



Parliament of New South Wales

Committee on the Health Care Complaints Commission

Report 2/57 – August 2021

Review of the Health Care Complaints Commission 2019-20 annual report



New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Joint Committee on the Health Care Complaints Commission.

Review of the Health Care Complaints Commission 2019-20 annual report / Parliament of New South Wales, Committee on the Health Care Complaints Commission. [Sydney, N.S.W.] : the Committee, 2021. – 1 online resource ([22] pages). (Report ; no. 2/57)

Chair: Gurmeh Singh, MP.

“August 2021”.

ISBN 9781925214994

1. New South Wales. Health Care Complaints Commission. Annual report, 2019-20.
2. Health facilities—Complaints against—New South Wales.
3. Medical care—New South Wales—Evaluation.
4. Professional standards review organizations (Medicine)—New South Wales.
 - I. Title.
 - II. Singh, Gurmeh.
 - III. Series: New South Wales. Parliament. Joint Committee on the Health Care Complaints Commission. Report ; no. 2/57.

362.1068 (DDC22)

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”.

Contents

Membership	ii
Chair’s foreword.....	iii
Recommendations	v
Issues discussed in the report	1
Complaint management.....	1
Managing the increase in complaints	1
COVID-19 related complaints and inquiries.....	2
Dealing with vaccine misinformation.....	3
Stakeholder engagement and oversight	4
Engagement with Aboriginal communities and organisations	4
Increase in complaints about pharmacies and pharmacists	5
Evolving scope of practice in dentistry	8
Organisation and governance	9
Culture and staffing	9
Review of internal processes	10
Appendix One – Committee's functions	11
Appendix Two – Witnesses	12
Appendix Three – Extracts from minutes.....	13

Membership

Chair	Mr Gurmeh Singh MP, Member for Coffs Harbour
Deputy Chair	Dr Joe McGirr MP, Member for Wagga Wagga
Members	Ms Kate Washington MP, Member for Port Stephens The Hon Mrs Leslie Williams MP, Member for Port Macquarie The Hon Lou Amato MLC The Hon Walt Secord MLC (until 23 June 2021) The Hon Mark Pearson MLC The Hon Greg Donnelly MLC (from 23 June 2021)
Contact details	Committee on the Health Care Complaints Commission Parliament House 6 Macquarie Street SYDNEY NSW 2000
Telephone	(02) 9230 2521
E-mail	hccc@parliament.nsw.gov.au
Website	http://www.parliament.nsw.gov.au/healthcarecomplaints

Chair's foreword

I am pleased to present the Committee's Review of the Health Care Complaints Commission's 2019-20 annual report. Conducting annual report reviews is part of our role under the *Health Care Complaints Act 1993*.

In this reporting period, the Commission has undertaken several initiatives to improve its systems, processes, and engagement strategies. The Commission has maintained its complaint handling performance during the COVID-19 pandemic. Its outreach and co-regulatory work is also helping to identify and track emerging areas of concern in the NSW health care landscape.

An ongoing area of interest for the Committee has been the low volume of complaints from Aboriginal and Torres Strait Islander people. We commend the Commission on its new strategy for engaging with Aboriginal communities and health organisations. The Commission has begun implementing a strategy to better support Aboriginal people in making complaints, and to improve Aboriginal communities' awareness of the Commission. We recommend that the Commission continue to build on these early initiatives, and provide tangible results from this new engagement strategy in its next annual report.

The Commission received 7.6 per cent more complaints in 2019-20 than in 2018-19, which follows a long-term trend of year-on-year increases in overall health care complaints. The Commission made several process and system improvements that have benefitted its complaint handling performance, such as introducing a new triage and intake team. Among several positive outcomes, the average time taken to assess complaints decreased from 48 days in 2018-19 to 39 days in 2019-20. We were also pleased to hear that the total number of complaints assessed by the Commission increased for the third consecutive year.

The COVID-19 pandemic continues to affect complaint trends, yet most COVID-related complaints in the reporting period were not serious in nature. Many reflected the public's unfamiliarity with new rules and protocols for accessing health services, particularly during the early months of the pandemic. However, the Commission noted the likely challenges of regulating vaccine misinformation, when false or misleading statements are made in public by people who are not health care providers.

The Commission also reported several areas of concern related to registered practitioners. For example, the number of complaints received about pharmacists and pharmacies increased significantly. Many of these complaints were serious in nature, such as breaches of legislation governing drugs of addiction and other restricted substances. While many of these complaints were driven by the investigatory work of the Pharmaceutical Regulatory Unit (NSW Ministry of Health), we were pleased to hear that the Commission is collaborating with other regulators and professional councils to provide education and development programs for pharmacists, so that some of the issues behind the rise in complaints can be addressed.

Another area of interest is that dentistry's scope of practice is evolving, such that some dentists are performing cosmetic procedures that do not involve the teeth or mouth (carboxytherapy, for example). At present, these new cosmetic procedures have not resulted in the Commission receiving many complaints, however, it will continue to work with professional councils and national boards to ensure that practitioners seeking to do cosmetic work are properly trained. This trend remains an area of interest for the Committee.

In terms of organisation and governance, there are several areas that the Committee will continue to monitor. While it performed well in the People Matter Employee Survey, the Commission is working to improve its performance in some topic areas. We look forward to hearing more about the Commission's work in this area. Finally, we note that the Commission is undertaking a review of some of its internal processes for clinical advice and data collection.

I want to thank the Commissioner, her senior management team and Commission staff for working to improve our health care complaints system, and their ongoing diligence in responding to new and evolving challenges in the health care system. I also thank Committee members for their engagement and interest, and Committee staff for their work.

Gurmesh Singh

Chair

Recommendations

Recommendation 1 _____ 4

That the Health Care Complaints Commission include in its annual reporting the outcomes of its strategies to engage with Aboriginal communities.

Issues discussed in the report

Complaint management

Managing the increase in complaints

- 1.1 We note that there was a 7.6 per cent increase in complaints received by the Commission over the reporting period. A total of 7852 complaints were received during 2019-20, compared to 7299 in 2018-19. This follows a long-term trend of year-on-year increases in total complaints received.¹
- 1.2 Over the reporting period the Commission was able to again assess more complaints than it received, with 8023 complaints assessed. This is the third consecutive year that the Commission has achieved this result.² The Commission attributes this to process and system improvements. In particular, the Commission told us that they created a triage and intake team within their assessments division. We heard that this team is able to quickly and accurately review complaints and make initial decisions about how they should be managed. Mr Tony Kofkin, Executive Director, Complaint Operations, said the Commission recognises the importance of addressing and resolving formal complaints in a timely manner.³ We commend this work and hope to see it continue in the next reporting period.
- 1.3 The Commissioner, Ms Sue Dawson, told us that the Commission's increased focus on resolving complaints is 'working well'.⁴ There were 8023 complaints assessed during the reporting period, a 3.7 per cent increase on the previous year. A total of 8054 complaints were finalised and closed. We heard that 34.1 per cent of complaints assessed were referred to the Commission's Resolution Service, which finalised 18.7 per cent more resolutions than during 2018-19.⁵
- 1.4 The Resolution Service usually deals with complaints that do not need formal investigation but raise important issues, or have significantly impacted the complainant. Many referrals involve issues of communication breakdown or loss of trust between the parties. The Commission reviewed its Resolution Service in 2018-19 and this resulted in changes to its staffing and operation. We were pleased to see that this has continued to have a positive impact on its capacity to address sensitive and complex complaints.⁶
- 1.5 An ongoing area of interest for the Committee is the timeliness of complaint assessment. We heard that the Commission continues to assess complaints in an

¹ Health Care Complaints Commission, [Annual Report 2019-20](#), p 15; Committee on the Health Care Complaints Commission, [Review of the Health Care Complaints Commission's 2017-18 and 2018-19 annual reports](#), report 1/57, Parliament of New South Wales, November 2020, p 2.

² *Annual Report 2019-20*, p 11.

³ Mr Tony Kofkin, Executive Director, Complaint Operations, Health Care Complaints Commission, [Transcript of evidence](#), 19 March 2021, p 8.

⁴ Ms Sue Dawson, Commissioner, Health Care Complaints Commission, [Transcript of evidence](#), 19 March 2021, p 1.

⁵ *Annual Report 2019-20*, pp 8, 50; Ms Dawson, [Transcript of evidence](#), p 1.

⁶ *Annual Report 2019-20*, p 50; Ms Dawson, [Transcript of evidence](#), p 1.

'ever more timely way', with 89 per cent of complaints resolved within the 60 day statutory deadline. The target is 100 per cent of complaints resolved within 60 days. We were pleased to hear that the average time taken to assess complaints has reduced from 48 days in 2018-19 to 39 days in 2019-20.⁷

- 1.6 We were concerned about a noticeable increase in the number of complaints referred to the Director of Proceedings (228 in 2019-20, and 168 in 2018-19).⁸ The Commission explained that there are two factors causing the increase. The first and main factor is that more complaints are subject to investigation, and this leads to a corresponding increase in the number of complaints referred for prosecution.
- 1.7 Secondly, Mr Kofkin mentioned that proactive regulation and activity (ie. inspections) by the Ministry of Health and other professional bodies can also identify serious matters. These matters are more likely to be referred to the Director of Proceedings. For example, we noted a substantial increase in investigations into pharmacies and pharmacists over the reporting period, which we heard was directly linked to an increase in inspections carried out by the Pharmaceutical Regulatory Unit.⁹ We discuss this issue in more detail below.
- 1.8 We asked whether there was a difference in the volume of complaints received between metropolitan and rural or regional areas of NSW. The Commission said that two-thirds of the complaints they receive relate to metropolitan areas, and one-third to rural areas. They told us that comparing the profile of complaints has not highlighted any areas of concern.¹⁰

COVID-19 related complaints and inquiries

- 1.9 The Committee has previously examined the Commission's response to the COVID-19 pandemic, and found that the pandemic had not impacted the Commission's complaints handling performance.¹¹
- 1.10 We wanted to know about the volume and nature of COVID-19 related complaints that were received during the reporting period. The Commission reported a total of 457 COVID-19 related complaints in 2019-20, and approximately 900 complaints since the beginning of the pandemic (January 2020 to March 2021).¹²
- 1.11 COVID-related complaints tended to focus on registered, rather than unregistered practitioners. The complaints were made about a broad range of issues, but they were generally not serious in nature. Complaints often related to telehealth consultations, changes in rules for elective surgery, the conduct of COVID-19 testing, whether some health providers and businesses were following public health guidelines, and complaints about airport triaging and hotel

⁷ Ms Dawson, Transcript of evidence, p 1; *Annual report 2019-20*, pp 11, 194

⁸ *Annual Report 2019-20*, pp 9, 13.

⁹ Mr Kofkin, Transcript of evidence, p 10.

¹⁰ Ms Dawson, Transcript of evidence, p 11.

¹¹ *Review of the Health Care Complaints Commission's 2017-18 and 2018-19 annual reports*, Finding 1.

¹² *Annual Report 2019-20*, p 16; Ms Dawson, Transcript of evidence, 19 March 2021, p 7.

quarantine.¹³ The Commissioner noted that most of the complaints 'were really a function of people coming to understand what the COVID world was'.¹⁴

- 1.12 The number of inquiries made to the Commission increased by just over six per cent in 2019-20, and the Commissioner noted that many of these additional inquiries related to COVID-19.¹⁵ The Commission managed this increase by providing Inquiry Service staff with scripts for answering common questions, directing callers to more appropriate health bodies, and increasing the number of staff attending to calls during busy periods. We heard that, as the availability of public health information improved during the pandemic, the number of inquiries stabilised and demand on the Inquiry Service did not increase.¹⁶
- 1.13 We heard that the Commission does not anticipate an unsustainable increase in complaints during the next reporting period. The Commission has projected that complaints will increase in line with the overall trend: an increase of 8 per cent, or an anticipated total of 8500 complaints in 2020-21.¹⁷
- 1.14 The Commissioner said that it will be 'difficult to predict' whether the COVID-19 vaccination rollout will impact on complaint numbers, but she hoped that adequate consumer information will help reduce the volume of complaints made to the Commission.¹⁸
- 1.15 The Committee will continue to monitor the nature and volume of COVID-19 related complaints as the vaccination rollout continues.

Dealing with vaccine misinformation

- 1.16 The Committee asked about the Commission's powers to respond to false or misleading public information, particularly in relation to the COVID-19 vaccination rollout.
- 1.17 The Commission advised that its powers are focused on the delivery of health services. Its jurisdiction on public misinformation depends on whether the person or organisation making false or misleading claims is a health care provider. The Commission can only take action against health organisations and registered and unregistered health providers who promote misinformation that may impact public health and safety.¹⁹
- 1.18 The Commission does not, on the other hand, have jurisdiction to issue warnings or prohibition orders against people who are not offering a health service, for example public figures who convey anti-vaccination information.²⁰

¹³ Ms Dawson, Transcript of evidence, pp 4-5; Mr Kofkin, Transcript of evidence, p 5.

¹⁴ Ms Dawson, Transcript of evidence, p 4.

¹⁵ *Annual Report 2019-20*, p 80; Ms Dawson, Transcript of evidence, p 7.

¹⁶ *Annual Report 2019-20*, p 81; Ms Dawson, Transcript of evidence, pp 8, 11.

¹⁷ Ms Dawson, Transcript of evidence, p 7.

¹⁸ Ms Dawson, Transcript of evidence, p 7.

¹⁹ Ms Dawson, Transcript of evidence, pp 5-6.

²⁰ Ms Dawson, Transcript of evidence, p 6.

- 1.19 The Committee also asked whether it would be helpful for the Commission to have powers to take action against individuals who endorse false health information, but are not health practitioners. We were informed that the Commission considers its powers to be 'adequate and consistent with the Commission's focus on the risks posed to health and safety if they arise in the delivery of health services'.²¹
- 1.20 The Commission noted that their powers complement those of other NSW and Commonwealth agencies that provide health and consumer protections. Other bodies with powers to take action against persons promoting false and deceptive information include: the NSW Ministry of Health, Australian Competition and Consumer Commission, NSW Fair Trading, Therapeutic Goods Administration, and the Australian Health Practitioner Regulation Agency.²²
- 1.21 The Commission also noted that its powers to issue public warnings and prohibition orders have been strengthened in recent years, particularly as a consequence of the Health Legislation (Miscellaneous Amendments) Bill 2020. The Committee noted the introduction of this legislation in its previous annual report review.²³
- 1.22 The Committee will continue to monitor the Commission's role in responding to public vaccination misinformation.
- 1.23 In 2019-20, the Commission's investigations resulted in 27 prohibition orders and public statements issued against unregistered practitioners. Seven public warnings are currently in place about health organisations, including two related to anti-vaccination campaigners. No new public warnings were issued to health organisations in the reporting period.²⁴

Stakeholder engagement and oversight

Engagement with Aboriginal communities and organisations

Recommendation 1

That the Health Care Complaints Commission include in its annual reporting the outcomes of its strategies to engage with Aboriginal communities.

- 1.24 The Committee has previously examined the low volume of complaints made by Aboriginal and Torres Strait Islander people, which may not be consistent with their experiences of health services.²⁵
- 1.25 We heard that the Commission is working with Aboriginal organisations to better understand the barriers that prevent Aboriginal people from using the complaint

²¹ Answers to supplementary questions, Health Care Complaints Commission, 15 April 2021, p 7.

²² Answers to supplementary questions, pp 5, 7.

²³ Mr Kofkin, Transcript of evidence, p 6; Answers to supplementary questions, pp 6-7; Review of the Health Care Complaints Commission's 2017-18 and 2018-19 annual reports, pp 13-14.

²⁴ *Annual Report 2019-20*, pp 61, 89, 185.

²⁵ *Review of the Health Care Complaints Commission's 2017-18 and 2018-19 annual reports*, p 6.

system. The Commission has undertaken consultations with organisations, such as the Aboriginal Women's Consultation Network, for this reason.²⁶

- 1.26 The Commissioner told us that there is low awareness of the Commission in the Aboriginal community, and this contributes to a low volume of complaints. She also noted that more complaint-making support could be provided to Aboriginal communities.²⁷
- 1.27 We previously heard that the Commission is developing a strategy to improve its engagement with Aboriginal communities and organisations.²⁸ The Commission is forming partnerships with the Aboriginal Health and Medical Council, and the Centre for Aboriginal Health within the NSW Ministry of Health.²⁹
- 1.28 The Committee heard that Commission staff are receiving cultural competency training from the Centre for Aboriginal Health (CAH). The Commission is also working with the CAH to 'identify strategies that can be adopted at the service delivery level to drive systems improvement'.³⁰ These strategies include finding 'points of connection' between the Commission and the CAH, in order to share information on service weaknesses and identify patterns in complaints.³¹ We look forward to hearing more detail about this at a later date.
- 1.29 The Commission is also working with local health districts, particularly with their Aboriginal Liaison Officers and Aboriginal Health Coordinators. This work aims to improve awareness of the Commission as an independent complaints body, and to establish 'community-based dialogue about health services'.³²
- 1.30 The Commission is also in the process of forming a partnership with the Aboriginal Health and Medical Council, to improve its engagement with Aboriginal-controlled health services.³³
- 1.31 The Committee was pleased to note that the Commission has begun implementing its strategy to improve awareness and use of the Commission's services in Aboriginal communities. We also note that the COVID-19 pandemic has impacted the Commission's ability to meet with external organisations and communities. The Committee recommends that the Commission include in its annual reporting the outcomes of its strategies to engage with Aboriginal communities.

Increase in complaints about pharmacies and pharmacists

- 1.32 A particular area of interest for us was a significant increase in the number of complaints received about pharmacists and pharmacies. There was a 30.9 per cent increase in the number of complaints about pharmacists over the reporting

²⁶ Ms Dawson, Transcript of evidence, p 13.

²⁷ Ms Dawson, Transcript of evidence, p 13.

²⁸ Ms Dawson, [Transcript of evidence](#), 31 July 2020, pp 5-6.

²⁹ Ms Dawson, Transcript of evidence, pp 13-14.

³⁰ Ms Dawson, Transcript of evidence, p 13.

³¹ Ms Dawson, Transcript of evidence, p 14.

³² Ms Dawson, Transcript of evidence, p 14.

³³ Ms Dawson, Transcript of evidence, p 14.

period. There were 356 complaints received in 2019-20, compared to 272 in 2018-19. We also noted a 78.5 per cent increase in complaints about pharmacies, with 116 in 2019-20, compared to 65 received in the previous year.³⁴

- 1.33 There were 10 335 pharmacists registered in NSW during the reporting period, comprising about 4.5 per cent of all registered practitioners in the state. The Commission noted that prior to 2018-19, about 5 per cent of the total complaints received about registered practitioners were about pharmacists. Since that time, complaints about this cohort have increased.³⁵
- 1.34 In 2019-20, complaints about pharmacists comprised 6.9 per cent of the total complaints received about registered practitioners. This is up from 5.7 per cent in 2018-19. Additionally, we heard 20 per cent of the complaints about pharmacists were referred for investigation. These complaints were serious in nature as they were about illegal practices, breaches of guidelines and laws, or dispensing issues. As a group, the proportion of pharmacist-related complaints referred for investigation is the highest across all health practitioners: over four times higher than medical practitioners.³⁶
- 1.35 This area is high-risk and highly regulated, and we were particularly concerned that complaints related to breaches of legislation governing restricted substances, especially Schedule 8 drugs (including the Opioid Treatment Program), and to improper or illegal compounding.³⁷
- 1.36 We asked the Commission to provide us with more detail on the profile and analysis of these complaints, especially those related to Schedule 8 drugs. In response, the Commission said the increase in complaints is 'overwhelmingly' being driven by the work of the Pharmaceutical Regulatory Unit (PRU), and not because there has been an uptick in professional misconduct.³⁸
- 1.37 Schedule 8 drugs are drugs of addiction, such as amphetamines, codeine and oxycodone.³⁹ They are strictly regulated by the *Poisons and Therapeutic Goods Act 1966* (NSW). The Opioid Treatment Program (OTP) permits registered pharmacists to provide enrolled patients with doses of the Schedule 8 drugs methadone and buprenorphine. Patients must be placed on the program by an authorised doctor. Delivery of the OTP is guided by the NSW Opioid Treatment Program Community Pharmacy Dosing Point Protocol. Compliance and authority to prescribe are managed by the Pharmaceutical Regulatory Unit.⁴⁰ The Commission told us that 28.6 per cent of complaints that resulted in investigations were related to breaches of legislation governing Schedule 8 drugs

³⁴ *Annual Report 2019-20*, pp 24, 27.

³⁵ Answers to questions taken on notice, Health Care Complaints Commission, 15 April 2021, p 1.

³⁶ Answers to questions taken on notice, pp 1, 2; *Annual Report 2019-20*, p 42.

³⁷ Mr Kofkin, Transcript of evidence, p 9.

³⁸ Mr Kofkin, Transcript of evidence, p 10.

³⁹ Pharmaceutical Regulatory Unit, [Schedule 8 drugs – Drugs of addiction](#), 7 August 2017, viewed 27 April 2021.

⁴⁰ NSW Ministry of Health, [NSW Opioid Treatment Program: Community Pharmacy Dosing Point Protocol](#), October 2020, pp 1, 15, viewed 24 April 2021; Pharmaceutical Regulatory Unit, [NSW Opioid Treatment Program](#), 9 August 2017, viewed 24 April 2021.

and Schedule 4D restricted substances. A further 19.5 per cent related to provision of OTP services and noncompliance with the NSW OTP protocol.⁴¹

- 1.38 Compounding refers to the special preparation of a therapeutic product that is intended for a specific patient, for example, if the patient has an allergy to a preservative used in a commercial product. Because of the way they are produced, compounded medicines are not on the Australian Register of Therapeutic Goods or subject to assessment by the Therapeutic Goods Administration (TGA), but they do have to meet quality standards set by the *Therapeutic Goods Act 1989* (Cth).⁴² The NSW Pharmacy Council has regulatory powers which it uses to monitor and investigate compounding practice.⁴³
- 1.39 Of the total number of complaints about pharmacists that were formally investigated, 6.5 per cent related to the compounding of medicines without a TGA license or using imported products that are not approved for use in Australia.⁴⁴ The Commission told us that more than half of these complaints were received from the NSW Pharmacy Council, and a quarter resulted from proactive work done by the Pharmaceutical Regulatory Unit (PRU).⁴⁵
- 1.40 The PRU sits within the legal division of the NSW Ministry of Health. It is responsible for administering and enforcing the *Poisons and Therapeutic Goods Act 1966* (NSW) and the *Poisons and Therapeutic Goods Regulation 2008* (NSW). These rules govern the sale, storage, labelling, dispensing, and recording of restricted drugs and substances. The Unit's powers include being able to inspect and investigate pharmacies to ensure compliance.⁴⁶
- 1.41 From early 2019, the PRU has focused on auditing pharmacies that are registered as OTP dosing point sites. We heard that these audits resulted in an increased number of complaints referred to the Commission. There were 868 pharmacies registered as dosing points in 2019-20, which is 85 per cent of NSW's dosing points.⁴⁷ The PRU audited 80 of these during the reporting period.⁴⁸ One-third were then referred for further investigation by the Pharmacy Council and/or the Commission.
- 1.42 This is a significant proportion, but we note that the PRU applies a risk-based approach to its work. This means those who are deemed more likely to be at risk

⁴¹ Answers to questions taken on notice, p 4.

⁴² Pharmacy Board of Australia and Medical Board of Australia, [Joint statement on compounded medicines](#), 24 November 2017, p 1, viewed 23 April 2021; Pharmacy Board of Australia, [Guidelines on compounding of medicines](#), March 2015, content updated August 2017, pp 3, 13, viewed 23 April 2021; Therapeutic Goods Administration, [Compounding medicines and good manufacturing practice \(GMP\)](#), version 2.0, May 2017, p 11, viewed 23 April 2021; Pharmacy Council of NSW, [What we do](#), viewed 27 April 2021.

⁴³ [Health Practitioner Regulation National Law No 86a of 2009 \(NSW\)](#), Part 5A, div 2, s 41C; [Health Practitioner Regulation \(New South Wales\) Regulation 2016](#), Part 4.

⁴⁴ Answers to questions taken on notice, p 4; Answers to supplementary questions, p 7; Mr Kofkin, Transcript of evidence, p 9.

⁴⁵ Answers to questions taken on notice, pp 3-4.

⁴⁶ Pharmaceutical Regulatory Unit, [About Us](#), 15 December 2020, viewed 27 April 2021; Answers to supplementary questions, p 7.

⁴⁷ Australian Institute of Health and Welfare, [National Opioid Pharmacotherapy Statistics Annual Data collection](#), 31 March 2021, viewed 27 April 2021.

⁴⁸ Answers to supplementary questions, p 8.

of compliance breaches are, in turn, more likely to be audited. We heard that these audits are more likely to generate complaints. The OTP audit program is ongoing, and we will monitor its progress in future reviews.⁴⁹

- 1.43 We heard that education is essential to addressing the increase in complaints about pharmacists and pharmacies. The Commission emphasised the importance of education and development programs for pharmacists. We heard that education programs work to prevent noncompliance stemming from misunderstanding, rather than purposeful action. They told us they work with the Pharmacy Council and the NSW Ministry of Health in coordinating ongoing professional education for pharmacists across NSW. They also said they are considering developing modules on compliance and regulation for final-year pharmacy students, with the aim of promoting earlier outreach.⁵⁰
- 1.44 We heard that promoting better standards of regulatory compliance proactively reduces complaints. It helps the Commission to focus its resources on genuine risks, such as individuals who divert Schedule 8 or other restricted drugs for profit.⁵¹
- 1.45 We were happy to hear that the Commission is working to address some issues behind rising numbers of complaints about pharmacists and pharmacies, and we will continue to monitor their work in this area closely.

Evolving scope of practice in dentistry

- 1.46 The Committee asked about new cosmetic practices that were being performed by dentists, and noted that the Commission has investigated professional development seminars relating to cosmetic surgery 'considered to be outside the scope of dentistry'.⁵²
- 1.47 We heard that dentistry's scope of practice is evolving, with some dentists performing cosmetic procedures that do not involve the teeth or mouth. For example, some dentists are now offering cosmetic skin procedures such as carboxytherapy. This procedure involves injections or infusions of carbon dioxide into the skin, which aims to reduce cellulite, stretch marks or darkness under the eyes.⁵³
- 1.48 The Commission told us that the changing scope of practice is not necessarily a risk to public health and safety. Mr Kofkin noted that the Commission has not been informed of any adverse outcomes that were caused by these new cosmetic procedures.⁵⁴
- 1.49 However, the Commission noted that they require further guidance from the dental sector as to what procedures fall within dentistry's scope of practice. The

⁴⁹ Pharmaceutical Regulatory Unit, [Compliance Policy](#), 15 December 2020, viewed 27 April 2021; Answers to supplementary questions, pp 7-8; Mr Kofkin, Transcript of evidence, p 9.

⁵⁰ Ms Dawson, Transcript of evidence, p 10; Mr Kofkin, Transcript of evidence, pp 9, 10.

⁵¹ Ms Dawson, Transcript of evidence, p 10.

⁵² *Annual Report 2019-20*, p 43.

⁵³ Mr Kofkin, Transcript of evidence, p 12.

⁵⁴ Mr Kofkin, Transcript of evidence, p 13.

Commission has begun discussing this issue with the Dental Council of New South Wales, the NSW Health Regulators Forum and national bodies like the Dental Board of Australia.⁵⁵

- 1.50 The Committee asked about industry-wide approaches to reducing potential risks to the public. Mr Kofkin noted that the Commission acts as co-regulator with the Dental Council of New South Wales, who have 'the power to take urgent action and to put conditions on practitioners' registration.⁵⁶
- 1.51 If dentists started performing high-risk cosmetic procedures in NSW, the Commission's role would involve investigating individual complaints and taking appropriate disciplinary action when required. For example, the Commission would be able to issue public warnings about individual practitioners or health organisations.⁵⁷
- 1.52 The Commissioner noted that adequate training and education for dentists are essential for public health and safety. The Commission is working with the dental sector to determine what information and education needs to be provided to practitioners. The Commissioner said:
- Our expectation is that, whatever a practitioner is doing, it is within their training and qualifications to do it safely. That is at the centre of the conversation that we are having.⁵⁸
- 1.53 The Committee will continue to monitor how the Commission engages with the dental sector in determining whether dentists' training is currently adequate for new cosmetic procedures.

Organisation and governance

Culture and staffing

- 1.54 We were interested in the Commission's results from the annual People Matter Employee Survey (PMES). The PMES is an annual survey of all public sector employees about their experiences at work. The Commission performed well in some topic areas, such as 'Flexible Working', while others had weaker responses, such as 'Engagement'. The Commissioner told us that the Commission is focused on improving its responses, and we will continue to monitor its results going forward.
- 1.55 We note that there were changes to staffing at the Commission through the course of the reporting period. During 2019-20, 14 full-time equivalent employees were recruited, mostly into the investigations team.⁵⁹ Thirty-three staff moved on from the agency, including 13 resignations.⁶⁰

⁵⁵ Mr Kofkin, Transcript of evidence, p 12; Ms Dawson, Transcript of evidence, p 13.

⁵⁶ Mr Kofkin, Transcript of evidence, p 13.

⁵⁷ Ms Dawson, Transcript of evidence, p 13.

⁵⁸ Ms Dawson, Transcript of evidence, p 12.

⁵⁹ Ms Dawson, Transcript of evidence, p 1.

⁶⁰ *Annual Report 2019-20*, p 97.

- 1.56 When we asked the Commissioner about the level of staff movement, she told us that these numbers are not necessarily reflective of problems within the Commission. She noted that there is a large degree of mobility within the public sector, and that this is something the sector 'fosters'. The Commissioner suggested that this can be interpreted as both 'a positive and a negative'. The movement of staff within the Commission is an area of ongoing interest to the Committee.⁶¹
- 1.57 We also heard that a Working With Children Check is now a standard part of the recruitment process. This was put in place following a review of recruiting processes in 2017.⁶²

Review of internal processes

- 1.58 The Committee has previously discussed whether data on general practice complaints could be extracted from the Commission's aggregated data on 'general medicine' complaints. The Committee asked whether statistics are available on the volume of complaints specifically related to organisations and individuals engaged in general practice.⁶³
- 1.59 We heard that the Commission is currently investigating a methodology for separating these complaints, and is undertaking consultation with relevant stakeholders.⁶⁴
- 1.60 The Committee also asked about progress on the Commission's audit of clinical advice. The Commission told us that the recommendations of the completed audit are under consideration and subject to stakeholder consultation.⁶⁵

⁶¹ Ms Dawson, Transcript of evidence, p 15.

⁶² Ms Dawson, Transcript of evidence, pp 2-3.

⁶³ Ms Dawson, [Transcript of evidence](#), 31 July 2020, pp 7-8.

⁶⁴ Answers to supplementary questions, p 5.

⁶⁵ Answers to supplementary questions, p 7.

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

19 March 2021

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 9

1:41pm, 17 February 2021

Room 1254

Members present

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

Officers in attendance

Rohan Tyler, Kieran Lewis, Ilana Chaffey

1. Confirmation of minutes

Resolved on the motion of Ms Washington, seconded by Dr McGirr, that the minutes of the meeting of 22 October 2020 be confirmed.

2. ***

3. ***

4. ***

5. ***

6. Review of Health Care Complaints Commission's 2019-20 annual report

Resolved on the motion of Mrs Williams, seconded by Dr McGirr, that the Committee:

- conducts a review of the 2019-20 annual report of the Health Care Complaints Commission
- invites the Commissioner and her staff to give evidence at a public hearing on 19 March 2021 as part of the review of the Commission's annual report.

7. Next meeting

The meeting adjourned at 1:50pm until 8:15am on 19 March 2021 in the Jubilee Room.

MINUTES OF MEETING No 10

8:19am, Friday 19 March 2021

Jubilee Room

Members Present

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

Officers in Attendance

Rohan Tyler, Kieran Lewis, Matthew Johnson, Ilana Chaffey, Nicolle Gill

1. Deliberative meeting

1.1 Media orders

Resolved on the motion of Ms Washington, seconded Mrs Williams: That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 19 March 2021, in accordance with the Legislative Assembly's guidelines for the coverage of proceedings for committees administered by the Legislative Assembly.

1.2 Questions taken on notice and supplementary questions

Resolved on the motion of Mrs Williams, seconded Dr McGirr: 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.

The meeting concluded at 8:22am.

2. Public hearing – Review of Health Care Complaints Commission 2019-20 annual report

Witnesses were admitted. The Chair opened the hearing at 8:24am 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.

Ms Dawson made an opening statement.

Mr Amato left the hearing at 8:42am.

Mr Secord left the hearing at 8:45am.

Evidence concluded, the witness withdrew.

The public hearing concluded at 9:58am.

3. Deliberative meeting

The Committee commenced a deliberative meeting at 9:59am.

3.1 Confirmation of Minutes

Resolved on the motion of Mr Pearson, seconded Dr McGirr: That the minutes of the meeting of 17 February 2021 be confirmed.

3.2 Publication orders

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

4. General business

Members agreed to send supplementary questions to the HCCC, with the questions to be sent to the secretariat by 26 March 2021.

The Committee discussed arrangements for future annual report reviews.

5. Next meeting

The meeting adjourned at 10:01am until a date and time to be determined.

UNCONFIRMED MINUTES OF MEETING No 11

2.05pm, Monday 9 August 2021

All via Webex

Members Present

Mr Singh, Dr McGirr, Mrs Williams, Mr Pearson, Ms Washington, Mr Amato, Mr Donnelly

Apologies

Nil

Officers in Attendance

Rohan Tyler, Kieran Lewis, Matthew Johnson, Nicolle Gill

1. Confirmation of minutes

Resolved on the motion of Mr Pearson, seconded by Mr Amato, that the minutes of the meeting of 19 March 2021 be confirmed.

2. ***

3. ***

4. ***

5. Review of the Health Care Complaints Commission's 2019-20 annual report

5.1 Response to questions taken on notice

Resolved on the motion of Mr Pearson, seconded by Mrs Williams, that the response to questions taken on notice from the Health Care Complaints Commission be accepted and published on the Committee's website.

5.2 Response to supplementary questions

Resolved on the motion of Mr Pearson, seconded by Mrs Williams, that the response to supplementary questions from the Health Care Complaints Commission be accepted and published on the Committee's website, and that Annexure 1 and Annexure 4 of the response remain confidential to the Committee.

5.3 Consideration of Chair's draft report

By concurrence, the Committee considered the Chair's draft report *in globo*.

Resolved on the motion of Mrs Williams, seconded by Mr Pearson:

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.

6. ***

7. Next meeting

The meeting adjourned at 2.43pm and agreed to meet again in September at a time and date to be determined.