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Committee on the Health Care Complaints Commission

Report 1/57 – November 2020

Review of the Health Care Complaints Commission's 2017-18 and 2018-19 annual reports



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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 pleased to present the Committee's Review of the Health Care Complaints Commission's 2017-18 and 2018-19 annual reports. Conducting annual report reviews is part of our role under the *Health Care Complaints Act 1993*.

A challenge for the Commission this year was the impact of the COVID-19 pandemic. We heard that the Commission took the opportunity to speed up technological reforms that were already planned. Staff were given equipment and IT support to work from home, allowing them to keep managing complaints. The Commission also moved its outreach and communication to video and teleconference platforms. While there were some challenges, we found that this approach helped limit the impact on the Commission's complaint handling performance.

COVID-19 also affected usual complaint trends. The Commission received 20 per cent fewer complaints during the early months of the pandemic, as people stayed at home and attendance at medical facilities dropped. Before this, complaints had continued to increase, growing by 3 per cent in 2018-19.

The Commission has continued to use technology to manage complaints. A new website was launched this year, making it easier for users to get information about making a complaint. We were pleased to hear that the website is now more accessible for users with a disability.

The eComplaints portal launched in 2018 has improved efficiency and reduced the time taken to assess complaints. We heard that 40 per cent of complaints are now made through this online portal. The portal also made it easier for Commission staff to move to working from home during COVID-19 restrictions.

The Committee has previously taken an interest in complaints about unregistered health practitioners. We heard that the Commission has worked with member-based organisations to improve awareness of, and compliance with, the code of conduct for unregistered practitioners. The Commission also identified the occupations that were most complained about and ran workshops and presentations for these groups.

This strategy to boost engagement with unregistered practitioners is particularly important given the growth in complaints about these practitioners. We will continue to monitor the Commission's work in this area.

Finally, we note that proposed changes to the Health Care Complaints Act are before the Parliament. These changes, if passed, will implement some of the previous Committee's recommendations and strengthen the Commission's powers.

The proposed changes include a wider power to issue public warnings and make prohibition orders. The Commission would also be able to investigate complaints about organisations alleged to have breached the code of conduct for relevant health organisations, which are defined as health organisations and persons other than public health organisations, hospitals and private facilities. These changes would give the Commission greater powers in relation to unregistered health practitioners.

I acknowledge the previous Committee's work in making recommendations which led to some of the changes proposed by the Health Legislation (Miscellaneous Amendments) Bill.

I want to thank the Commissioner, her senior management team and Commission staff for working to improve our health care complaints system and meeting the challenges raised by COVID-19. I also thank Committee members for their engagement and interest, and Committee staff for their work.

Gurmesh Singh MP

Chair

Findings

Finding 1 _____ 1

The Health Care Complaints Commission's response to COVID-19 has limited the pandemic's impact on its complaint handling performance.

Issues discussed in the report

Response to COVID-19 pandemic

Finding 1

The Health Care Complaints Commission's response to COVID-19 has limited the pandemic's impact on its complaint handling performance.

- 1.1 The Committee was pleased to hear that the Health Care Complaints Commission's performance wasn't affected by the COVID-19 pandemic. We heard that the Commission took the opportunity to accelerate planned technological reforms to improve its performance.¹
- 1.2 There was a reduction in the number of complaints received by the Commission in the early months of the COVID-19 pandemic. Complaints received in March and April 2020 were 20 per cent lower than expected for that time of year.²
- 1.3 We heard the decrease is likely due to people staying at home because of the restrictions in place, and fewer people needing to attend medical facilities like emergency rooms.³
- 1.4 The Commission received 445 COVID-19 related complaints between March and June 2020. Ms Sue Dawson, Health Care Complaints Commissioner told the Committee that very few of the complaints raised serious issues:
- ... only 3 per cent or 4 per cent of those complaints ... required us to take action in relation to referring matters to the professional councils or investigation—so a very small number with significant issues to deal with.... It was a very small proportion where there were considered to be either serious issues or clinical departures or consequences ...⁴
- 1.5 Ms Dawson noted the majority of COVID-19 related complaints were about access to health services, confusion around testing, and GP telehealth consultations.⁵
- 1.6 The Commission reported the pandemic has not impacted on complaint performance. Due to the safety measures and restrictions, the Commission gave staff the opportunity to work from home. Up to 90 per cent of staff agreed to either work partly or completely from home. They were given appropriate equipment, technology and IT support.⁶

¹ Ms Sue Dawson, Commissioner, Health Care Complaints Commission, [Transcript of evidence](#), 31 July 2020, p2

² Ms Dawson, Transcript of evidence, p2

³ Ms Dawson, Transcript of evidence, p2

⁴ Ms Dawson, Transcript of evidence, p3

⁵ Ms Dawson and Mr Tony Kofkin, Executive Director, Complaint Operations, Health Care Complaints Commission, Transcript of evidence, pp3-4

⁶ [Answers to questions taken on notice](#), Health Care Complaints Commission, 12 June 2020, pp2 & 17

- 1.7 We heard that staff working remotely have continued to receive and manage complaints but working remotely has presented challenges. They don't receive physical copies of complaints that are posted to the office. Clients are advised of other ways to register their complaint or are assisted if they are unable to submit online. There are also delays in receiving medical records, reports and expert advice, which can delay finalising complaints. Staff regularly contact all parties involved in a complaint and keep them advised of deadlines.⁷
- 1.8 The ability to conduct face-to-face meetings with clients and professional councils and do community outreach has been lost due to pandemic restrictions. The Commission has shifted its communication to be via phone and/or video conference.⁸
- 1.9 We heard the most significant impact of the restrictions has been the suspension of in-person hearings at the NSW Civil and Administrative Tribunal. These hearings, conducted to resolve more serious and complex matters, have been deferred until later in 2020 or 2021. The Commissioner said that this delay will impact on new matters being listed.⁹

Complaint handling and resolution

Managing complaints

- 1.10 The long-term trend of increasing complaints received by the HCCC continued, with a rise of 12.1 per cent during 2017-18 and 3 per cent in 2018-19. Ms Dawson told the Committee that the trend for annual increases in health care complaints is seen across Australia and internationally.¹⁰
- 1.11 The rise in complaints made to the HCCC can be due to various reasons, including:
- NSW's increasing population
 - an aging society who are more frequently using the healthcare system
 - the growing demand for healthcare services
 - new research and technology offering more treatments to the public
 - the emergence of alternative therapies
 - increasing awareness by consumers of health services and reporting options if they are not happy with a service or treatment.
- 1.12 Complaints may be a result of one, or a combination of these factors.¹¹

⁷ Answers to questions on notice, pp2 & 17

⁸ Answers to questions on notice, p3

⁹ Answers to questions on notice, pp2 & 3

¹⁰ Health Care Complaints Commission, [Annual Report 2018-19](#), p15; Ms Dawson, Transcript of evidence, p6

¹¹ Answers to questions on notice, p4

1.13 The Commission acknowledged it was important to resolve complaints early. Working with complainants and service providers is valuable as dealing with an issue promptly can prevent it escalating into a formal complaint.

1.14 Some of the approaches used by the Commission include:

- helping people to raise their issue with the healthcare provider directly
- working with service providers to avoid repeat complaints
- providing outreach to service providers, medical students and the public on constructive communication
- liaising with professional associations to maintain high standards and responsibility in their industry and its members
- giving public warnings on potentially risky procedures and practices.¹²

Serious and high priority complaints

1.15 We wanted to know how the Commission manages serious complaints that involve life altering injury or death. The Commission told us that on receipt of a complaint, a triage process is done to evaluate how serious it is. The assessment looks for critical events like severe injury and death, and potential threats to public health and safety. Complaints assessed as serious are subject to a full formal investigation. Those about a patient suffering death, major trauma or experiencing life changing conditions are given priority and classified 'Category A'.¹³

1.16 Any potential risks that are identified are overseen and monitored at the executive level. An alert is placed on the healthcare provider which identifies any other issues raised against them. Weekly meetings allow investigation officers to seek updates and direction on complex and significant issues.¹⁴

1.17 The Committee notes that regular updates are given to all parties throughout the investigation, particularly to the complainant who must be contacted at least once a month.

Timeliness of investigations

1.18 The timeliness of the Commission's investigations has been examined by the Committee during previous annual report reviews.

1.19 We heard that a review by the Commission in 2017-18 examined how the timeliness of investigating complaints could be improved. After the review, the Commission introduced new practices for managing investigations. Leadership and oversight of investigations was strengthened and the Commission increased

¹² Answers to questions on notice, p4

¹³ Answers to questions on notice, p9

¹⁴ Answers to questions on notice, pp8-9

staffing levels and recruited people with a diverse range of investigation skills and experience.¹⁵

1.20 New methods included an emphasis on early planning of investigations, having more reviews throughout the investigation and a focus on finalising the oldest and most complex cases.¹⁶

1.21 The Committee is pleased to note that these changes, and the completion of longstanding cases, have improved timeliness. The Commission told us that between July 2019 and March 2020, 360 investigations were completed – an increase of 78 per cent compared to the same period in 2018-19. Average days taken to complete an investigation decreased to 315 days, compared to an average of 335 days in 2018-19.¹⁷

1.22 This remains an area of interest and we will continue to monitor the time taken by the Commission to complete investigations.

Reviews of complaint assessments

1.23 Once a decision has been made on a complaint the Commission may receive a request to review that decision. The Commission aims to assess and complete 90 per cent of these requests within 6 weeks. During the 2018-19 period only 35.3 per cent of complaints were finalised within that time.¹⁸

1.24 We were told that various factors impact on the time taken to review a decision, and the review process is as complex and time consuming as assessing the original complaint. All of the original material and evidence needs to be thoroughly reassessed along with any additional documentation sought from the complainant. The Commission may also need to seek further medical expertise and liaise with the relevant professional council.¹⁹

1.25 In 2018, the Commission changed their processes for reviewing complaints. They told us that this has improved the completion rate, with 93.4 per cent of reviews received between November 2019 and April 2020 being completed.²⁰

1.26 However, we share the Commission's concern that the time taken to review complaint assessments is still an issue. The Commission told us that the current 6 week goal for reviews may not be realistic and a new target is being considered as part of current strategic planning.²¹

1.27 The Commissioner noted that a new target of 60 days, rather than 42 days is being considered. She told us that the timeframe for a full review of an

¹⁵ Answers to questions on notice, p11

¹⁶ Answers to questions on notice, pp11-12

¹⁷ Answers to questions on notice, p12

¹⁸ Health Care Complaints Commission, [Annual Report 2018-19](#), p179

¹⁹ Answers to questions on notice, pp10-11; Ms Dawson, Transcript of evidence, p9

²⁰ Answers to questions on notice, p10

²¹ Answers to questions on notice, pp10-11

assessment should be the same as for the original complaint assessment, to allow a thorough review of all the relevant material.²²

Impact of practitioners that generate multiple complaints

- 1.28 In 2017-18, the Commission received 2,553 complaints about medical practitioners. Within this group of complaints:
- 2,051 individual practitioners were identified
 - 301 medical practitioners were the subject of two or more complaints
 - 13 were the focus of more than five complaints
 - three practitioners had been the subject of more than ten complaints.²³
- 1.29 Throughout 2018-19, the Commission received 2,377 complaints about medical practitioners, with:
- 1,924 being identified
 - 287 medical practitioners being the subject of two or more complaints
 - 11 practitioners had five or more complaints made about them
 - two practitioners were the subject of ten or more complaints with the Commission receiving 32 complaints about one practitioner.²⁴
- 1.30 Multiple health care providers can be listed in complaints about a particular incident or organisation. This generates an individual complaint about each health care provider which can allow a full, individual assessment of their role in the complainant's experience.²⁵
- 1.31 We heard that multiple complaints about one health care practitioner are more demanding on the Commission's resources, particularly if they reveal serious risks.²⁶
- 1.32 When the HCCC receives a complaint about a healthcare provider, any previous or current complaints about that person will be included as part of the triage assessment. Each complaint is separately assessed, recorded and reviewed.²⁷
- 1.33 If a complaint is investigated and the matter goes to trial, cases may be prosecuted as one matter or separately. Multiple complaint prosecutions require more resources and longer timeframes, as a large amount of evidence needs to

²² Answers to questions on notice, pp10-11; Ms Dawson, Transcript of evidence, p9

²³ Answers to questions on notice, p2

²⁴ Answers to questions on notice, p3

²⁵ Answers to questions on notice, p2

²⁶ Answers to questions on notice, p25

²⁷ Ms Dawson, Transcript of evidence, p11; Answers to questions on notice, p25

be gathered and more hearing days are needed for multiple witnesses and experts.²⁸

Complaints about Aboriginal Health Services

- 1.34 The Committee notes that while there was a drop in the number of complaints about Aboriginal Health Services over both reporting periods, this may not reflect on service delivery in this area.²⁹
- 1.35 The Commission told us that 'Aboriginal Health Service' refers to community health facilities that specifically offer health services to Aboriginal persons. It doesn't refer to service delivery to Aboriginal people generally.³⁰
- 1.36 The Commission also noted that the small number of complaints received about Aboriginal Health Services makes it difficult to draw conclusions. They highlighted a rise in complaints about Community Health Services over the reporting period and noted this broader reporting category could include complaints about Aboriginal health services.³¹
- 1.37 The Commissioner told us about a planned meeting with the Aboriginal Women's Consultation Network to discuss the Commission's accessibility and responsiveness in meeting the Indigenous community's needs. She noted that this meeting was delayed due to COVID-19.³²
- 1.38 The Committee will continue to take an interest in the Commission's engagement with the Indigenous community.

Using technology to improve complaints management

- 1.39 The Committee heard that the Commission has updated its website, and plans to implement a roadmap to improve processes. We were also pleased to hear that the eComplaints portal has enabled more efficient complaint handling.
- 1.40 The Commission's website is now more user friendly. Before its launch, the website was tested to ensure it met users' needs. The new website is more accessible and understandable for all users, particularly those with a disability. Information on the process for making a complaint is clearer. The website also allows for new information to be easily seen.³³
- 1.41 We heard that around 40 per cent of complaints to the Commission are now made through the eComplaints portal. The Commission said it has been valuable in improving efficiency and reducing the time taken to assess complaints.³⁴
- 1.42 Other benefits offered by the eComplaints portal are a drop in time to delegate complaints, from up to two weeks when done manually to within two days. This

²⁸ Answers to questions on notice, pp25-26

²⁹ Ms Dawson, Transcript of evidence, p6

³⁰ [Answers to questions taken on notice](#), Health Care Complaints Commission, 12 June 2020, p18

³¹ Answers to questions on notice, p18

³² Ms Dawson, Transcript of evidence, p6

³³ Answers to questions on notice, p16

³⁴ Answers to questions on notice, p16

allows earlier contact with complainants and gives staff more time to meet targets such as completing assessments within 60 days.³⁵

- 1.43 The Commission also noted the eComplaints portal allowed for a smoother transition to working remotely during COVID-19 restrictions.³⁶
- 1.44 While user feedback does not tend to include the eComplaints portal, users have reported a positive experience with the system. They said it was easy to upload documents, they appreciated getting an acknowledgement of receipt and the improved timeliness.³⁷
- 1.45 With the employment of a new Director, Technology and Systems Transformation, the Commission is aiming to use technology to improve its procedures and implement a roadmap to transform its technology and systems.
- 1.46 The Technology Vision, Strategy and Roadmap outlines the IT transformation over the next two to three years. As part of this, the Commission's skills and technology will be reviewed and expanded. New tools and software systems will be introduced to help with investigations and reporting. Options for staff working remotely will be addressed with the move towards virtual consultations and cloud-based options.³⁸
- 1.47 The Commission said the roadmap was almost complete in March 2020, but COVID-19 related challenges delayed it, as resources were directed to staff working remotely. The roadmap has been revised to incorporate and meet the challenges raised by COVID-19.³⁹

Performance of the Inquiry Service and Resolution Service

- 1.48 The Commission has reviewed and redesigned its Inquiry Service and Resolution Service. The Committee was pleased to hear that this work has had some positive results.
- 1.49 The Inquiry Service is the first point of contact for callers to the Commission with general inquires and questions about making a complaint.
- 1.50 While Resolution Officers previously addressed inquiries, the Commission has now introduced two designated Client Service Officers. Their role is to provide general information, advise clients on making a complaint, and help those who can't submit a complaint themselves. An Inquiry Coordinator oversees the Client Service Officers.⁴⁰
- 1.51 With the redesign of the Inquiry Service, new performance measures were implemented to assess:

³⁵ Answers to questions on notice, p16

³⁶ Answers to questions on notice, p16

³⁷ Answers to questions on notice, p17

³⁸ Answers to questions on notice, p18

³⁹ Answers to questions on notice, p17; Ms Dawson, Transcript of evidence, p10

⁴⁰ Answers to questions on notice, p20

- information provided and tailored for the caller
- support provided to the caller, including strategies for them to contact the healthcare provider, or contacting the provider on their behalf
- whether the client was referred to another body, if appropriate
- whether a complaint form was sent to the caller, or prepared for those who needed more help
- if no further action is possible, such as cases where contact details are not provided in written or online complaints, and the issue is not able to be resolved due to the complainant not being able to be contacted.⁴¹

1.52 We heard that the Commission received fewer inquiries during 2018-19. One reason for this may be that information answering common questions can now be found on the eComplaints portal. Users can read about the Commission's role and powers, how to make a complaint and how to direct a complaint to their health service provider.⁴²

1.53 Another factor is the move away from inmates of correction facilities contacting the Inquiry Service to raise issues and ask questions. The recent introduction of an inquiry service within Justice Health means inmates can seek this information from Justice Health.⁴³

1.54 The Commission's Resolution Service has also been reviewed and changes made to improve its performance. The Commission told us that resolution outcomes and timeliness have improved during 2019-20.⁴⁴

1.55 The changes producing a positive impact include:

- streamlining functions and responsibilities of Resolution Officers to allow them to focus on resolution matters
- Resolution Officers having more exposure to rural and regional resolution matters, to increase skills and experience and better manage resources
- further training of Resolution Officers to increase specialised skills
- enhanced triaging processes to identify and refer matters for resolution
- a focus on earlier engagement with complainants
- closer attention to case management to help timely resolution of matters.⁴⁵

⁴¹ Answers to questions on notice, pp20-21

⁴² Answers to questions on notice, p22

⁴³ Ms Dawson, Transcript of evidence, p5

⁴⁴ Answers to questions on notice, p27

⁴⁵ Answers to questions on notice, pp26-27

Local resolution of complaints

- 1.56 More complaints were referred to Local Health Districts (LHDs) for local resolution during the reporting period. We asked if there had been any issues with this process.
- 1.57 The Commission commented that LHDs have been consistently co-operative and supportive of receiving matters for local resolution. They noted that complaints referred for local resolution are usually about less serious matters, and that LHDs appreciate the benefits of the process in getting a timely resolution. LHDs have also acknowledged this can prevent ongoing or more challenging complaints.⁴⁶
- 1.58 LHDs have to maintain effective complaints management under the National Safety and Quality Health Service (NSQHS) Standards. NSQHS Standards include a Clinical Governance standard. The Commission observed that this means LHDs have complaints management policies and guidelines, which make them well-placed to manage complaints referred for local resolution.⁴⁷
- 1.59 The Commission also pointed out that LHDs must give them written advice about the outcomes of matters referred for local resolution. This includes documenting the resolution process. The Commission stated that this can identify actions that facilitated satisfactory complaint resolutions, and changes and improved processes arising from complaints. The Commissioner told us that this encourages stronger frontline complaint management.⁴⁸
- 1.60 The Commission noted that complaints about mental health services are often more complex and sensitive. Processes to confirm complaints about mental health services are appropriate for local resolution have been introduced. This ensures complex complaints are appropriately referred, and complainants get the best possible outcome.⁴⁹

Expert clinical advice

- 1.61 We heard that in the 2017-18 reporting period the Commission began a review of its Internal Medical Advisors. This included looking at the way expert advice was accessed and used in resolving complaints, and the impact this had on the timeliness of their work.⁵⁰
- 1.62 As a result of the review, the Commission converted three part-time Internal Medical Advisor positions into permanent positions and relabelled them Clinical Advisors. This is to stress their focus on clinical aspects of complaints.⁵¹
- 1.63 The Commission also told us that during 2018-19 its panel of expert clinical advisors (experts) was refreshed.⁵²

⁴⁶ Answers to questions on notice, p24

⁴⁷ Answers to questions on notice, pp24-25

⁴⁸ Answers to questions on notice, p25; Ms Dawson, Transcript of evidence, p10

⁴⁹ Answers to questions on notice, p25

⁵⁰ Answers to additional questions, Health Care Complaints Commission, 8 September 2020, p5

⁵¹ Answers to additional questions, p5

⁵² HCCC, 2018-19 Annual Report, November 2019, p85

- 1.64 These experts give information on specialised areas of expertise. They provide written or verbal opinions on whether a respondent's conduct and/or clinical care and treatment meets accepted standards of clinical practice. The Commission then makes a recommendation drawing on this advice. Expert opinion holds significant weight in investigations involving complex clinical matters, but doesn't determine the action taken by the Commission.⁵³
- 1.65 Training/re-training of new and existing experts is done regularly, to add experts in emerging or high-demand specialties, and to remove those that aren't available. We heard that more experts were added to the panel because of increases in the volume and complexity of complaints. The Commissioner explained that this means the Commission continues to get timely, high quality, expert clinical advice.⁵⁴
- 1.66 The Commission told us these changes have improved access and quality of clinical advice. This has resulted in improved assessment performance and better timeliness. In 2017-18 just over half of complaints were assessed within the 60-day target, and there was a 72 day average for complaint assessment. In 2018-19 79 per cent of assessments were completed within 60 days, with an average assessment time of 48 days.⁵⁵

Complaints about unregistered health practitioners

- 1.67 A focus area in the Commission's annual report for the 2018-19 period was the increasing number of complaints about unregistered health practitioners. The Committee has previously discussed the way the Commission engages with unregistered practitioners.⁵⁶
- 1.68 We are pleased to see that the Commission has continued its work in this area. In particular, they established a stakeholder engagement position in late 2018. An immediate project was to work with member-based organisations of unregistered practitioners to better promote awareness of and compliance with the *Code of Conduct for Unregistered Practitioners*.⁵⁷
- 1.69 The Commission explained that they analysed the past five years of complaints about unregistered practitioners. This identified 25 occupations with the highest percentage of complaints. The Commission then established a program of workshops and presentations for professional associations and membership organisations in these occupations. These workshops were delivered to a range of groups. The Commission reported that evaluations found 100 per cent of workshop attendees found them helpful, with a 94 per cent satisfaction rate across all feedback questions.⁵⁸

⁵³ Answers to questions on notice, p24; Ms Dawson, Transcript of evidence, p6

⁵⁴ Answers to questions on notice, p24; Ms Dawson, Transcript of evidence, p7

⁵⁵ Answers to additional questions, p6

⁵⁶ Committee on the Health Care Complaints Commission, [Review of the HCCC's annual report 2016/17](#), October 2018, p10

⁵⁷ Answers to questions on notice, p12

⁵⁸ Answers to questions on notice, p12

- 1.70 As well as face-to-face engagement, the Commission distributed material in newsletters/communiques from professional associations to their members. These covered the expectations of unregistered practitioners and the role of the Commission to assess complaints about their members.
- 1.71 The Commission also told us that as well as engaging with members, they had discussions with professional associations about the types of issues that could be brought to their attention (about their members), and options for referring matters to the Commission where appropriate.⁵⁹
- 1.72 The Committee notes the marked increase in complaints about unregistered practitioners, particularly counsellors/therapists, over the 2018-19 reporting period.⁶⁰
- 1.73 The Commission explained that several factors may be driving the increase, including:
- Increased number and types of services provided by unregistered practitioners.
 - The type and content of advertising, especially on social media platforms.
 - Increased media attention on adverse outcomes for service providers in this area, especially cosmetic treatments, naturopathy, and body modification.⁶¹
- 1.74 We also heard that increased regulation and better understanding of the ability to make complaints about these practitioners contributes to an increase in complaints. The Commission noted that unregistered practitioners are not subject to a formal oversight system. They emphasised that approximately half the complaints they received for these practitioners had elements of misconduct, which may be a consequence of this.⁶²
- 1.75 The Commission noted that, for counsellors/therapists, increasing proliferation and advertising of informal counselling and therapy modes – life coaching, energy rebalancing, dream therapy, and various types of spiritual guidance – has driven the growth in complaints for this particular sub-category.⁶³
- 1.76 The Commission told us that it's difficult to confirm the prevalence of complaints about unregistered health practitioners, as there is no way to establish the numbers of practitioners and the services they provide. They also said they will continue to educate the community and professional organisations about this area of the Commission's jurisdiction.⁶⁴

⁵⁹ Answers to questions on notice, p12

⁶⁰ Answers to questions on notice, p7; Health Care Complaints Commission 2018-19 Annual Report, pp33-34

⁶¹ Answers to questions on notice, pp12-13

⁶² Answers to questions on notice, p7

⁶³ Answers to questions on notice, p7

⁶⁴ Answers to questions on notice, p13

- 1.77 The Committee asked the Commission about the development of a National Code of Conduct for unregistered health practitioners, including the working group.
- 1.78 Unregistered practitioners in NSW have been subject to the *NSW Code of Conduct for Unregistered Practitioners* since August 2008.⁶⁵ In June 2013, Health Ministers from each jurisdiction agreed in principle to strengthen state and territory complaints mechanisms, developing a national code-regulation regime, which includes:
- A single National Code, to be made by regulation in each state and territory, with powers to enforce the Code, including investigating breaches and issuing prohibition orders.
 - A national, web-based register of prohibition orders.
 - Mutual recognition of prohibition orders across all states and territories.⁶⁶
- 1.79 The Commission told us that the National Working Group responsible for coordinating administration of the National Code has undertaken to support jurisdictions implementing the Code, including organising administration, establishing common frameworks for collecting data and performance reporting, and administering the national web-based register of prohibition orders. They have also created explanatory materials.⁶⁷

Amendments to the Health Care Complaints Act

- 1.80 The Committee heard that proposed reforms to the *Health Care Complaints Act 1993* could assist the Commission in its work. We heard that the Ministry of Health consulted the Commission and other stakeholders to determine if any changes are needed to the Act. The Commission said that several amendments would be pursued, but noted that the process had been delayed due to COVID-19.⁶⁸
- 1.81 The Committee noted the public health warning on anti-vaccination campaigners issued by the Commission during the reporting period. We asked if stronger powers were needed in this area. The Commission told us that the Ministry of Health was considering its ability to make prohibition orders against specific organisations and to name individual providers in public warnings, as well as penalties for breaching orders. The Commission acknowledged that these powers could have applications for their specific public health warning about anti-vaccination campaigners.⁶⁹

⁶⁵ Answers to questions on notice, p13; Health Care Complaints Commission 2018-19 Annual Report, p27

⁶⁶ Answers to questions on notice, p13

⁶⁷ Answers to questions on notice, p13

⁶⁸ Answers to questions on notice, pp13-14; Ms Dawson, Transcript of evidence, p10

⁶⁹ Answers to questions on notice, p15

- 1.82 The Committee has previously recommended that the HCCC increase cooperation with private health care providers. Engaging with private hospitals was a priority in the Commission's 2017-2020 strategic plan.⁷⁰
- 1.83 We heard that the Commission continues to provide assisted resolution processes to all health facilities, but legislation governing local resolution limits it to public health organisations.⁷¹
- 1.84 The Commissioner told us that that being able to refer complaints for local resolution in private hospitals would be helpful for the Commission's work. She noted that it has helped build stronger frontline management of complaints in public hospitals:
- What we find is that in the public hospital system we have an ability to connect with public hospitals and say, "We really want you to sit down with this patient or this family and address their issues in real time. Will you do that? Do you commit to doing that?" They are very cooperative and responsive, and I think it delivers a better result. I would like to have that same result for folks in the private health sector as well.⁷²
- 1.85 After the Committee's hearing with the HCCC, the Health Legislation (Miscellaneous Amendments) Bill 2020 was introduced into Parliament. The Bill proposes the following changes relating to the Commission:
- Extending the HCCC's power to issue public warnings against treatments or health services to specific health practitioners and health service organisations.
 - Extending the framework for prohibition orders against individual unregistered health practitioners to relevant health organisations.
 - Giving the HCCC the power to receive, assess and investigate complaints against organisations alleged to have breached the code of conduct for relevant health organisations. If an organisation is found to have breached the code and be a risk to the public, the HCCC would be able to issue an order or interim order, prohibiting the organisation from providing a health service, or imposing conditions on the provision of health services.
 - Giving the HCCC powers of entry, and the power to require documents to be produced and questions to be answered when assessing compliance with prohibition orders and recommendations.
 - Providing that the HCCC doesn't need a warrant to enter non-residential premises. A warrant would only be needed to enter residential premises if the occupier doesn't consent.

⁷⁰ [Review of the Health Care Complaints Commission Annual Report 2015/16](#), report 2/56, October 2017, p10; [Review of the Health Care Complaints Commission Annual Report 2016/17](#), report 3/56, October 2018, pp6-7; [NSW Government Response, Review of the HCCC Annual Report 2015-16](#), 26 March 2018, pp2-4; Answers to questions on notice, p15

⁷¹ Answers to questions on notice, p15

⁷² Ms Dawson, Transcript of evidence, p10; Answers to questions on notice, p15

- Allowing the HCCC to refer a complaint to a private health facility for local resolution after the complaint has been assessed.⁷³

1.86 We are pleased to note that the Bill seeks to implement recommendations made by the Committee in its report on cosmetic health service complaints in NSW. We will monitor the impact of the amendments contained in the Bill and their effect on the Commission's powers once enacted.

⁷³ Legislative Assembly, [Debates](#), 23 September 2020, Brad Hazzard (Minister for Health)

Appendix One – Committee's functions

Under 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 functions of the Committee, set out in section 65 of the Act, 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

31 July 2020

Parliament House, Jubilee Room, Sydney, NSW

Witness	Position and Organisation
Ms Sue Dawson	Commissioner, Health Care Complaints Commission
Mr Tony Kofkin	Executive Director, Complaint Operations, Health Care Complaints Commission

Appendix Three – Extracts from minutes

MINUTES OF MEETING No 3

1:15 pm, 14 November 2019

Banksia Room

Members present

Mr Singh, Dr McGirr, Mr Amato, Mr Secord

Apologies

Ms Washington, Ms Williams, Mr Pearson

Officers in attendance

Dora Oravec, Kieran Lewis, Jennifer Gallagher, Ilana Chaffey

1. Confirmation of minutes

Resolved on the motion of Dr McGirr, seconded Mr Amato, that the minutes of the meeting of 22 August 2019 be confirmed.

2. ***

3. Review of the Health Care Complaints Commission's 2017-18 and 2018-19 annual reports

Resolved on the motion of Mr Secord, seconded by Dr McGirr, that the Committee:

- conducts a review of the 2017-18 and 2018-19 Annual Reports of the Health Care Complaints Commission
- invites the Commissioner and her staff to give evidence at a public hearing at Parliament House on a date to be confirmed in March 2020.

4. ***

5. Next meeting

The meeting adjourned at 1:18 pm to a date and time to be determined.

MINUTES OF MEETING No 4

9:32 am, 12 May 2020

Room 1136 and videoconference

Members present

Mr Singh, Dr McGirr, Mr Amato, Ms Washington, Mr Pearson (via videoconference)

Ms Williams (room 1136)

Apologies

Mr Secord

Officers in attendance

Dora Oravec, Jacqueline Linnane (room 1136); Clara Hawker, Kieran Lewis, Jenny Gallagher (via videoconference)

1. Confirmation of minutes

Resolved on the motion of Mr Amato, seconded Dr McGirr, that the minutes of the meeting of 4 November 2019 be confirmed.

2. ***

3. ***

4. Written questions on notice – Health Care Complaints Commission

The Committee discussed sending written questions to the Health Care Complaints Commission.

Resolved on the motion of Mr Pearson, seconded Ms Williams, that the Committee sends the agreed written questions on notice to the Health Care Complaints Commission, and asks that the answers be provided within four weeks of the questions being sent to the Commission.

5. ***

6. Next meeting

The Committee agreed to meet before the end of August 2020. The meeting adjourned at 9:41 am until a date and time to be determined.

MINUTES OF MEETING No 5

10.03am, 29 June 2020

Room 1254 and videoconference

Members present

Mr Singh, Dr McGirr, Mr Amato, Mr Secord, Mr Pearson, Ms Williams (via videoconference)
Mr Secord (room 1254)

Apologies

Ms Washington

Officers in attendance

Dora Oravec, Clara Hawker, Jenny Gallagher, Ilana Chaffey (room 1254); Kieran Lewis (via videoconference)

1. Confirmation of minutes

Resolved on the motion of Mr Pearson, seconded Dr McGirr, that the minutes of the meeting of 12 May 2020 be confirmed.

2. Review of Health Care Complaints Commission's 2017-18 and 2018-19 annual reports

2.1 Answers to written questions

The Committee noted the receipt of answers to written questions from the Health Care Complaints Commission.

Discussion ensued.

Resolved on the motion of Ms Williams, seconded by Dr McGirr, that the answers to written questions from the Health Care Complaints Commission be published on the Committee's webpage.

2.2 Public hearing

The Committee agreed to invite the Commissioner and her staff to give evidence at a public hearing at Parliament House on a date to be confirmed in July 2020.

3. ***

4. Next meeting

The meeting adjourned at 10.17am to a date and time to be determined.

MINUTES OF MEETING No 6

10.00am, 31 July 2020

Jubilee Room

Members present

Mr Singh, Dr McGirr, Mr Secord, Mr Pearson, Ms Williams, Ms Washington, Mr Secord

Apologies

Mr Amato

Officers in attendance

Dora Oravec, Clara Hawker, Jenny Gallagher, Ilana Chaffey, Kieran Lewis

1. Deliberative meeting

1.1 HCCC's quarterly performance report – April to June 2020

The Committee noted the receipt of the Health Care Complaints Commission's fourth quarterly performance report for 2019-20.

1.2 Media orders

Resolved on the motion of Ms Williams, seconded Mr Secord: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 31 July 2020, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the Legislative Assembly.

1.3 Questions taken on notice and supplementary questions

Resolved on the motion of Ms Williams, seconded Ms Washington: That witnesses be asked to provide answers to questions taken on notice and supplementary questions within 1 week after the questions are forwarded to them.

1.4 ***

2. Public hearing – Review of Health Care Complaints Commission's 2017-18 and 2018-19 annual reports

Witnesses were admitted. The Chair opened the hearing at 10.08am and made a short opening statement.

Ms Sue Dawson, Commissioner, Health Care Complaints Commission, was affirmed and examined.

Mr Tony Kofkin, Executive Director, Complaint Operations, Health Care Complaints Commission, was sworn and examined.

The public hearing concluded at 11.20am.

3. Deliberative meeting

The Committee commenced a deliberative meeting at 11.25 am.

3.1 Confirmation of minutes

Resolved on the motion of Dr McGirr, seconded Mr Secord: That the minutes of the meeting of 29 June 2020 be confirmed.

3.2 ***

3.3 Publication orders

Resolved, on the motion of Mr Secord, seconded Ms Williams: that the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

3.4 Acceptance of tendered document

The Committee accepted Plymouth University's report titled *Understanding the rise in Fitness to Practise complaints from members of the public*.

4. General business

The Committee agreed to write to the HCCC seeking more information on:

- Central versus regional complaint handling and resolution services, especially for serious complaints.
- The use of internal medical experts, including for nursing.
- Ways to measure the HCCC's organisational culture and staff wellbeing.

5. Next meeting

The meeting adjourned at 11.40am to a date and time to be determined during October.

UNCONFIRMED MINUTES OF MEETING No 8

1:42 pm, 22 October 2020

Room 1043

Members present

Mr Singh, Dr McGirr, Ms Williams, Mr Secord, Ms Washington, Mr Amato, Mr Pearson

Officers in attendance

Clara Hawker, Dora Oravec, Kieran Lewis, Jenny Gallagher, Ilana Chaffey

1. Confirmation of minutes

Resolved on the motion of Dr McGirr, seconded Mr Secord, that the minutes of the meeting of 15 October 2020 be confirmed.

2. ***

3. Review of the Health Care Complaints Commission's 2017-18 and 2018-19 annual reports

3.1 Response to additional questions

Resolved on the motion of Ms Williams, seconded Mr Amato, that the response to additional questions from the Health Care Complaints Commission be published on the Committee's webpage.

3.2 Consideration of Chair's draft report

Resolved on the motion of Mr Pearson, seconded Ms Williams:

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

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

That, once tabled, the report be posted on the Committee's website.

4. General business

The Committee agreed to write to the Health Care Complaints Commission seeking a copy of the:

- report from the audit of clinical advice that is being conducted through the Commission's internal audit program; and
- Commission's Culture Plan.

5. Next meeting

The meeting adjourned at 1:54 pm until a date and time to be determined.