



Parliament of New South Wales

# Committee on the Health Care Complaints Commission

Report 3/56 – October 2018

Review of the Health Care Complaints Commission Annual Report 2016/17



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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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# Membership

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## Chair's foreword

I am delighted to present the Committee's Review of the Health Care Complaints Commission Annual Report 2016/17, pursuant to our responsibilities under section 65 of the *Health Care Complaints Act 1993*. This is the Committee's third review during the 56th Parliament.

The Commission is continuing to see an increase in complaints and more complex complaints. We are concerned that this has impacted on the Commission's timeliness in dealing with complaints. It has also impacted on the Commission's ability to prioritise other work, such as expanding its outreach activities. We will continue to closely monitor these issues and the impacts on complainants in particular.

However, I commend the Commissioner and her staff for taking on widespread organisational change to better address these challenges. The Commission has developed and implemented a number of new initiatives, including in response to recommendations from our review of the Commission's 2015/16 annual report.

A significant project which the Commission delivered in July 2018 was the new online eComplaints portal which is expected to be user-friendly for stakeholders and streamline the complaints management process to improve timeliness.

The Commission has commenced a number of other improvements to how it deals with complaints; interacts with public and private hospitals; and liaises with complainants, including vulnerable groups. The Commission also intends to further develop its education programs.

Engagement with unregistered health practitioners is one area that we would like to see further progress in to ensure that these practitioners are aware of, and comply with, their obligations under the Code of Conduct for Unregistered Practitioners. We have therefore recommended that the Commission develops new initiatives to identify, target and engage with membership-based organisations for unregistered health practitioners. This is a significant area of public concern around safety of clients so we consider it is appropriate that the Commission develops further strategies for educating unregistered health practitioners.

We have not made any other recommendations at this stage. However, we look forward to the Commission's evaluation of the initiatives detailed in this report to determine whether they are having the desired impact in improving the Commission's processes, timeliness and engagement with stakeholders.

I would like to thank the Commissioner, her senior management team and all the staff of the Commission for their hard work and commitment to continuously improving our health care complaints system. I also thank the Committee Members for their engagement and interest and the Committee staff for their work.

**Mr Adam Crouch MP**  
Chair

# Recommendation

Recommendation 1 \_\_\_\_\_ 9

The Committee recommends that the Health Care Complaints Commission develops new initiatives to identify, target and engage with membership-based organisations for unregistered health practitioners.

# Chapter One – Complaint trends and management

## Managing the continued growth and complexity of complaints

- 1.1 We commend the Commission for developing and implementing a number of new initiatives and processes to address the challenges the Commission faces with the growth in complaints and their increasing complexity. We also support the lessons the Commission has taken from the pelvic mesh investigations to improve its work for future large-scale investigations.
- 1.2 While we note that the Commission has met and exceeded some performance targets, we remain concerned with the Commission's difficulties in assessing complaints in a timely manner and meeting other important targets. We expect to see the results of the Commission's initiatives in future years and their impact on improving timeliness and the complaints management process through an evaluation by the Commission of their effectiveness.

### Timeliness in dealing with complaints

- 1.3 In 2016-17, the Commission received 6,319 complaints, representing a four per cent increase on the previous year. This was less than the 15.4 per cent increase reported in 2015-16, when 6,075 complaints were received.
- 1.4 While the rate of increase declined, the long term trend is for the volume of complaints to continue to increase.<sup>1</sup> We heard that the Commission expects to receive around 7,000 complaints in 2017-18.<sup>2</sup>
- 1.5 Timeliness in dealing with complaints continues to be a significant and immediate challenge for the Commission. The Commission is required to assess all complaints within 60 days after receiving them.<sup>3</sup> In 2016-17, the Commission assessed 64.5 per cent of complaints within this timeframe, compared to 85.8 per cent in 2015-16.<sup>4</sup> We were informed that this is due to the growth in complaints and their increasing complexity.<sup>5</sup>
- 1.6 The Commission also had some other difficulties in relation to timeliness. For example, the Commission finalised 72.4 per cent of investigations within 12 months in 2016-17, a decrease from 82.8 per cent in 2015-16. However, the average time taken to complete an investigation remained fairly stable at 274 days compared to 275 days the previous year.<sup>6</sup>

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<sup>1</sup> HCCC Annual Report 2016-17, pp14, 15

<sup>2</sup> Transcript of evidence, 12 March 2018, p3

<sup>3</sup> *Health Care Complaints Act 1993*, section 22

<sup>4</sup> HCCC Annual Report 2016-17, p177

<sup>5</sup> Transcript of evidence, 12 March 2018, p2

<sup>6</sup> HCCC Annual Report 2016-17, p179

- 1.7 Likewise, 62.7 per cent of assessment decisions were sent to the parties within the 14 day statutory timeframe, compared to 88.7 per cent the previous year.<sup>7</sup>
- 1.8 However, the Commission exceeded other performance targets relating to timeliness. For example, the resolution service closed 71.3 per cent of matters within four months, which surpassed the Commission's target of 70 per cent.<sup>8</sup>
- 1.9 In 92.6 per cent of complaints, a resolution officer contacted the parties within 14 days of receiving the complaint, which exceeds the Commission's target of 90 per cent.<sup>9</sup>

### **Understanding and managing complexity**

- 1.10 An improved understanding of complaint complexity should help the Commission better respond to its increasing workload. We heard that in order to assess complaints in a more timely manner, the Commission intends to become more agile and responsive in terms of where and how it allocates its resources.<sup>10</sup>
- 1.11 New complaints are now triaged or assessed using a risk based approach to:
- ensure the most serious and complex complaints are identified early to allow the assessment team to focus on them
  - identify complaints suitable for early resolution or that would be more appropriately dealt with by a professional council
  - reduce duplication of work.<sup>11</sup>
- 1.12 The Commissioner explained that the triaging principle ensures that the effort that goes in to dealing with a complaint is proportionate to the seriousness and complexity of the complaint.<sup>12</sup>
- 1.13 The Commission is also taking steps to deal with the backlog of complaints. This includes assigning more staff to assess complaints when needed. Additional staff will also be assigned to prepare the decision letters that are sent to all parties when a complaint is finalised.
- 1.14 This more flexible approach should allow the Commission to assess a greater number of complaints and do it in a more timely manner. It aims to resolve more low level complaints earlier and will not detract from the Commission's focus on investigating and prosecuting the most serious complaints.<sup>13</sup>
- 1.15 Recent experience has taught the Commission a number of lessons about dealing with complex complaints. The Commission's investigation of transvaginal mesh

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<sup>7</sup> HCCC Annual Report 2016-17, p177

<sup>8</sup> HCCC Annual Report 2016-17, p178

<sup>9</sup> HCCC Annual Report 2016-17, p178

<sup>10</sup> HCCC Annual Report 2016-17, p25; Transcript of evidence, 12 March 2018, pp2, 16

<sup>11</sup> HCCC Annual Report 2016-17, p42

<sup>12</sup> Transcript of evidence, 12 March 2018, pp2, 16

<sup>13</sup> Transcript of evidence, 12 March 2018, pp2, 16

implants helped it to identify how it could better manage such lengthy and complex investigations in the future to:<sup>14</sup>

- ensure the assessment process immediately connects new complaints to investigations that are already dealing with the same issue
- identify and access expert witnesses quickly, particularly where knowledge and understanding about a treatment or device is evolving
- be realistic about the amount of time required to investigate and prosecute complex complaints as the Commission is also subject to the timeframes of other organisations it is working with and relevant courts and tribunals.<sup>15</sup>

### **Improving communication with complainants**

1.16 We heard that the focus of the Commission's newly established Customer Engagement and Resolution Division is to improve the Commission's responsiveness. It will analyse the experience of all parties to a complaint and use that information to improve the Commission's business practices and how it communicates with stakeholders.<sup>16</sup>

1.17 This includes how the Commission can communicate better in cases with multiple complaints about a single health practitioner or device. These complainants can often feel isolated and making them aware that other individuals have also raised similar concerns can assist them.<sup>17</sup>

1.18 We welcome the recognition that more can be done to provide clear and regular communication with complainants in these situations. However, as the Commissioner highlighted, any form of information sharing with multiple complainants about a common complaint needs careful management due to considerations such as privacy and consent.<sup>18</sup>

### **Staff training**

1.19 We acknowledge that working in health complaints management can be challenging and demanding. The Commission continues to recognise the importance of providing staff with resilience training so they can develop skills to constructively deal with complainants who may be distressed, angry or abusive as a result of their experience.<sup>19</sup>

1.20 As the Commission's processes adapt and change there will be an emphasis on ensuring all staff are equipped to work in the new environment. The Commissioner outlined the importance of providing case management skills to staff to help them review their workload and determine how matters should progress.<sup>20</sup>

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<sup>14</sup> Transcript of evidence, 12 March 2018, p9

<sup>15</sup> Transcript of evidence, 12 March 2018, p9

<sup>16</sup> HCCC Annual Report 2016-17, pp68, 69

<sup>17</sup> Transcript of evidence, 12 March 2018, pp15, 16

<sup>18</sup> Transcript of evidence, 12 March 2018, p16

<sup>19</sup> HCCC Annual Report 2016-17, p76

<sup>20</sup> HCCC Annual Report 2016-17, p76; Transcript of evidence, 12 March 2018, p16

## Using technology to improve complaints management processes

1.21 We recognise the Commission's work in developing a new eComplaints portal which is expected to be user-friendly for all stakeholders and streamline the complaints management process. We look forward to receiving an assessment from the Commission about whether the portal is improving timeliness in resolving complaints and meeting stakeholder needs or whether further enhancements are required.

### New eComplaints portal

1.22 The Commission's new online eComplaints portal is expected to be more efficient and responsive for both complainants and Commission staff.<sup>21</sup>

1.23 This initiative follows a recommendation from the Committee's review of the Commission's 2015-16 annual report that the Commission improve administrative processes and information and communication technology systems.<sup>22</sup> This was intended to assist with improving the Commission's timeliness in assessing and resolving complaints.

1.24 Previously, when complaints were lodged online, the backend processes to deal with them were manual, involving:

- printing and scanning the complaints to an electronic file, and
- entering relevant information into the electronic case management system.<sup>23</sup>

1.25 This process meant it could take 14 days before a complaint was allocated to an assessment officer and complainants could therefore wait several weeks before confirmation that their complaint was received.<sup>24</sup>

1.26 The Commissioner told us the new eComplaints portal will be a 'game changer'<sup>25</sup> in terms of improving timeliness. The Commission highlighted some of the main features of the system:

- an intuitive and user-friendly design to guide individuals through submitting a complaint
- information is automatically saved to the electronic case management system so staff do not need to scan documents or enter anything<sup>26</sup>
- the complainant can enter information in stages and then lodge a complaint at a later time so everything does not have to be ready at once, as was the case with the previous system<sup>27</sup>

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<sup>21</sup> Transcript of evidence, 12 March 2018, pp2, 3, 4

<sup>22</sup> Committee on the HCCC, Review of the HCCC Annual Report 2015-16

<sup>23</sup> Transcript of evidence, 12 March 2018, p3

<sup>24</sup> Transcript of evidence, 12 March 2018, p3

<sup>25</sup> Transcript of evidence, 12 March 2018, p2

<sup>26</sup> Transcript of evidence, 12 March 2018, pp3, 4

<sup>27</sup> Transcript of evidence, 12 March 2018, pp3, 8

- complainants can submit an unlimited number of documents, whereas the previous system only allowed two documents per complaint and further documents had to be sent via email<sup>28</sup>
- once a complaint is submitted, complainants can log into the system to track the progress of their complaint and find out the assessment officer's details<sup>29</sup>
- respondents can see the status of the complaint against them<sup>30</sup>
- the 14 professional councils can access all cases open for consultation so they can review the recommendation briefs and associated information<sup>31</sup>
- complaints can still be submitted manually, either by post or email.<sup>32</sup>

1.27 Commission staff were involved throughout the design and testing of the portal and their contributions helped map how processes could be improved.<sup>33</sup>

1.28 The eComplaints portal was expected to be fully operational by 1 July 2018 but went live in mid-July 2018 after some final technical issues were addressed.<sup>34</sup> The Commission expects that improvements and efficiencies will be noticeable very soon after the portal is implemented and staff are trained.<sup>35</sup>

### Local health districts resolving complaints

1.29 We heard that the Commission is satisfied with the ability of local health districts to resolve complaints locally and that the quality of complaints management processes and responses is consistent across all local health districts.<sup>36</sup>

1.30 The Commission is referring an increasing number of complaints back to the local health districts for resolution. In 2016-17 there were 549 complaints referred for local resolution. This represented a 32.3 per cent increase on the previous year.<sup>37</sup>

1.31 Following assessment, the Commission may refer a complaint to a local health district if the Commission considers this is the most suitable and effective way to address the complaint.<sup>38</sup> The Commission will only take this approach if the complaint can be resolved at a local level and both parties agree to use this process.<sup>39</sup>

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<sup>28</sup> Transcript of evidence, 12 March 2018, p3

<sup>29</sup> Transcript of evidence, 12 March 2018, pp3, 4

<sup>30</sup> Transcript of evidence, 12 March 2018, pp3, 4

<sup>31</sup> Transcript of evidence, 12 March 2018, p4

<sup>32</sup> Transcript of evidence, 12 March 2018, p8

<sup>33</sup> Transcript of evidence, 12 March 2018, p7

<sup>34</sup> Transcript of evidence, 12 March 2018, p8

<sup>35</sup> Transcript of evidence, 12 March 2018, p7

<sup>36</sup> HCCC Annual Report 2016-17, p11; Transcript of evidence, 12 March 2018, pp10, 14

<sup>37</sup> HCCC Annual Report 2016-17, p11

<sup>38</sup> HCCC, Referral for local resolution, viewed 31 August 2018,

<http://www.hccc.nsw.gov.au/Information/Information-For-Health-Consumers/Referral-for-local-resolution>

<sup>39</sup> *Health Care Complaints Act 1993*, section 26; HCCC, Referral for local resolution, viewed 31 August 2018,

<http://www.hccc.nsw.gov.au/Information/Information-For-Health-Consumers/Referral-for-local-resolution>

- 1.32 Examples of cases that may be referred to local resolution include inadequate communication with the patient and family members, long waiting times in emergency departments, quality of food and access to parking.<sup>40</sup>
- 1.33 When a complaint has been referred for local resolution, the Commission is no longer involved in the resolution process between the parties.<sup>41</sup>
- 1.34 The Commission has stated that resolving complaints at the local health district level can result in complainants receiving a faster and more direct response. This recognises that often it is the health service provider who is best placed to manage and resolve an issue.<sup>42</sup>
- 1.35 We heard that the Commission's outpost officers play an important role in working with the local health districts to improve how they interact with patients and their families. Officers are located in Dubbo, Lismore, Newcastle and Shellharbour. As they are often located at a public hospital, they are easily accessible to health district staff to provide advice and support when needed.<sup>43</sup>
- 1.36 The Commissioner informed us that local resolution of complaints is being embraced by the local health districts. She noted that, as with any process, further improvements can be made and Commission staff will continue to provide complaints management support to the health districts.<sup>44</sup>
- 1.37 In 2016-17, the Commission also began to put in place formal arrangements to receive feedback on the outcome of complaints referred to local health districts and professional councils for resolution. The Commission will analyse this information to help identify trends and patterns in complaints. This will also help the Commission to better understand the processes of these organisations and how they work to protect public health and safety.<sup>45</sup>
- 1.38 We acknowledge that the processes for the Commission to refer suitable complaints back to local health districts for resolution appear to be working well at this time. We will be interested in an update from the Commission after it has analysed feedback from the parties to these complaints.

## Complaints about private hospitals

- 1.39 In the Committee's review of the Commission's 2015-16 Annual Report, the Committee recommended that the Commission increase consultation and cooperation with private hospitals, among other things.<sup>46</sup>

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<sup>40</sup> HCCC, Referral for local resolution, viewed 31 August 2018, <http://www.hccc.nsw.gov.au/Information/Information-For-Health-Consumers/Referral-for-local-resolution>

<sup>41</sup> HCCC, Referral for local resolution, viewed 31 August 2018, <http://www.hccc.nsw.gov.au/Information/Information-For-Health-Consumers/Referral-for-local-resolution>

<sup>42</sup> HCCC Annual Report 2016-17, pp11, 30; Transcript of evidence, 12 March 2018, p10

<sup>43</sup> Transcript of evidence, 12 March 2018, pp10, 14

<sup>44</sup> Transcript of evidence, 12 March 2018, p10

<sup>45</sup> HCCC Annual Report 2016-17, pp11, 30

<sup>46</sup> Committee on the HCCC, Review of the HCCC Annual Report 2015-16

- 1.40 Increased engagement with private hospitals has been identified as a priority in the Commission's 2017-2020 strategic plan. The Commission intends to share knowledge and experiences in complaints management and advise private hospitals of systemic or operational issues. Options for local resolution of complaints will also be discussed as part of the process.<sup>47</sup>
- 1.41 In 2016-17, the Commission received 121 complaints about private hospitals, which represented a 7.1 per cent increase from the previous year. The 121 complaints accounted for 5.5 per cent of all complaints received about health organisations.<sup>48</sup> In comparison, public hospitals accounted for 45.9 per cent of all complaints.<sup>49</sup>
- 1.42 Most complaints about private hospitals were discontinued or discontinued with comments in 2016-17 – 44.3 per cent and 20.8 per cent respectively.<sup>50</sup> The remaining complaints were either resolved during the assessment process, referred to another body or referred to the Commission's resolution service.<sup>51</sup>
- 1.43 The Commission's annual report noted that private facilities are less inclined to agree to assisted resolution.<sup>52</sup> However, the Commission will work more closely with private health organisations to strengthen their understanding of the resolution service as a source of expert advice and assistance in managing difficult or complex complaints.<sup>53</sup>
- 1.44 The Commission's powers and actions to investigate a complaint apply equally to both the public and private hospital system. We heard that private health organisations are just as cooperative as those in the public health system in responding to the Commission's requests for information.
- 1.45 Following an investigation, the Commission can make recommendations to the organisation to improve their performance in areas such as staff training, record keeping or governance. The Commissioner advised us that private health organisations are very responsive to such recommendations.<sup>54</sup>
- 1.46 We note that private hospitals appear to be cooperating well with the Commission. We will be interested to monitor the initiatives the Commission has proposed in its strategic plan for engaging with private hospitals.

## Complaints about pharmacists

- 1.47 We were interested to receive an update about the kinds of complaints the Commission is receiving about pharmacists. This is an area we also reviewed in relation to the Commission's 2015-16 annual report as we were concerned by the

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<sup>47</sup> NSW Government Response, Review of the HCCC Annual Report 2015-16, 26 March 2018

<sup>48</sup> HCCC Annual Report 2016-17, pp18, 142

<sup>49</sup> HCCC Annual Report 2016-17, p142

<sup>50</sup> HCCC Annual Report 2016-17, p38

<sup>51</sup> HCCC Annual Report 2016-17, pp 37, 38

<sup>52</sup> HCCC Annual Report 2016-17, p38

<sup>53</sup> HCCC Annual Report 2016-17, p38

<sup>54</sup> Transcript of evidence, 12 March 2018, p6

increase in these complaints over the past few years. However, we are pleased that the rate of increase is lower this year.

- 1.48 There were 200 complaints about pharmacists in 2016-17 which was an increase of just 1.5 per cent since 2015-16. However, since 2012-13 there has been a 34.2 per cent increase in complaints about pharmacists.<sup>55</sup>
- 1.49 Serious complaints about pharmacists include the compounding of medications when there is no need for it because an approved product is available. These complaints also include cases where human growth hormone is dispensed without a prescription or there is unsupported large scale dispensing of Schedule 4D and Schedule 8 drugs. Complaints involving dispensing errors, where the wrong type or dose of medication was dispensed, are also referred to the Pharmacy Council.<sup>56</sup>
- 1.50 Other, less serious, complaints involve poor communication on the part of the pharmacist with a customer. We heard that this type of complaint is a good example of the kind that can be quickly resolved to the satisfaction of all parties.<sup>57</sup>
- 1.51 The Commission continues to work with the Pharmacy Council of NSW to identify specific pharmacists involved in complaints about pharmacies and to ensure timely and effective action is taken.<sup>58</sup>

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<sup>55</sup> HCCC Annual Report 2016-17, p16

<sup>56</sup> Transcript of evidence, 12 March 2018, pp12, 13

<sup>57</sup> Transcript of evidence, 12 March 2018, p13

<sup>58</sup> HCCC Annual Report 2016-17, p16

## Chapter Two – Outreach activities

### Overview of activities

- 2.1 In our review of the Commission's 2015-16 annual report, we recommended that the Commission maintain a strong commitment to community outreach activities, particularly to vulnerable community groups.<sup>59</sup>
- 2.2 We accept that the Commission has not expanded its outreach program as much as it would have liked because of the challenge of balancing resources and prioritising complaint handling.<sup>60</sup>
- 2.3 However, we understand that the introduction of the Customer Engagement and Resolution area will help prioritise these activities.<sup>61</sup> We look forward to hearing more about the strategies this area puts in place in due course and whether they are having the desired impact.
- 2.4 Examples of the Commission's current outreach activities include presenting to medical students and new medical practitioners and presenting to local health districts and community groups such as Indigenous and Probus clubs.<sup>62</sup> Information on the Commission and its services is presented on its website in various community languages, audio-visual options including subtitles and Auslan sign-language. It is also available through brochures in GP rooms, hospitals and the Ombudsman's office.
- 2.5 The Commission has previously used webinars to cover a range of issues for health practitioners, service providers and the general public. The Commissioner expressed more could be done to prioritise the identification of relevant topics and presenting them via technology as part of their outreach training.<sup>63</sup>

### Unregistered health practitioners

#### Recommendation 1

**The Committee recommends that the Health Care Complaints Commission develops new initiatives to identify, target and engage with membership-based organisations for unregistered health practitioners.**

- 2.6 The *Health Practitioner Regulation National Law (NSW)* is a national registration and accreditation scheme to regulate health practitioners and students studying in the health professions.<sup>64</sup>

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<sup>59</sup> Committee on the HCCC, Review of the HCCC Annual Report 2015-16

<sup>60</sup> Transcript of evidence, 12 March 2018, p11

<sup>61</sup> Transcript of evidence, 12 March 2018, p11

<sup>62</sup> Transcript of evidence, 12 March 2018, p13

<sup>63</sup> Transcript of evidence, 12 March 2018, pp10, 11

<sup>64</sup> *Health Practitioner Regulation National Law (NSW)*, viewed 23 July 2018, <https://legislation.nsw.gov.au/#/view/act/2009/86a/historical2017-09-13/part1>

- 2.7 An unregistered practitioner is any health practitioner who is not required to be registered under the above law or who is registered but provides services unrelated to their registration.<sup>65</sup>
- 2.8 There are a broad range of unregistered practitioners. Examples include naturopaths, massage therapists and dieticians.<sup>66</sup> There continues to be emerging categories of unregistered health practitioners, such as those providing extreme body modification services.
- 2.9 A code of conduct for unregistered health practitioners outlines the standards clients should expect from their provider such as delivering services in a safe and ethical manner; taking precautions for infection control; and not misinforming or financially exploiting clients, among other things.<sup>67</sup>
- 2.10 The Commission can assess, investigate and resolve complaints about a breach of conduct by unregistered health service providers.<sup>68</sup> Complaints about an unregistered practitioner also deliver the opportunity for the Commission to issue a public message or warning to alert practitioners about expected standards and warn health consumers on possible risks associated with the treatment.<sup>69</sup>
- 2.11 The Commission currently engages with unregistered health practitioners by:
- displaying its expectations for practitioners to comply with the Code of Conduct on its website,
  - liaising with membership-based organisations that represent different professions, and
  - attending, and presenting at, relevant national conferences.<sup>70</sup>
- 2.12 The Commission informed us that one of the challenges of targeting education to unregistered practitioners is that the Commission does not necessarily know who they are because there are such a broad range of professions that fall within this category. This makes it difficult to structure a generic program.<sup>71</sup>
- 2.13 However, the Commission highlighted that many of these practitioners have membership-based organisations where individuals might become accredited. The Commission suggested there was an opportunity to work more with these organisations to ensure their accreditation processes and standards are consistent

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<sup>65</sup> HCCC, Information for unregistered health practitioners, viewed 29 August 2018, <http://www.hccc.nsw.gov.au/Information/Information-for-Unregistered-Practitioners>

<sup>66</sup> HCCC, Information for unregistered health practitioners, viewed 29 August 2018, <http://www.hccc.nsw.gov.au/Information/Information-for-Unregistered-Practitioners>; Transcript of evidence, 12 March 2018, p6

<sup>67</sup> Code of Conduct for Unregistered Practitioners, August 2017, viewed 13 July 2018, <http://www.hccc.nsw.gov.au/Information/Information-for-Unregistered-Practitioners> or <https://www.legislation.nsw.gov.au/#/view/regulation/2012/311/sch3>

<sup>68</sup> HCCC, Information for unregistered health practitioners, viewed 29 August 2018, <http://www.hccc.nsw.gov.au/Information/Information-for-Unregistered-Practitioners>

<sup>69</sup> Transcript of evidence, 12 March 2018, pp6, 7

<sup>70</sup> Transcript of evidence, 12 March 2018, pp6, 7, 17

<sup>71</sup> Transcript of evidence, 12 March 2018, pp6, 7

with the Commission's expectations and those under the Code of Conduct for Unregistered Practitioners.<sup>72</sup>

- 2.14 We are concerned by the continuing emergence of new services offered to the public and the difficulties in locating any associated representative bodies. However, we believe it is important for the Commission to continue to find ways to engage with unregistered practitioners to ensure they are aware of, and comply with, their obligations.
- 2.15 We therefore recommend that the Commission develops new initiatives to identify, target and engage with membership-based organisations for unregistered health practitioners. Ensuring that any accreditation or other standards of such organisations meet the Commission's expectations and the Code of Conduct for Unregistered Practitioners may help to minimise future complaints and improve health care services for patients.

### **Training health practitioners**

- 2.16 The Commission provides education services to student health practitioners at universities and TAFEs within NSW. We were interested to learn that the Commission highlights the importance of good patient communication, open disclosure processes and dealing with complaints.<sup>73</sup> We recognise the long term benefits of this strategy to lower the level of complaints in these common complaint areas and therefore assist patients, health practitioners and the Commission.
- 2.17 During the 2016-17 period, Commission staff held 32 presentations and workshops across NSW. This included presenting to student nurses, doctors and dentists at TAFE and Universities across Sydney and the regional areas of Ballina, Lismore and Gosford.<sup>74</sup>
- 2.18 The Commission has strong relationships with the universities and would like to broaden its work with students, particularly to cover more universities and disciplines.<sup>75</sup>
- 2.19 While the Commission has run some training for existing practitioners in the private health system, the Commissioner identified this as an area for further development. We heard that the Commission is currently considering the most effective way to educate these practitioners in the roles and responsibilities of the Commission and best practice complaint management.<sup>76</sup>
- 2.20 We recognise the importance of the Commission's education programs in developing our future and current health providers and we strongly support the expansion of the Commission's work in these areas to ensure that practitioners

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<sup>72</sup> Transcript of evidence, 12 March 2018, p17

<sup>73</sup> Transcript of evidence, 12 March 2018, p16

<sup>74</sup> HCCC Annual Report 2015-16, p63

<sup>75</sup> Transcript of evidence, 12 March 2018, p16

<sup>76</sup> Transcript of evidence, 12 March 2018, p6

have the appropriate skills to care for patients and manage complaints, when they arise.

## Assisting vulnerable complainants

- 2.21 We were interested to hear how accessible the complaints process is for people with mental illness or who have an intellectual or cognitive impairment along with complainants in the Justice Health System.
- 2.22 It is a requirement of the *Health Care Complaints Act 1993* that all complaints are submitted in writing. The Commissioner outlined how vulnerable complainants can use the Commission's inquiry service to be guided through the process of making a complaint. Staff can explain how to make a complaint and also help people draft their complaint. This service and support can be provided over the telephone or in a face-to-face meeting.<sup>77</sup>
- 2.23 We also heard that complaints do not have to be made directly by patients themselves. This is particularly important in situations where a patient may be unable to communicate due to illness or injury. A third party, such as a family member, carer, or advocacy service can make the complaint on a patient's behalf.
- 2.24 For people in the Justice Health system, such as patients in the Forensic Hospital, there may be limited or no access to a computer. However, the Commission accepts written complaints by post.<sup>78</sup> The Commission also has a toll free phone number.<sup>79</sup>
- 2.25 In response to the Commission's 2015-16 annual report, the Committee recommended that the Commission maintain a strong commitment to vulnerable community groups.<sup>80</sup> The Commission acknowledged that it is always looking at other ways it can continue to reach out to vulnerable groups.<sup>81</sup> The NSW Government Response to the Committee's review of the Commission's 2015-16 annual report highlighted that the Commission's Customer Engagement and Resolution division will look at the experiences of vulnerable groups to improve the Commission's work in this area.<sup>82</sup>
- 2.26 We support any improvements the Commission can make to how it engages with vulnerable groups, particularly in ensuring that vulnerable groups are made aware that the Commission can assist them with making a complaint.

<sup>77</sup> Transcript of evidence, 12 March 2018, p8

<sup>78</sup> Transcript of evidence, 12 March 2018, pp8, 9

<sup>79</sup> HCCC, Contact us, viewed 5 September 2018, <http://www.hccc.nsw.gov.au/Contact-Us/Contact-Us2>

<sup>80</sup> Committee on the HCCC, Review of the HCCC Annual Report 2015-16

<sup>81</sup> Transcript of evidence, 12 March 2018, p9

<sup>82</sup> NSW Government Response, Review of the HCCC Annual Report 2015-16, 26 March 2018

## Chapter Three – Inter-governmental relations

### Relationships with State and Commonwealth agencies

- 3.1 We were encouraged to hear that the Commission has good relationships with various agencies including the Ministry of Health, NSW Fair Training and other State Boards. The Commission also has a separate Memorandum of Understanding for information sharing between the NSW Police Force, State Coroner and Australian Sports Anti-Doping Authority.<sup>83</sup>
- 3.2 While the Commission said its relationships were growing stronger,<sup>84</sup> the Commission had difficulties sourcing information from Commonwealth agencies.<sup>85</sup> This issue was previously raised by the Commission during the Committee's review of the Commission's 2015-16 annual report.<sup>86</sup>
- 3.3 During this current inquiry, the Commission spoke of numerous attempts to obtain information from the Commonwealth Therapeutic Goods Administration on a pelvic mesh device. The information was eventually sourced from a complainant via their Freedom of Information request in the United States.<sup>87</sup>
- 3.4 As a result of the challenges posed in accessing information from other agencies, a new national forum, Consumer Health Regulators Group, was created. The group is intended to improve data and intelligence sharing. We learnt that it will enable joint investigations and operations addressing national and international issues to progress at a faster rate.
- 3.5 The Consumer Health Regulators Group includes the Commission and other State regulators, Therapeutic Goods Administration, Australian Competition and Consumer Commission, Australian Health Practitioner Regulation Agency, Private Health Insurance Ombudsman and Fair Trading NSW.<sup>88</sup>
- 3.6 Inter-governmental relations is an area of interest to the Committee that we will continue to monitor. We were concerned about the difficulties the Commission faced in attempting to access information from the Therapeutic Goods Administration relating to an important investigation. We look forward to an update from the Commission about whether the Consumer Health Regulators Group has the expected impact of improving information sharing arrangements between the Commission and Commonwealth agencies.

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<sup>83</sup> Transcript of evidence, 12 March 2018, p12

<sup>84</sup> Transcript of evidence, 12 March 2018, p12

<sup>85</sup> Transcript of evidence, 12 March 2018, p10

<sup>86</sup> Transcript of evidence, 8 May 2017, p5

<sup>87</sup> Transcript of evidence, 12 March 2018, p9

<sup>88</sup> Transcript of evidence, 12 March 2018, p10

## Appendix One – Terms of Reference

This inquiry was self-referred. Under Part 4, section 65 (1) (c) of the *Health Care Complaints Act 1993*, the Committee is to examine each annual and other report made by the Health Care Complaints Commission and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report.

The broader function of the Committee are in section 65 of the *Health Care Complaints Act 1993*:

(1) The functions of the Joint Committee are as follows:

(a) to monitor and to review the exercise by the Commission of the Commission's functions under this or any other Act,

(a1) without limiting paragraph (a), to monitor and review the exercise of functions by the Health Conciliation Registry,

(b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of the Commission's functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,

(c) to examine each annual and other report made by the Commission, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,

(d) to report to both Houses of Parliament any change that the Joint Committee considers desirable to the functions, structures and procedures of the Commission,

(e) to inquire into any question in connection with the Joint Committee's functions which is referred to it by both Houses of Parliament, and to report to both Houses on that question.

(2) Nothing in this Part authorises the Joint Committee:

(a) to re-investigate a particular complaint, or

(b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or

(c) to reconsider the findings, recommendations, determinations or other decisions of the Commission, or of any other person, in relation to a particular investigation or complaint.

(3) The functions of the Joint Committee may be exercised in respect of matters occurring before or after the commencement of this section.

## Appendix Two – Witnesses

**Review of the Health Care Complaints Commission Annual Report  
2016/17  
Monday, 12 March 2018  
Jubilee Room, Parliament House**

<b>WITNESS</b>	<b>POSITION</b>	<b>ORGANISATION</b>
Ms Sue Dawson	Commissioner	Health Care Complaints Commission
Ms Karen Mobbs	Director of Proceedings	Health Care Complaints Commission
Mr Tony Kofkin	Executive Director, Complaint Operations	Health Care Complaints Commission
Mr Eddie Van Den Bempt	Chief Financial Officer & Director, Corporate Operations	Health Care Complaints Commission

## Appendix Three – Extract from Minutes

### MINUTES OF MEETING No 9

Tuesday 13 February 2018  
Room 1254, Parliament House

#### Members present

Mr Crouch MP (Chair), Mr Taylor (Deputy Chair), Mr Amato, Mr Evans, Mr Pearson, Mr Secord, Ms Washington

#### Officers in attendance

Elaine Schofield, Ben Foxe, Kieran Lewis

The Chair opened the meeting at 12.17pm.

#### 1. Minutes of meeting No 8

Resolved, on the motion of Mr Amato, seconded by Mr Secord:

That the minutes of Meeting No 8 held on 10 October 2017 be confirmed.

#### 2. Committee membership

The Chair welcomed Mr Evans to the Committee and noted that Mr Evans had replaced Ms Hodgkinson. The Chair noted his thanks for Ms Hodgkinson's service to the Committee.

#### 3. \*\*\*

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#### 4. Review of the HCCC Annual Report 2016-17

Resolved, on the motion of Mr Amato, seconded by Mr Pearson:

That, pursuant to the Committee's responsibilities under Part 4, section 65 (1) (c) of the *Health Care Complaints Act 1993*, the Committee conducts a review of the 2016-17 Annual Report of the Health Care Complaints Commission.

Resolved, on the motion of Mr Evans, seconded by Ms Washington:

That the Committee invite the Commissioner and her delegates to attend a public hearing at Parliament House on Monday 12 March 2018 to review the Commission's 2016-17 Annual Report.

#### 5. \*\*\*

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#### 6. Next meeting

The Chair closed the meeting at 12.26pm. The next meeting will be held at 8:50 am on 12 March 2018.

## **MINUTES OF MEETING No 10**

Monday 12 March 2018  
Jubilee Room, Parliament House

### **Members present**

Mr Crouch MP (Chair), Mr Taylor (Deputy Chair), Mr Evans, Mr Pearson, Mr Secord, Ms Washington

### **Apologies**

Mr Amato

### **Officers in attendance**

Jonathan Elliott, Jessica Falvey, Kieran Lewis, Millie Yeoh

The Chair opened the meeting at 8.52am.

### **1. Minutes of meeting No 9**

Resolved, on the motion of Mr Taylor, seconded by Ms Washington:

That the minutes of Meeting No 9 held on 13 February 2018 be confirmed.

### **2. \*\*\***

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### **3. Review of the 2016-17 Annual Report of the Health Care Complaints Commission**

#### **3.1 Witnesses**

Resolved, on the motion of Mr Evans, seconded by Mr Secord:

That the Committee invites the following witnesses to give evidence in relation to the Review of the 2016-17 Annual Report of the Health Care Complaints Commission:

- Ms Sue Dawson, Commissioner, Health Care Complaints Commission
- Ms Karen Mobbs, Director of Proceedings, Health Care Complaints Commission
- Mr Tony Kofkin, Executive Director, Complaint Operations, Health Care Complaints Commission
- Mr Eddie Van Den Bempt, Chief Financial Officer & Director, Corporate Operations, Health Care Complaints Commission.

#### **3.2 Media**

Resolved, on the motion of Mr Taylor, seconded by Ms Washington:

That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 12 March 2018 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.

#### **3.3 Transcript of evidence**

Resolved, on the motion of Mr Secord, seconded by Mr Evans:

That the corrected transcript of evidence given on 12 March 2018 be authorised for publication and uploaded on the Committee's website.

#### 3.4 Answers to questions on notice

Resolved, on the motion of Ms Washington, seconded by Mr Taylor:

That witnesses be requested to return answers to questions taken on notice within two weeks of the date on which the questions are forwarded to the witness, and that once received, answers be published on the Committee's website.

#### 3.5 Key issues – Annual Report of the Health Care Complaints Commission 2016-17

The Committee noted the briefing note, *Key issues: Annual Report of the Health Care Complaints Commission 2016-17*.

#### 3.6 Public hearing

The public hearing commenced at 9.01am. Witnesses and the public were admitted. The Chair welcomed the witnesses and the gallery.

The following witnesses representing the Health Care Complaints Commission were affirmed and examined:

- Ms Sue Dawson, Commissioner
- Ms Karen Mobbs, Director of Proceedings.

The following witnesses representing the Health Care Complaints Commission were sworn and examined:

- Mr Tony Kofkin, Executive Director, Complaint Operations
- Mr Eddie Van Den Bempt, Chief Financial Officer & Director, Corporate Operations.

The Chair ruled a question by Mr Secord to be out of order. Mr Secord dissented from the Chair's ruling. Witnesses and the public gallery withdrew.

The Committee went into private session at 10.10am.

The Committee deliberated.

Question put, that the Chair's ruling be upheld. The Committee divided.

Ayes: Mr Crouch, Mr Taylor, Mr Evans

Noes: Mr Secord, Ms Washington, Mr Pearson

There being an equal number of votes, the Chair exercised his casting vote pursuant to s 70(6) of the *Health Care Complaints Act 1993* and voted in favour of the motion.

Question resolved in the affirmative.

The witnesses and public gallery were readmitted and the hearing recommenced at 10.20am.

Evidence concluded, the witnesses withdrew. The hearing concluded at 11.00am.

#### **4. Next meeting**

The Chair closed the meeting at 11.00am. The next meeting will be held on a date to be determined.

#### **UNCONFIRMED MINUTES OF MEETING No 15**

Thursday 25 October 2018  
Room 1043, Parliament House

#### **Members present**

Mr Crouch (Chair), Mr Griffin (Deputy Chair), Mr Amato, Mr Evans, Mr Pearson, Ms Washington, Mr Secord

#### **Officers in attendance**

Elaine Schofield, Jessica Falvey, Kieran Lewis, Jennifer Gallagher

The Chair opened the meeting at 4:07 pm.

#### **1 Minutes of meetings no 13 and 14**

Resolved, on the motion of Mr Secord, seconded by Mr Griffin:

That the minutes of meeting no 13 held on 1 August 2018 and meeting no 14 held on 2 August 2018 be confirmed.

#### **2 Committee membership**

The Chair advised the Committee of changes in membership:

Mr Griffin appointed from 20 September 2018 in place of Mr Taylor, discharged (Legislative Assembly Votes and Proceedings no 192, 20 September 2018, entry 27).

#### **3 to 6 \*\*\***

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#### **7 Review of the HCCC's Annual Report 2016-17 – Consideration of Chair's draft report**

The draft report having been previously circulated:

The Chair advised that in his foreword he would like to thank committee staff for their work in preparing the report.

Resolved, on the motion of Mr Griffin, seconded by Ms Washington:

That the draft report be considered *in globo*.

Resolved on the motion of Mr Evans, seconded by Mr Amato:

That the draft report be the report of the Committee, and that it be signed by the Chair and presented to the House.

Resolved on the motion of Mr Pearson, seconded by Mr Secord:

That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.

Resolved on the motion of Mr Amato, seconded by Ms Washington:  
That, once tabled, the report be posted on the Committee's website.

**8 Next meeting**

The Chair closed the meeting at 4:16 pm.

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