing harmonious relationship; and the Board has taken the opportunity, in consultation with the Amputees Federation, to remind those who attend limb centres of their traditional particular entitlements, while also exhibiting the general provisions of the Code.*”

6.3 Facilities - ALC

The ALC premises are purpose-built for amputees. Facilities include spacious waiting and reception areas, a surgeon’s room and segregated changing rooms for men and women. Attention has been given to privacy, while allowing access for supporting family members as required. There are men’s and women’s fitting rooms and other specialist rooms, walking races

and other equipment for assessment of needs, an extensive stock of componentry, workshop areas for the manufacture of prostheses, a service room for Hydra-Cadence units and administration areas. The waiting area includes an outdoor courtyard. The total area is some 1000m^2 of floor space.

6.4 ALC Staffing

Prior to the termination of its agreement with North Health, the ALC employed 11 full time equivalent employees, including some amputees and had the services of an on-site orthopaedic limb fitting surgeon and physiotherapist. The clinical team consisted of an orthopaedic surgeon, a prosthetist and a physiotherapist. A Maori staff member ensured Maori perspective was available.

Prosthetists employed by NZALB are trained by apprenticeship methods. Training of prosthetists to degree level has been identified as an issue that needs to be addressed by NZALB. Professor Hughes, when reviewing NZALB's activities for the Coopers&Lybrand Review confirmed that internationally the view is that the education and training of prosthetists should be to degree level. In the United Kingdom all prosthetists must be trained to degree level.

6.5 Consumer Appointments at ALC

The ALC operated officially from 8.30am to 4:15pm on week days. However a staff member was usually present from 7.00am to accommodate consumers who require services on their way to work and ALC closed later on Friday evenings on a fortnightly basis enabling amputees to have appointments after work. Appointments were not always necessary at the ALC. Consumers who did not insist on seeing a particular staff member were usually able to receive same day service. When a consumer wanted to see a particular staff member, and that person was not available, then an appointment would be made. Emergency services were available outside hours to ensure minimal disruption to consumers who were employed and who could not take time off work to attend appointments during work hours.

6.6 Northland Service

Amputees in Northland attended clinics in Auckland for any service that required extensive workshop time and materials, or consultation with a surgeon or a physiotherapist. For minor repairs and adjustments, two fitters travelled to Whangarei periodically.

The Amputee Society would be informed of the dates of the Northland clinics so that it could advise its members when staff from the ALC would be in the area.

6.7 Hydra-Cadence Units

Hydra-Cadence is the trade name of a hydraulic prosthetic system. At the time of its introduction the Hydra-Cadence knee was one of the best units available because of its innovative hydraulic mechanism. It is still popular with many amputees, particularly those who are very active. The ALC services Hydra-Cadence limbs for all NZALB Limb Centres throughout New Zealand.

The 1998 Clinical Audit stated "*RML has found that Hydracadence devices require a higher level of maintenance than alternative knee units. A similar problem was identified in Australia many years ago and the units were no longer prescribed.*"

During the investigation it was suggested that Hydra-Cadence devices were obsolete, but the senior prosthetists at RML and the ALC are in agreement that for some consumers, the Hydra-Cadence unit is the ideal unit. The Hydra-Cadence unit enables a pivotal movement in the foot that no other prosthetic device can equal. There are also consumers who are accustomed to the unit who would find it difficult to adapt to something new.

NZALB advised that the disadvantages of Hydra-Cadence units are that they can leak oil and be heavy. The weight of Hydra-Cadence componentry can cause consumers' prosthetic requirements to change. Developments in the prosthetic industry have resulted in lighter and superior componentry, so as time goes by fewer consumers are being fitted with a prosthesis containing a Hydra-Cadence unit as the technology has been surpassed by other brands of hydraulic componentry. NZALB stated in correspondence dated 18 October 1995 "*Limbs using*

hydracadence components are decreasing each year. As at this date there are 41 amputees using hydracadence components in their limbs".

ALC was the only centre in New Zealand that serviced Hydra-Cadence components, and there were concerns expressed that RML could not service Hydra-Cadence componentry. RML submitted in its RFP response to North Health that it would access the one technological provider of Hydra-Cadence services in New Zealand, NZALB, for the servicing of these units. However, this did not prove practicable.

RML had difficulty in sourcing Hydra-Cadence componentry and attributed time delays of over seven weeks to trying to source this componentry. There are suppliers overseas who continue to support the Hydra-Cadence unit, although with modifications to make the unit lighter and therefore more practicable for the user. However, RML described its attempts to source this componentry from overseas as "*trying to get the museum open*". The Chairman of NZALB suggested that RML tended to describe as obsolete "*anything that Rehabilitation Management Limited can not do or make*". One of the technicians employed by RML, who was previously employed by the ALC, "*knew something about*" Hydra-Cadence devices.

6.8 Quality Control

RML obtained reports from a specialist prosthetic technician based in Australia, on consumers' prostheses which RML deemed could not be repaired due to safety risks. The reports raised concern about whether NZALB was complying with international safety standards. There were suggestions from RML that some limbs supplied to consumers in New Zealand by NZALB were outdated or obsolete. One report obtained by RML from Orthopaedic Techniques Limited stated:

> "*The excessive volume of Above Knee clients presenting with malfunctioning and noisy knee units appears to be a result of a quality control problem in technical management.*"

Rehab Tech at Monash Rehabilitation Technology Research Unit reported one of the adjustments to a limb was home made and an inefficient use of time given the relatively inexpensive price of

safe components. This aspect of ALC's service was discussed between the manager of the ALC and the current Chairman of NZALB. Neither could see anything wrong with this approach as these were judgement calls made by the prosthetist or technician at the time, and contributed to the ALC's ability to provide an "on the spot" service. NZALB's approach is encapsulated in a comment in its annual report for the year ended June 1996 *"…local ingenuity continues to abate the cost of prostheses without compromising standards…*".

6.9 Stock and Componentry

In the Coopers&Lybrand Review, Professor John Hughes referred to the ALC's system and stock levels as being adequate but not excessive. The Coopers&Lybrand review stated the ALC held one month's supply of overseas stock, that non-imported materials were ordered locally and that all components and materials from overseas were ordered through NZALB's Wellington centre.

6.10 Prescription related practices

Professor Hughes expressed concern at one NZALB prosthetist's practice of fitting sockets for below knee amputees without a liner. Instead amputees wore sockets with three thick socks. Later, when their stumps reduced, these consumers were provided a liner with a thin sock and socks were then progressively added until a new socket was deemed necessary. Professor Hughes did not support this as being good practice.

Professor Hughes was not able to examine and interview many consumers with above knee amputations and of the stumps he examined none had apparent damage or blemishes caused by the socket. These consumers said they were happy with their treatment.

Professor Hughes also raised questions about the way in which quadrilateral sockets for above knee amputees were fitted. He considered fittings would be improved if staff underwent retraining and refresher courses in socket fitting techniques.

Construction and assembly methods were summarised by Professor Hughes as being "*…modern with an adequate awareness of health hazards and safe working practices."*

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7. Support Services

7.1 On-Site v Out-Patient Services

The provision of an artificial limb or prosthesis is only one part of an amputee's rehabilitation. The 1998 Audit stated that the principles of best practice in amputee rehabilitation include:

> "*An interdisciplinary (or at least multidisciplinary) approach*
> *Collaboration with surgical teams*
> *Early Rehabilitation with use of preparatory limbs*
> *Use of "Critical Pathways'* [sic]
> *Coordinated case management*
> *Involvement of the prosthetist in the clinical team*
> *Active involvement of the amputee in the rehabilitation process.*"

The Commissioner therefore sought information from providers of support services as part of the investigation.

While the ALC had access to on-site orthopaedic limb fitting surgeons and a physiotherapist, RML did not. This was not stipulated in its contract and RML submitted that prosthetic providers in other countries do not all necessarily provide such services. Instead a prosthetist works as part of a team of professionals, amongst whom co-operation and communication is essential. North Health stated that support services were provided through Crown Health Enterprises' (CHEs) out-patient services.

Information was submitted as part of the investigation from Physiotherapy services based at Waitakere Hospital, individual orthopaedic surgeons and the Orthopaedic Association. They reflected dissatisfaction with the service provided by RML.

7.2 Physiotherapy Services

Physiotherapy Section Managers from the Northern Regional Public Hospitals met on 8 August 1997 to discuss the problems encountered with the new amputee service, and to make recommendations to alleviate their concerns. The physiotherapists were critical that they were

not consulted about changes to the provider of prosthetic services. They had little knowledge of what was happening, no information of who was replacing the Artificial Limb Centre and for the month of February 1997 they had nowhere to send consumers. To provide support, physiotherapy services required referral information about where and what the facilities, staffing and resources were going to be like and whether there would be an on site physiotherapist.

Following the changeover the physiotherapists noted they were constantly calling RML to find out whether prosthetic devices were ready. Around five to six calls per consumer needed to be made to RML which did not occur with the ALC. Delays by RML in providing prosthetic limbs meant that in some cases, consumers experienced a longer stay in hospital, particularly if their home was not equipped for them to be discharged. In some cases consumers were being discharged without a limb and therefore required equipment and home support. One physiotherapist stated that with the ALC there had been much more flexibility with maintenance of limbs and there was liaison between therapists and workers. The ALC had their own physiotherapist who would work with the prosthetist to get the best limb for the consumer.

The Commissioner was advised that the deciding factor for many patients to have a limb removed is the length of time following amputation in which a prosthesis could be provided. The prosthesis was viewed as more than a mobility tool for the consumers. The artificial cosmetic and functional purposes of a prosthesis also had psychological benefits for the consumer if fitted soon after amputation. One physiotherapist acknowledged that the limbs provided by RML were newer and easier to fix to the body. The stump “shrinkers” provided by RML were described as “excellent”.

Recommendations arising from the meeting with physiotherapists held on 8 August 1997 sought to ensure that consumers were not discharged from hospital without a prosthesis, reduction in casting and fitting times, and improvement in referrals between physiotherapists and RML.

7.3 Orthopaedic Services

The limb fitting orthopaedic service offered by the ALC was part of the service provided by NZALB. Payment of orthopaedic consultants’ services were disclosed in its Annual Reports.

While the surgeons were paid directly through the payment they received from Crown Health Enterprises, this amount was in turn reimbursed by NZALB to the Crown Health Enterprises.

With the RML contract North Health considered that orthopaedic services would be provided through public hospitals' out-patient services. Therefore an on-site orthopaedic surgeon was not included in its contract for services with RML.

RML advised the Commissioner that it intended the orthopaedic services that had been provided to consumers of the ALC would continue even though its prosthetists, trained and clinically certified overseas, were capable of prescribing limbs without reliance on an orthopaedic surgeon. To this end, on 4 February 1997, RML met the orthopaedic limb fitting consultant at the ALC, and the Chairman of North Health to try and organise this. However RML advised that its efforts were unsuccessful and that it met resistance and reluctance from orthopaedic surgeons to co-operate with its service.

The New Zealand Orthopaedic Association expressed their concern to Mr Jim Anderton in a letter dated 16 July 1997, stating that the Association would *"...strongly support involvement of ongoing orthopaedic care within a limb centre environment..."* but that the "*...overall package of care for these patients has to be adequate in all respects."* They thought the North Health contract with RML provided a totally different environment and that at present *"...orthopaedic surgeons are not comfortable with providing an adequate service in that environment*."

One of the limb fitting consultants at the ALC stated that as a consequence of RML not having an orthopaedic surgeon on site, "*amputees were left to wait in the general queue for orthopaedic outpatient appointments through the CHEs* [public hospitals] *to see medical staff in those clinics who have no particular interest or training in limb fitting*." During the investigation, many consumers openly expressed the loss that they felt at no longer receiving services from an orthopaedic surgeon at ALC.

The Commissioner received individual letters of complaint from other orthopaedic surgeons and the Orthopaedic Association expressing concern about RML's ability to provide services.

The head prosthetist at RML met with a number of orthopaedic specialists at Middlemore Hospital and ran clinics at that hospital in an attempt to develop a working relationship with the specialists and to improve communication and education about the services provided by RML.

The June 1997 review prepared for North Health by R H Penny Limited found that RML had links with some general practitioners, rest homes and with the Diabetes Society "*but not with a large group of health professionals and consumer groups essential to the ongoing service provision and its development, specifically: Orthopaedic/Vascular/Paediatric Specialists, Physiotherapists, Occupational Therapists and Amputees Federation*". The 1998 Clinical Audit Report also noted a lack of communication between RML and other health professionals and recommended that RML "*urgently needs to further develop clearly defined referral and communication systems with… hospitals and community agencies*."

8. Consumers

8.1 Summary

Prior to and during the course of this investigation a number of consumer complaints were received by the Commissioner. Eleven consumers complained about RML to Jim Anderton, Leader of the Alliance Party. These complaints were subsequently forwarded to the Commissioner. The Commissioner sought to interview all these complainants. Furthermore the Commissioner invited consumers listed on the RML database to contribute to the investigation and interviewed those who responded. In addition to the complaints referred to above, the Commissioner received 29 further complaints in 1998. Six complaints were resolved through advocacy or mediation and a further case was closed with an opinion that no breach had occurred.

Most consumers interviewed had initial concerns about the change in service provider. For some, these concerns materialised. Others found the new service better than the old.

Those who complained about RML's service described difficulties making appointments and waiting longer for repairs to be carried out or for new limbs to arrive. Many believed this was the result of RML having work done in Australia. Several complaints related to RML not providing consumers with the type of stump socks they used previously. There was also some concern about the size of RML's facilities and the fact that people with other disabilities used the same premises. Several consumers complained that RML had no orthopaedic surgeon on site.

Some consumers considered that RML's facilities were better than those at ALC. They also spoke of being able to make appointments at RML more quickly than they had been able to at ALC. Northland service users appreciated RML's regular visits to Whangarei. RML's staff were described as being friendly and helpful.

8.2 Facilities

General

Several consumers complained to the Commissioner about the facilities at the Laura Fergusson Centre. RML was described as having two small rooms, neither of which has "*useful support to*

lean on when putting on or taking off one's leg ...nor is there a mirror or fixed parallel bar walkway of any length against which I can test my leg and any work completed." Another consumer said on 13 March 1997 that "*RML Ltd are operating out of a one bedroom domestic unit at the Laura Ferguson trust with absolutely no equipment at all*."

The 1998 Clinical Audit noted that RML's three consulting rooms were adequate for static examination but not for gait analysis and indicated that this was an area for improvement.

Sharing Premises

Some consumers were concerned at having to share RML's reception area with people with other disabilities. A consumer said that on one occasion when she attended the Laura Fergusson Centre an intellectually handicapped person tried to hug her mother. The Commissioner was advised that a consumer was shocked to see "*disabled, handicapped people*" at RML's premises. Another consumer told the Commissioner that she thought some consumers may feel uncomfortable about being in the same environment as other consumers who are based at the Laura Fergusson premises. She had not experienced any problems herself. Other consumers were not concerned about having to share the Laura Fergusson premises with other persons with disabilities.

Children's Facilities

One consumer complained about the lack of a facility for feeding or changing babies in the waiting area. Another was concerned that RML had no waiting facility for children. This was also noted in the 1998 Clinical Audit.

Air Conditioning

A number of consumers expressed concern about the lack of air conditioning at RML's premises, as did the 1998 auditors. RML advised the Commissioner that as a result of complaints about its facilities being too hot, ceiling sky-light vents were installed to cool its customer areas.

Parking

RML's parking facilities and toilets met with the approval of consumers. However consumers complained that there were no signs directing them to RML's premises.

Some consumers found RML's facilities better and brighter than those of ALC. One consumer described ALC's premises as "*dingy and depressing*." The 1998 Audit Report describes the Laura Fergusson centre as "*a modern well lit building with pleasant architectural features and good disabled access*." The auditors noted however that the centre is not purpose built for the provision of prosthetic services and that purpose built adaptations have been minimal.

Consumers described ALC's facilities as "*excellent*".

8.3 Privacy

Some consumers felt that their privacy was not respected when they attended RML's premises. Complaints included:

- a consultation about stump stocks carried out in the hallway
- a repaired limb being given to a consumer in the reception area with no chance to try it on
- consultations with the consultation room door left open
- no privacy in the reception area
- no segregation of male and female consumers.

Some consumers thought that RML's facilities offered more privacy than those of ALC and had not experienced any problems in this respect. One person reported that at ALC "*he had to take his gear off in front of everyone (although they were all men) but at RML it was a room to himself*." Another patient advised that an ALC prosthetist lifted her daughter's skirt without first introducing himself.

8.4 Staff

Some consumers were concerned about the ability and experience of RML's prosthetists and technicians. Consumer concerns expressed to the Commissioner included comments that:

- a fully qualified technician should have been able to assess needs without reference to medical records
- doubt about the qualifications and expertise of RML's prosthetists as the prosthetist should have known that providing a new knee would not rectify socket problems
- an RML staff member stated that "*they had never seen that type of limb before*."

- the technology RML used has been tried by ALC and found not to work.

One consumer said he was told by RML that the two weeks taken to repair his limb was partly due to RML's lack of staff. Before RML began providing services, he had been advised by ALC that the same repairs would probably take two days. He noted that while ALC had employed four limb-fitters, RML tried to manage with just one fitter.

One consumer complained that he could not see the same prosthetist each time he attended RML. However another consumer said that she appreciated being able to see the same prosthetist at RML.

Orthopaedic Services

A number of consumers were concerned that RML did not employ an orthopaedic surgeon as ALC had. A consumer advised the Commissioner that he was told that because RML did not employ an orthopaedic surgeon, he would have to make his own arrangements. Subsequently he discovered that he would have to wait six months to see an orthopaedic surgeon at Middlemore Hospital or pay $250 to see a surgeon in private practice. North Health advised another consumer:

> "*…the orthopaedic consultation in the previous contract was through Auckland Hospital and provided on-site advice at the Limb Centre. The current provision remains with Auckland Hospital who now maintain outpatient clinics at their premises. Should you need medical advice regarding your stump, this is the appropriate referral for you. RML provides a technical limb-fitting service as did the previous provider*".

Customer Service

One consumer reported that an RML staff member was "*rude and abrupt*" on the phone and another was unhappy with the "*general attitude of the staff at RML*". An RML consumer, who had been a vocal objector at a presentation meeting held by North Health, reported being told by a member of RML's staff that RML would not make a limb for him. RML advised the Commissioner that some consumers had behaved unreasonably. One consumer was told by RML that "*the abuse, foul language, threatening behaviour and attempting to push your way into a clinic room that another client was in was totally unacceptable*."

Other consumers reported that RML's staff were friendly and helpful and set out the options available. One person described them as "*friendly and doing their best, however signs of being overworked are apparent*". Another described one of RML's prosthetists as having "*a wealth of experience*" and someone else commented that "*they knew more than the old fitters*." One consumer said she appreciated being able to see a female prosthetist and said that she had never had a female prosthetist in the past. She told the Commissioner that she "*can really only wear underwear during the fitting process so feels more comfortable being able to have the services of a female prosthetist.*"

8.5 Start-Up Issues

Consumers reported that there was confusion about whether RML or ALC should be attending to them. One man was advised by RML that he was technically a customer of ALC under the transitional arrangements. Another person reported that he only discovered that there had been a change in service provider when he presented to ALC and was directed to RML. The Commissioner was also advised that a consumer who needed a new limb first went to RML but was told that because of its six month waiting list he should go to ALC. ALC told him it could not help him because he was a war veteran and it was unsure who would fund his treatment. That consumer subsequently received confirmation that he could continue to use ALC's services. RML advised the Commissioner that it thought one consumer who was the responsibility of ALC because he had a limb "*in progress*", "*set up*" his visits to RML and subsequent complaints.

One consumer phoned RML on 3 March 1997 needing urgent repairs to his prostheses. As RML had not yet commenced services and the consumer stated that his case was urgent, he was referred to an orthotist. The orthotist was unable to assist. RML advised that this consumer did not have an urgent need and was given an initial appointment within seven days of its service starting.

A consumer advised the Commissioner that some of the information requested by RML in a questionnaire in relation to his previous care and current requirements, had nothing to do with his limb.

One consumer complained that although she had authorised ALC to release her records, RML had difficulty obtaining them. RML advised the Commissioner that the records arrived without recording sheets and measurements. These were later provided, however RML found that the recording sheets had not been updated since 1993. Another consumer discovered when she went for her first appointment at RML, that her records had not been transferred from ALC. She went to ALC and requested her file but later discovered that it was incomplete. That consumer then made a written request to ALC for "*all other relevant forms/correspondence relating to repairs done over the past years*."

One consumer advised the Commissioner that "*from his observations, they* [RML] *were not set up yet, but that had not a made a difference to the service that he had received*."

8.6 Appointments and Turn-Around

Auckland

Several consumers complained to the Commissioner that they had difficulties making appointments with RML. The Commissioner was advised that on three out of four occasions when one consumer telephoned RML he was diverted to an answer-phone. Another consumer reported that on the day before her scheduled appointment, her prosthesis broke but RML would not see her that day telling her she would have to wait until her appointment the following day. Another consumer first tried to make an appointment on 3 March 1997 but was unable to get one until 11 April 1997. The Commissioner was advised by one consumer that he "*did not have to make an appointment and would not have to wait to have his limb fixed*" at ALC.

In response to one consumer's complaint, RML advised that it had experienced difficulties making appointments for her "*as she tells us she has difficulty getting into Auckland*." The consumer lives south of Auckland. Another consumer who complained about RML's service was advised by North Health that "*the reason you were unable to be afforded an immediate service by RML is that in the absence of historical clinical detail, all clients must have a full assessment by the clinical prosthetist at RML.*"

Some consumers found it difficult to make appointments with RML outside of working hours. One consumer described how he had been able to visit ALC on his way to work as consumers could make appointments from 7:00 a.m. Because RML is only open during business hours and its lunch periods are extremely busy he had been forced to attend four appointments during work time. Another consumer was concerned about RML's lack of a seven day emergency service. The 1998 Clinical Audit suggested that the matter of RML's office hours was an area for improvement.

Consumers reported being told by RML that it would contact them for another appointment but after waiting some time for a response, they had to re-contact RML. Another who tried to make an appointment with RML in its first week of operation was told that he should telephone back at the end of April.

The 1998 Clinical Audit Report states that "*Follow-up appointments cannot be made while the client is at the centre, because of uncertainties with prosthetic delivery dates. They are made by phone when the prosthesis arrives*." The auditors suggested RML's appointment system could be improved so that consumers are given greater certainty about appointment times.

One consumer told the Commissioner how when he presented to ALC in late 1996 to have his leg adjusted, he was told that ALC could not help him because they were $200,000 in debt and could not get any money from North Health. He was told that he would have to wait until RML started providing services. Another consumer reported being told by RML that "*the company was already at 150% of budget so special application would need to be made to North Health*."

Consumers reported having to wait long periods for scheduled appointments at RML. One person reported waiting for over one and a half hours. There were also complaints about waiting times at ALC.

Other consumers advised the Commissioner that they had no problems making appointments at RML and have been able to have urgent repairs carried out. One person who was given an

appointment at RML within 48 hours of making his request, said that at ALC "*you could wait a week to 10 days for an appointment*."

The Commissioner was advised that some consumers found that ALC and RML provided similar turn-around times. One person reported that "*his new leg was very quick in arriving from Melbourne (10 days) and that it was a great leg*." The new leg was light and easier to put on and did not cause the problems he had experienced with both of the legs ALC had made. The consumer was pleased that he could drive with his new limb. He said that driving had been difficult with his old limb.

Whangarei

In relation to the clinics held by RML in Whangarei, the Commissioner was advised that "*nobody appears to know about the Clinics, only those people who were given an appointment know that a particular Clinic is being held*". In the past ALC had held occasional clinics in the north which the Amputee Society were informed about and which were advertised in the local newspaper. RML provided regular clinics in Whangarei.

8.7 Stump Socks, Gloves and Bandages

Socks

A number of consumers reported having difficulties obtaining stump socks from RML. Examples include a consumer who found that his order for stump socks took two and a half months to arrive and then discovered the socks were unsuitable because they had a seam in the end. RML responded that because it had no hard copy records for that consumer, it could only send him the socks it thought he was asking for. RML reported that on one occasion when that consumer complained about the size of his socks, after the size label was removed, and the same socks were returned to the consumer, he found that they fitted.

There was a consumer who complained that RML would not give them enough stump socks. One person reported that she required a total of 6 socks and had to "*beg*" for each single sock. Others reported being unable to obtain their preferred type of stump sock. One consumer who was accustomed to using the woollen brand of stump sock produced by NZALB could not obtain the same type from RML and he stated the Australian merino wool socks supplied were not as

durable. He found that after four washes the socks became very hard and uncomfortable to wear. One consumer reported that she purchased stump socks from ALC because ALC would not tell RML where her preferred socks could be purchased.

In response to a question relating to RML's supply of limb socks, North Health advised the Leader of the Alliance Party:

> "*RML has a substantial stock of stump socks. There* [are] *about 600 varieties on the market. The unique requirements of individuals have not been known to RML; and the amputees had not been informed by their previous provider about the size or type they use. Any delays in service provision are a consequence of the previous service provider refusing to hand over client records until the last week in April.*"

Gloves and Bandages

Another consumer who required a new skin coloured glove for her artificial hand before making a trip overseas was told by RML that a replacement could take up to six weeks to arrive. That consumer made an appointment to have her limb checked and ordered the glove in time to allow for the six week delay. Shortly before her overseas trip, she telephoned RML to enquire about her glove and was informed that RML was having trouble communicating with the firm who supplied gloves and did not know when the glove would arrive. The consumer subsequently acquired a glove from ALC at her own expense.

One consumer found the compression bandages supplied by RML easier to use than the crepe bandages he had been given by NZALB.

8.8 New Limbs

Some consumers complained to the Commissioner about the new limbs provided for them by RML. The following are representative cases:

Size

One consumer who complained about a short arm provided by RML acknowledged that the arm was the best she had ever seen but said "*what use is an arm that looks really nice but doesn't work.*" In response to that consumer's complaint, RML advised that her new limb was made

solely on the basis of ALC records and that she had never been assessed by an RML prosthetist. The consumer had insisted that she didn't need assessment and the limb should be ordered from ALC records. RML stated that this type of limb "*has a fundamentally cosmetic function, rather than any operable mechanism*." Additionally the consumer did not understand the necessity to attend a fitting. It was therefore unable to be fitted correctly as she sent her husband to the appointment. The arm that consumer was accustomed to was of a suction type and the arm she received from RML had a flange at the top. She said the arm kept falling off because it had the wrong kind of attachment. In its letter enclosing the limb RML advised that the limb had been trimmed and finished with a flare to prevent pinching. RML stated: "*…if this* [the flare] *is not in quite the right place it can be altered by simply heating the required area by waving a hand held hair-dryer over it*."

Quality

Another person reported being "*appalled by the shocking quality of the prostheses RML are making, and their service*." She advised that:

> "*The protheses* [sic] *they made for my husband actually push on "neuromas" in his stumps causing acute nerve pain. They are impossible to even put on, let alone walk on. After 5 minutes of wear, my husband's legs turn red from the pressure. The protheses* [sic] *are not aligned correctly and are sharp, and easily visible through his clothes. They don't fit and make a noise if he walks*."

Another consumer commented that the limb he received from RML was much lighter than any of the limbs he had been given by ALC.

Sockets

One consumer stated that the socket of a leg made by RML detached leaving him stranded. After first being assessed as requiring a new socket, a consumer reported having to go back to RML the following week for the cast to be made up. This was then sent to Australia and it took eight weeks to come back. A further adjustment was then required to the limb taking another three months. The consumer has had continuing problems with the socket and said that "*it has never been a success*." This consumer subsequently went to ALC to have his limb fitted. He said that in the light of his disappointment at RML's service he would rather pay to go to ALC.

Colour

In response to one consumer's complaint about RML's inability to provide him with an adequate new limb, RML advised the Commissioner that although the consumer said he had not had problems at ALC, there is a letter on his file describing the difficulties ALC prosthetists had dealing with the consumer's unusual skin condition. RML also stated that the time taken to provide a new limb was due to discussions about the consumer's problem with overseas experts and the need to try a number of different approaches to solve his problem.

A consumer reported being told by ALC that a wrong coloured limb would not be replaced because ALC wanted to use the limbs it had in stock.

Type of Prothesis

The Commissioner was advised by another consumer that RML tried to persuade her to use a "*full leg*" rather than the "*peg leg*" she preferred. RML advised that this consumer was presented with several options and a number of leg types were discussed.

Another consumer reported being told her limb "*wasn't any good*" and that she would be better off with a whole new limb. The consumer did not want a new limb. A consumer was also unhappy that an RML prosthetist told him that his limb was "*old fashioned and difficult to work on*." NZALB advised the Commissioner that it had been advised by amputees that "*RML have been insisting that existing amputees take new limbs, i.e. newly designed and constructed, because RML has neither the facilities, componentry nor skill to maintain or repair unfamiliar models*."

Spare Limbs

One consumer reported that when he visited RML, he was told that he was not allowed a spare limb and that it was suggested his spare limb should be taken from him so that its parts could be used in other limbs. Another person was hesitant to have a new limb made by RML because both the limb he used and his second limb were the same "*and need to be the same for ease of transferring between each*."

Dignity and Independence

Some consumers complained about the limbs and accessories provided by ALC. One such consumer is a Maori with a dark complexion. He reported to the Commissioner that the legs he

received from ALC were pink, and did not resemble his natural skin colour and had wrong sized feet. In comparison, he said that RML has attempted to match his new leg with his skin colour. He stated he was pleased with his Maori leg in comparison with the pakeha legs of the past. That consumer reported being able to use only two of the six legs ALC had made for him and showed the previous pink legs to the Commissioner's investigator. NZALB advised the Commissioner that it "*certainly would not fit a Maori man amputee with a white leg*."

Another consumer, a young child, had an artificial lower arm and hand made by ALC and the mother was critical of the service. The mother stated that she formed the impression that the person at ALC who made the device had never made or fitted a baby with a prosthesis before and was disappointed with the device her child was given. The prosthesis was described as bright orange in colour and the hand mitten shaped. After a couple of days the parents would not allow the child to wear the device due to its obvious artificial appearance and because it was heavy, rigid and cumbersome. On hearing there was a new prosthetic service provider, the child was taken to RML in March 1997 to find out what they could provide. The Commissioner was advised RML supplied a prosthesis which was life-like in appearance and difficult to distinguish from the child's natural arm and hand. It was light with a soft flexible texture and it took only two days for the child to become accustomed to it. The mother stated the child was able to walk and crawl using the prosthesis which her child now wears all the time. The consumer found RML's service to be very good and stated that she would be remaining with RML.

Integration of Service

A consumer expressed concern that there was no follow up by ALC after her daughter's limb was fitted. Her daughter was never offered physiotherapy or counselling. The 1998 Clinical Audit noted that the provision of an integrated amputee service was a desirable objective which could be facilitated by North Health.

Fitting

Another consumer reported having an appointment with RML at Whangarei on 14 October 1997 where he was told his prosthesis would be repaired in three weeks and that he would have a replacement in six weeks. On 22 December 1997, he received a prosthesis which he described as "*totally useless*."

The Commissioner was still receiving complaints in 1998 about RML's service. One consumer reported that he was assessed for new limbs on 2 September 1997 and was advised that he was a priority on RML's waiting list. He attended the first fitting for his legs on 14 January 1998 and at the time of writing to the Commissioner, over six weeks later, he had still not been advised of a second fitting date.

8.9 Limb Repair and Replacement

Many consumers who complained to the Commissioner told of delays in having their old limbs repaired and in having new limbs made. They believed this was due to the fact that "*the new provider is unable to effect any but the most minor repairs to limbs within the country and instead makes use of its facilities in Australia*." A number were concerned about having their limbs sent to Australia for repair. One reported that he felt apprehensive when RML could not tell him how long his leg would be in Melbourne. Consumers thought that, in some cases, ALC would have been able to carry out the same repairs on the spot. One consumer advised the Commissioner that he was not informed that his limb would be sent to Australia for repair.

Repairs

Several consumers told the Commissioner that they were unhappy with the repairs RML had carried out on their limbs. One consumer described the repairs to her limb as looking like "*a panel beater had bogged a car, made it too thick and it wasn't smoothed properly*". She described the repairs to her limb as being so bad that many people who had known her for some time became aware for the first time that she had an artificial limb. Previously it had been unnoticeable.

Another consumer reported that his limb was three kilograms heavier after being repaired by RML. In response to the later consumer's complaint, RML reported that his prosthesis was "*way past its used by date*" and that the internal foam was crumbling. RML stated that it offered him a replacement prosthesis which he refused to accept.

A consumer reported waiting a number of weeks for RML to make repairs which he thought could have been made in about three hours at ALC.

One consumer told the Commissioner she was "amazed" [impressed] at the repairs that RML had done to her limb.

The Commissioner was informed of an instance when a consumer presenting to RML for limb repairs was told by RML that it did not yet have the materials necessary to repair the limb and that it did not know when they would arrive. One consumer's husband reported that when his wife required a small modification to the cosmetic cover of her limb, she was told that RML did not have the appropriate sand paper and that she should go home and do the sanding herself. The 1998 Clinical Audit states that while "*stock-outs*" [i.e. supply shortages] were frequent during RML's first few months of operation, as RML ascertained the demand for particular componentry, this problem became uncommon.

In response to one consumer's complaint about the time taken by RML to repair her limb, RML responded that the *"...parts within the unit had disintegrated. The prosthetist refused to release the prosthesis until the modified parts were all replaced with internationally tested and approved parts. This is a time consuming exercise."* RML reported that the unit was constructed in the same manner as another unit it had sent overseas for examination which was found to have been unsafe. In response NZALB stated it suspected "that in submitting the limb for testing in Australia no indication was given of the very restricted use to which it would be put, nor that its use would be carefully monitored. We assume that the limb was tested for robust use for which it was never intended and which would have been beyond the capacity of the amputee anyway." NZALB rejected the claim that there were safety issues involved. RML also advised the Commissioner that *"there have been an inordinate amount of cases where prosthetics that had standard international prosthetic parts had been altered and combined with every day building supplies*" and that RML had had to convert "*non-prosthetic*" componentry to meet international safety standards. NZALB responded that the "*non-prosthetic parts used were high quality industrial components and were certainly strong enough for the very specific use intended*."

One consumer advised the Commissioner that she "*usually puts car tyre pieces on the end* [of her prosthesis] *so that they last longer*." RML took the tyre piece off and put on a much thinner

piece of rubber. The consumer also advised that RML lengthened her leg by about 2½ inches and that she had to saw off the extra wood.

Hydra-Cadence Unit Repairs

Some consumers presented to RML with Hydra-Cadence units. One consumer was concerned that RML did not have technicians able to repair such units and another advised the Commissioner that he was advised by RML that it did not have the knowledge, skill or equipment to repair such units. One consumer reported that when he collected the hydraulic unit of his limb from RML, it was in a worse state of repair that it had been in when it was originally delivered to RML. RML advised the Commissioner that it carried out some repairs to the unit but assessed it as being "*unsafe, inoperable and redundant*" and informed the consumer of this in writing. When the consumer demanded that his limb be returned to him, RML asked him to sign a release form acknowledging that RML did not believe the unit was safe and that it did not guarantee its "*optimal functioning*."

In response to a consumer's complaint about RML's inability to service Hydra-Cadence units, North Health stated that "*RML has negotiated a consultancy with a hydracadence specialist who had worked with the ALB to provide your special care on a case by case basis*". North Health also said that new technology may supersede the need for Hydra-Cadence prosthetists but that no change in technology would be imposed on consumers.

One complainant advised the Commissioner that RML planned to make a separate charge for the provision of technologically advanced limbs, although other Limb Centres in New Zealand would provide such prostheses free of charge. The complainant reported that RML had previously advised that technologically advanced limbs would be provided as part of its contract. In relation to this consumer's complaint, RML stated that the device requested was "*exceptionally expensive and outside the normal funding priorities*."

Replacements

In response to one consumer's complaint about the time taken by RML to provide a new limb, RML advised the Commissioner that the consumer "*…did have some problems with his prosthesis. As they were not at that point judged to be absolutely critical, his repairs were*

carried out and he was put on the list of people requiring a new socket. The client was told this and asked to contact us in a few months as this was also not a critical situation at this point."

One consumer approached RML for a new limb in May 1997 and did not receive it until 30 September 1997. RML explained that its overseas supplier had advised it of a seven to eight week delay as that supplier did not carry stock and only made enough for a run. RML tried to obtain a replacement limb from Limb Centres throughout New Zealand but was unsuccessful. NZALB advised that at that time it did not have the item concerned in stock as it generally ordered such components on a "*patient need*" basis. Another person who was seen at RML on 11 March 1997 was told that she needed a new leg but that RML did not yet have a workshop or waiting rooms.

8.10 General Service

Some consumers complained that they were unable to choose who provided prosthetic services to them. One consumer said that he was contemplating leaving the region so he could once again attend an NZALB operated limb centre.

Many consumers told the Commissioner that they preferred the overall service provided by ALC. One consumer described how at ALC there was "*a sense of real caring and dedication to the welfare of amputees*" but that the service provided by RML was "*impersonal*." The Commissioner was told by a consumer that for 23 years she had received "*such good service*" from her limb fitter at ALC. She felt that he was "*the only one who can fit her deformed limb resulting from polio*." That consumer has lived in Christchurch and Wellington and found no one there who could service her prostheses so she moved back to Auckland. She felt "*cheated*" by the change in service provider.

However, another consumer felt that RML was very responsive to consumers' needs. Prior to the change in service provider a consumer reported being concerned about not being able to travel overseas because of her dependency on ALC to service her prostheses. She believed that it would be now possible to have her prostheses serviced overseas by RML.

Some consumers appreciated RML holding clinics in Northland. One told the Commissioner that she was not told when RML would hold clinics in Northland. RML reported that it did not publicise its first Northland clinic "*as we had already accumulated a number* [of consumers] *to be seen*."

RML expressed disappointment that some consumers told their story to the news media before advising RML of their complaint. RML also advised the Commissioner that NZALB sent copies of one such article to a number of overseas prosthetic providers. RML stated that:

> "*We know that as a new company we have not yet got it all right, but the time spent having to justify ourselves constantly to complainants with questionable substance detracts from implementing the strategic development plan*."

8.11 Lack of Consultation

Consumers reported that there was inadequate consultation prior to the change in service provider. One person noted that by scheduling meetings during working hours, North Health was "*completely biased against those who demand the most from their limbs, those amputees who work*." It was also noted that North Health did not ask for input or submissions from the Amputee Society or ensure that the proposal received clinical input. Another consumer informed the Commissioner that North Health provided a clear explanation of the details surrounding the change in service provider at a public meeting.