Committee on the
Health Care Complaints Commission

PARLIAMENT OF
NEW SOUTH WALES

Review of the Health Care Complaints Commission 2020-21 annual report

Report 3/57 – November 2022

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

A catalogue record for this
book is available from the
National Library of Australia

ISBN: 9781925214130

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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Chair’s foreword

I am pleased to present the Committee's review of the Health Care Complaints Commission 2020-21 annual report. Annual report reviews are an important part of the Committee's role under the *Health Care Complaints Act 1993.* This report covers some key areas of the Commission's work during the reporting period that the Committee was interested in looking at in more detail.

The year-on-year trend of increasing complaints continued during the reporting period. The Commission attributes the continued increase to several factors, including the growing size of the population, an ageing population and the expansion of available health services. Despite this increase, and changes in staff working arrangements resulting from the COVID-19 pandemic, the Commission has maintained a high standard of complaint handling performance.

We heard that the Commission is working on replacing its existing case management system, which is 20 years old. The Commission told us it is working on the design of the new system, with the aim of improving its data collection and reporting capabilities. As part of the design process the Commission is considering what data it needs to collect and report on to address contemporary health system issues.

We welcome the Commission updating its case management system and recommend that additional health complaints data be collected as a way of providing a more information about the standard of health services, including in rural, regional and remote areas. In turn, the Committee recommends that the Ministry of Health uses this information to identify both sub-standard health services and the absence of health services. The Committee considers this data to be a valuable strategic resource that should be used to improve health services, especially in rural, regional and remote areas.

The Committee has an ongoing concern about the low volume of complaints from Aboriginal and Torres Strait Islander people. The Commission reported that it has not connected its engagement activities with Aboriginal and Torres Strait Islander people with the formal structure and methodology of a Reconciliation Action Plan (RAP). However, the Commission has confirmed that its First Nations Engagement and Connection strategy aligns with RAP principles. The Committee recommends that the Commission prioritise the completion and implementation of this strategy.

During the reporting period the Commission worked with other state and federal agencies to counter the spread of vaccine and health misinformation. During the public hearing the Commission highlighted legislative gaps that limit the oversight of "celebrity" and high-profile individuals widely spreading misinformation. The Committee recommends that the Commission strengthen its collaboration with other health regulators to counter vaccine misinformation and broaden its public outreach. This work should be supported by legislative amendments to prevent the spread of health misinformation during a declared pandemic.

Another area of particular interest is the low number of complaints the Commission receives annually about cosmetic procedures. We are concerned that this may reflect a lack of public awareness about the health care complaints process. The recently released *Independent review of medical practitioners who perform cosmetic surgery* by the Australian Health

Practitioner Regulation Agency also identified significant under reporting of complaints in the cosmetic surgery sector. To help increase public awareness and the reporting of these complaints, the Committee recommends that the Commission partner with NSW Health to develop and promote specific public education material about the health care complaints process that targets consumers who are considering cosmetic procedures. This has been a recommendation from a previous inquiry held by the Committee; however it would appear that more work needs to be done.

I thank the Commissioner, her senior management team and all the Commission staff for their ongoing hard work to improve our heath care complaints system and their continued diligence in responding to the evolving challenges within the health care system. I also thank Committee members for their support and engagement, and the Committee staff for their work.

Dr Joe McGirr
Chair

Findings and recommendations

That the Health Care Complaints Commission, in partnership with NSW Health, develop and promote public education materials about the health complaints process that specifically targets people who are considering cosmetic procedures.

Issues discussed in the report

Managing the increase in complaints

The profile of complaints

1.1 We heard that the year-on-year trend of increasing complaints has continued. Over the past decade, the number of complaints received has grown by 112 per cent. Ms Sue Dawson, Health Care Complaints Commissioner, reported that the number of complaints grew by 10.8 per cent in 2020-21, compared with the previous year.[1]

1.2 A number of factors have contributed to this. The Commissioner told us that, overall, the increase in complaints reflects the State's growing population and a larger number of people receiving health services. Other factors include an ageing population, new and emerging health concerns, the expansion of the types of health services available (including alternative therapies), and greater health consciousness and expectations among health consumers.[2]

1.3 The Health Care Complaints Commission (the Commission) also pointed to specific areas of growth in the body of complaints they have received. This includes increases in the complaints received about health organisations (12.7 per cent in 2020-21, compared with the overall 10.8 per cent growth rate), unregistered practitioners and registered practitioners, such as pharmacists.[3] Complaints about these providers are discussed further below.

COVID-19 related complaints

1.4 The COVID-19 pandemic continued to shape the complaints profile. As people in New South Wales navigated the pandemic, complaints were made about a broad range of health care providers and in relation to diverse health issues. A total of 676 COVID-19 related complaints were received by the Commission in 2020-21. This included complaints about newer types of health services, such as vaccination hubs, testing sites and quarantine facilities.[4]

1.5 The Committee was interested to know more about the lower proportion of COVID-19 related complaints that were made in relation to public hospitals. In the overall complaints relating to health organisations, 45.7 per cent of complaints related to public hospitals, yet only 31.9 per cent of COVID-related complaints involving health organisations were about public hospitals. The Commissioner explained that this lower proportion reflected the fact that the

[1] Ms Sue Dawson, Commissioner, Health Care Complaints Commission, Transcript of evidence, 20 May 2022, p 1; Answers to questions on notice, Health Care Complaints Commission, 7 June 2022, p 3.

[2] Ms Dawson, Transcript of evidence, p 1; Answers to questions on notice, pp 3-4.

[3] Health Care Complaints Commission, *Annual Report 2020-21*, p 26; Answers to questions on notice, p 3.

[4] *Annual Report 2020-21*, p 16; Ms Dawson, Transcript of evidence, p 8.

'health organisation category within COVID-19 complaints had a much wider range of organisations in it.'[5]

1.6 Treatment issues represented a smaller proportion of COVID-19 related complaints (40.3 per cent or 459 complaints) than with the overall body of complaints (45.9 per cent). As the Commissioner noted, many COVID-related complaints were of a non-clinical nature. This included complaints about waiting times at testing stations, delayed results and concerns about personal protective equipment, for example.[6]

1.7 While some COVID-19 related complaints concerned a more serious risk of harm for health consumers, these were not related to treatment or the standard of care provided. The seven complaints serious enough to progress to investigation were about three practitioners and concerned issues about their conduct. The Commissioner noted that these complaints generally involved fraudulent billing, or practitioners who attended work and failed to isolate when potentially exposed to COVID-19.[7]

1.8 Overall, the main issues raised in relation to COVID-19 were about testing, the impacts of public health rules, practitioner conduct and vaccination.[8]

1.9 Information about the Commission's response to COVID-19 vaccine misinformation, and further discussion about its complaints triaging work, are addressed below.

Complaints about pharmacists

1.10 The Committee previously examined a rise in complaints about pharmacists and psychologists,[9] and both continue to be among the most commonly complained about registered health professions in 2020-21.[10] In 2020-21, the Commission received 395 complaints about pharmacists, an 11 per cent increase from 2019-20.[11] Medication and professional conduct remain the most common issues raised in these complaints, accounting for 78.6 per cent of all issues raised.[12]

1.11 Of registered practitioners, complaints about pharmacists continue to have the highest rate of referral to a relevant council. In 2020-21, 44.5 per cent of complaints were referred to the relevant council and the proportion of complaints referred for investigation increased to 26.1 per cent, up from 20.2 per cent in 2019-20.[13]

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[5] Ms Dawson, Transcript of evidence, p 8.

[6] Ms Dawson, Transcript of evidence, p 7.

[7] Ms Dawson, Transcript of evidence, p 7.

[8] *Annual Report 2020-21*, p 20.

[9] Committee on the Health Care Complaints Commission, *Review of the Health Care Complaints Commission 2019-20 annual report*, report 2/57, Parliament of New South Wales, August 2021, p 6.

[10] *Annual Report 2020-21*, p 22.

[11] *Annual Report 2020-21*, p 25.

[12] *Annual Report 2020-21*, p 25.

[13] *Annual Report 2020-21*, p 42.

1.12 Over the past year the Commission held discussions with the Pharmacy Council of NSW and the Ministry of Health's Pharmaceutical Regulatory Unit (PRU), to consider broader strategies to lift standards across the pharmacy sector and address public health risks in a more proactive and preventive way.[14]

1.13 In addition to these discussions, Mr Tony Kofkin, Executive Director, Complaint Operations, highlighted that for the past two-three years the PRU has been undertaking a compliance audit. The PRU visited all community pharmacists who had dispensed methadone under the Opioid Treatment Program. The audit identified significant failures and instances of non-compliance with the strict methadone regulations. As a result of this non-compliance, the Pharmacy Council considered whether to take urgent action under section 150 of the National Law. This section enables the Council to take interim action, such as placing conditions on the pharmacists' registration.[15]

1.14 Mr Kofkin noted that the lack of compliance identified by the PRU's compliance audit led to the PRU lodging complaints about pharmacists. This, in turn, contributed to the overall increase in these complaints.[16]

1.15 As a result of trends in complaints about pharmacists, a new pharmacy stakeholder group was recently established. It includes members from the Commission, Pharmacy Council, Pharmacy Guild, Pharmaceutical Society of Australia and a number of other stakeholders. The group focuses on addressing high-risk matters such as Schedule 8 drugs.[17] These are drugs of addiction, such as methadone, codeine and oxycodone.[18]

1.16 Mr Kofkin stated that this is the first time pharmacy stakeholders are 'actually connected together'.[19] They meet together to devise action plans and to identify what needs to be done, and how, in terms of the education, prevention and regulation of high-risk matters like drugs of addiction.[20]

1.17 To further manage health risks around Schedule 8 drugs, the SafeScript system was introduced. Both practitioners and pharmacists can sign up to SafeScript to obtain visibility of real-time prescription and movement data on Schedule 8 drugs. This enables practitioners or pharmacists to identify 'doctor shoppers', who have gone from one doctor to another seeking a Schedule 8 drug prescription.[21]

1.18 In Victoria, it is currently mandatory for pharmacists to check SafeScript before writing or dispensing a prescription for a high-risk medication.[22] In NSW, there

[14] *Annual Report 2020-21*, p 25.

[15] Mr Tony Kofkin, Executive Director, Complaint Operations, Health Care Complaints Commission, Transcript of evidence, 20 May 2022, p 20.

[16] Mr Kofkin, Transcript of evidence, p 20.

[17] Mr Kofkin, Transcript of evidence, p 20.

[18] NSW Health, Schedule 8 drugs – Drugs of addiction, 7 August 2017, viewed 18 July 2022.

[19] Mr Kofkin, Transcript of evidence, p 21.

[20] Mr Kofkin, Transcript of evidence, p 20.

[21] Mr Kofkin, Transcript of evidence, p 21.

[22] The Victorian Government, Department of Health, For prescribers and pharmacists, 4 July 2022, viewed 18 July 2022.

are currently discussions about whether or not using SafeScript should be mandatory.[23]

Complaints about psychologists

1.19 In total, the Commission received 348 complaints about psychologists during 2020-21. This was a 14.9 per cent increase from 2019-20. The most common complaints continue to be related to professional conduct, at 36.3 per cent, and are specifically related to inappropriate disclosure of information, breach of a guideline or law, or impairment.[24]

1.20 In 2020-21, 26.6 per cent of complaints were referred to the Psychology Council of NSW, marginally higher than the previous year. The proportion of complaints referred for investigation was consistent with the previous year at 3.4 per cent. This was considerably lower than the 9.2 per cent average for all health practitioners.[25]

1.21 The Commissioner told us that when analysing the increase in complaints about psychologists, the Commission considers the context in which the service is being provided. The frequency, use and nature of the services being provided is also considered.[26]

1.22 In terms of the nature of the services, the Commissioner explained that there are inherent sensitivities in this professional relationship. This is because psychologists are placed 'at the epicentre of a person's trauma' while helping them to work through trauma or some other event that has impacted on their mental wellbeing.[27]

1.23 The Commissioner then highlighted that there are a lot of 'third-party complaints' about psychologists. These are complaints from someone other than the subject of the psychologist's report, for example, reports prepared for the purpose of family court proceedings. With these complaints, the Commissioner told us that it is common that a complainant, who is not the subject of the report, may complain that a report led to a poor outcome and that the content was biased and inappropriately framed. The Commissioner noted that of all the professions, psychologists had the highest proportion of complaints relating to the content of reports written by health practitioners.[28]

1.24 The Commissioner also told us that the working arrangements of psychologists, commonly as sole practitioners, rather than group practitioners, may create issues around professional conduct and the way boundaries between practitioner and client are managed. We heard that while psychologists have supervision, the

[23] Mr Kofkin, Transcript of evidence, p 21.
[24] *Annual Report 2020-21*, p 25.
[25] *Annual Report 2020-21*, p 42.
[26] Ms Dawson, Transcript of evidence, p 19.
[27] Ms Dawson, Transcript of evidence, p 19.
[28] Ms Dawson, Transcript of evidence, p 19.

sole practitioner environment may not provide sufficient peer support to manage boundary issues when they arise. [29]

1.25 The Commissioner outlined that professional bodies are aware of these issues and are working to address them. We heard that this includes an increasing emphasis on the need for supervision. The Commissioner also noted that the Psychology Council and other professional bodies are communicating to stakeholders about appropriate psychologist/patient boundaries and also highlighting the importance of good record keeping.[30]

Complaints about digital health care

1.26 We were interested to know more about the emerging field of digital health care. Digital health care is a broad term that encompasses online technologies and platforms that involve treatment and the collection and sharing of individuals' health information.[31]

1.27 This includes new online platforms and services, such as Mosh. It also includes virtual consultations and other forms of telemedicine, electronic prescriptions, electronic records, wearable devices and mobile health applications.[32]

1.28 The Commission noted that there are many benefits to digital health care. For example, telemedicine can provide patients with increased access to practitioners, while practitioners' access to electronic records can assist with diagnostic accuracy. Digital health care can also increase productivity and efficiency when treating patients. These benefits have become particularly evident during the COVID-19 pandemic.[33]

1.29 However, we also heard that complaints have been made about digital health care services. These were often about services that are primarily oriented towards profit, and are not adequately informed by 'a standards-based, patient-centred clinical care structure or model'.[34]

1.30 In response to questions taken on notice, the Commission pointed to 'virtual health platforms that solely utilise telephone or text-based consultations.' The Commission outlined further issues that are evident in digital health care complaints:

> The types of issues and risks that are arising with some online services of this kind are the absence of clinical governance, online prescribing medication without appropriate patient assessments, inadequate or non-existent patient consultations, failure to keep appropriate patient records, failure to disclose closed loop commercial arrangements with pharmacies, and poor or non-existent co-ordination with treating practitioners.[35]

[29] Ms Dawson, Transcript of evidence, p 19.

[30] Ms Dawson, Transcript of evidence, p 19.

[31] Answers to questions on notice, p 4.

[32] Ms Dawson, Transcript of evidence, p 18; Answers to questions on notice, p 4.

[33] Mr Kofkin, Transcript of evidence, p 27; Answers to questions on notice, p 4.

[34] Mr Kofkin, Transcript of evidence, p 27; Answers to questions on notice, p 4.

[35] Answers to questions on notice, p 4.

1.31 Mr Kofkin noted that the Commission has conducted investigations, prosecuted doctors and issued public warnings in relation to digital health care. He also noted that the Commission's powers to make prohibition orders against these types of organisations will be strengthened in the near future. [36]

> One of the things we will be looking at, in the near future, is our powers have been strengthened in relation to making prohibition orders against organisations. That is not public health organisations, and it is not private health facilities who are accredited by the Ministry of Health. But everything else is in place, so therefore the Commission will have the opportunity to make prohibition orders and prevent these companies from causing harm, but also prevent these companies from making significant profits in a short period of time.[37]

1.32 We were pleased to hear that the Commission has gained these insights into the emerging field of digital health care and is being proactive in the regulation of this space. The Committee will continue to monitor this issue.

Performance and complaint handling strategies

Finding 1

That the Health Care Complaints Commission has continued to maintain a high standard of complaint handling performance in the context of an increased workload and changed work arrangements resulting from the COVID-19 pandemic.

Gap between complaints received and assessed

1.33 The Commission reported that a gap had emerged between the number of complaints received and the number assessed during the reporting period.

1.34 The Commission received 8702 complaints in 2020-21, and assessed 8222 complaints. This resulted in a gap of 480 unassessed complaints in the reporting period. The Commission's annual report noted that, 'the number of complaints assessed was unable to keep pace with the growth in new complaints for the first time in several years.'[38]

1.35 We heard that the Commission undertook a range of initiatives to reduce this gap. The Commissioner told us that by the end of the third quarter of 2021-22, the gap had reduced to 70 complaints.[39] We will continue to monitor the Commission's performance in this area.

Improved complaint handling

1.36 We heard that the improvements to triaging, clinical advice and case management processes have helped to manage the influx of complaints.

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[36] Mr Kofkin, Transcript of evidence, p 27.

[37] Mr Kofkin, Transcript of evidence, p 27.

[38] Ms Dawson, Transcript of evidence, p 2; *Annual Report 2020-21*, p 11.

[39] Ms Dawson, Transcript of evidence, p 2.

1.37 The Commission has consolidated reforms to its triaging model that were introduced in 2019-20.[40] We heard that a team of frontline assessors can now initiate a risk-based review of new complaints, which allows complaints to be classified and triaged early, according to their seriousness or the intensity of assessment required. This allows lower-risk complaints to be 'dealt with more quickly'.[41]

1.38 These triaging processes were particularly important in relation to COVID-19 related complaints. For example, the Commission received numerous complaints about the type or cost of hotels that were used for COVID-19 quarantine. Many of these complaints were triaged as being outside the Commission's jurisdiction and were referred to other regulatory bodies.[42]

1.39 Several resources were developed to assist assessors in triaging complaints, such as a chart that outlined the Commission's jurisdiction for quarantine complaints.[43] The Commission also provided information 'prominently' on its website that was designed to inform potential complainants of areas that were outside the Commission's jurisdiction.[44]

1.40 Case management and clinical advice processes have also been refined. Various steps in the case management process have been automated, which has provided greater support to assessment work. Following last year's internal review of the Commission's clinical advice model, a clinical adviser is now able to assist in designing complaint assessment where clinical issues are involved.[45]

1.41 We also heard that the Commission has reallocated resources to its frontline assessment team. The Commissioner reported that resources that would normally have been spent on office costs, travel and in-person staff training were not required during the pandemic. This meant that resources were available for hiring additional assessment officers to address the gap and to 'get ahead of the growth that we knew was coming'.[46]

1.42 The Commission has introduced a new key performance indicator (KPI) of 60 days for the completion of reviews of complaint assessments. The previous target of completing case reviews within six weeks was only met in 37.7 per cent of cases, against a target of 90 per cent. The Commission stated that the revised KPI aligns with the assessment KPI, and will allow time for a more thorough and objective review process.[47]

1.43 The Commissioner advised that a number of additional strategies have been implemented to improve the timeliness of reviews. As with assessment, early triaging processes are now assisting with the completion of case reviews. New

[40] *Review of the Health Care Complaints Commission 2019-20 annual report*, p 1.

[41] Ms Dawson, Transcript of evidence, p 2.

[42] Ms Dawson, Transcript of evidence, p 8.

[43] Ms Dawson, Transcript of evidence, p 8.

[44] *Annual Report 2020-21*, p 21.

[45] Ms Dawson, Transcript of evidence, p 2.

[46] Ms Dawson, Transcript of evidence, p 2.

[47] *Annual Report 2020-21*, pp 53, 192.

case review teams have been established, and case management meetings and automated reporting are also contributing to review timeliness. The Commissioner reported that 80 per cent of reviews are now completed within the new 60 day target.[48]

1.44 We were pleased to hear that the Commission has generally maintained its performance against the targets it has set during this difficult period. We commend the Commission on taking these steps to maintain and improve performance in these circumstances.

Ability to refer complaints to a broader range of agencies

1.45 We also heard that the Commission has new powers to refer complaints to a broader range of agencies and bodies.

1.46 The Commissioner explained that the Commission has always had powers to refer complaints to professional councils, public hospitals and external regulatory and enforcement bodies, such as NSW Police, the Therapeutic Goods Administration and the Information and Privacy Commissioner.[49]

1.47 However, new powers were introduced during the reporting period. On 27 October 2020, amendments to section 26 (1) of the *Health Care Complaints Act 1993* came into effect. The Commission is now able to refer complaints to private hospitals for local resolution, and to a wider range of bodies, such as those with educative or policy functions. For example, the Commission can refer complaints to agencies that are not enforcement bodies, such as the Australian Government Department of Health and Aged Care, the NSW Department of Communities and Justice, and the Mental Health Commission of NSW.[50]

1.48 In 2020-21, the Commission referred 335 complaints to other bodies. The bodies with the largest number of referrals were the Australian Health Practitioner Regulation Agency (133 referrals), the NSW Ombudsman (55 referrals) and the NSW Information and Privacy Commission (34 referrals).[51]

Rural, regional and remote complaints

Visibility of rural, regional and remote complaints

1.49 We are concerned about ensuring that the Commission has clear visibility and understanding of complaints about rural, regional and remote health services.

1.50 Following on from the recent NSW Legislative Council parliamentary committee report, *Health outcomes and access to health and hospital services in rural and regional and remote New South Wales,* we wanted to know why many concerns raised in the report did not come to the Commission's attention. We also wanted to know how future monitoring can be improved.

[48] Ms Dawson, Transcript of evidence, p 2.

[49] Ms Dawson, Transcript of evidence, p 3.

[50] Ms Dawson, Transcript of evidence, p 3.

[51] Answers to questions on notice, p 2.

1.51 In addressing our concerns the Commissioner told us there are 'possibly two factors' that account for the low level of complaints from rural, regional and remote areas.[52]

1.52 First, there may be a low level of community awareness about the Commission. To address this issue the Commissioner stated that the Commission focuses most of its outreach program on rural and regional areas. The Commissioner outlined how part of the remit of its Resolution and Customer Engagement Division is to undertake community outreach. Outreach activity involves staff visiting community groups, health organisations and others, to deliver training and education about the Commission and the complaints process. The Commissioner also said that individual complaints are used as an opportunity to deliver community information sessions to improve awareness of its work.[53]

1.53 The Commissioner went on to explain that the second reason for a low level of rural, regional and remote complaints may be due a lack of 'awareness of us, and comfort with making a complaint'.[54] The Commissioner explained that people may find the complaints process 'too cumbersome' and that 'there may be process improvements for us to do' to capture complaints from these areas.[55]

1.54 The Commissioner went on to say that this hesitancy to make a complaint could also be based on discomfort or anxiety about even making a complaint in the first instance. She said that this can be based on the fear that a service could be withdrawn if a complaint is made. In smaller communities, where people are more likely to know one another, making a complaint about a local health professional could be seen as a personal attack.[56]

1.55 The Commissioner also said that 'there is a strong and understandable community concern about losing the only service that you have' if complaints are made. She went on to advise that this concern is a real issue in complaints that the Commission has at present, particularly where the sole health service provider to a small town is the subject of complaint.[57]

1.56 To help improve its complaints monitoring, the Commissioner reported that the Commission will implement a new case management system. We heard that this new system will improve the Commission's capacity to record and report on rural, regional and remote health complaints.[58] The new case management system is discussed in more detail below.

1.57 Also, as part of enhancing the use of the Commission's complaints data, the Commissioner indicated that she planned to meet with the Coordinator-General for Regional Health, who leads the Regional Health Division within NSW Health. The Commissioner explained that the Commission is looking at its rural and

[52] Ms Dawson, Transcript of evidence, p 22.
[53] Ms Dawson, Transcript of evidence, pp 18, 22.
[54] Ms Dawson, Transcript of evidence, p 22.
[55] Ms Dawson, Transcript of evidence, p 22.
[56] Ms Dawson, Transcript of evidence, p 22.
[57] Ms Dawson, Transcript of evidence, p 22.
[58] Ms Dawson, Transcript of evidence, p 22.

regional health complaints data to identify what it might make available. The aim is to provide data that can help with planning health services in rural and regional NSW.[59] Further information on this issue is discussed below.

Complaints about professional conduct

1.58 In both metropolitan and regional areas, complaints about the professional conduct of health service providers rose substantially compared to the previous year and continued to be the second most complained about issue.[60] The Commission received complaints about:

- performance (e.g. impairment, incompetence),
- administration (e.g. advertising, failing to complete annual declarations), and
- serious matters (e.g. allegations of fraud, assault, sexual misconduct).[61]

1.59 The Committee notes that professional conduct issues were nearly twice as likely to be raised by regional complainants (29.0 per cent) compared to metropolitan complainants (17.6 per cent).[62]

Health transport complaints

1.60 The Committee was interested in whether the Commission received complaints about health transport. Members of Parliament, especially those representing rural, regional and remote areas, often receive complaints about the lack of adequate health transport. As such, we wanted to know whether the Commission also receives similar complaints.

1.61 The Commissioner confirmed that complaints are received. She acknowledged that complaints about health transport services are 'a significant issue'.[63] She went on to state that not all transport-related complaints are considered by the Commission as it depends on the nature of the transport service provided.[64]

1.62 The Commissioner explained that the Commission deals with health transport complaints that involve a clinical service such as an ambulance, or a hospital transfer as part of a patient's treatment regime.[65]

1.63 However, complaints about patient transport generally, for example, for logistic purposes rather than treatment, can be more complex and may or may not be something that the Commission considers. The Commissioner explained that, for this type of transport complaint, it depends on the nature of the issue raised in the complaint and 'whether there has been an impact on the effectiveness of

[59] Ms Dawson, Transcript of evidence, p 22.
[60] *Annual Report 2020-21*, p 31.
[61] *Annual Report 2020-21*, p 18.
[62] *Annual Report 2020-21*, p 31.
[63] Ms Dawson, Transcript of evidence, p 26.
[64] Ms Dawson, Transcript of evidence, p 26.
[65] Ms Dawson, Transcript of evidence, p 26.

treatment, as a result of a transport-related issue that is provided by the facility'.[66]

1.64 Complaints about the absence of transportation services, for example to attend GP appointments, are also received by the Commission. The Commissioner noted however, that there is nothing the Commission can do about these types of complaints.[67]

Data and its potential to inform government stakeholders

Finding 2

The Health Care Complaints Commission's implementation of a new data management system and the introduction of a business analyst team should improve its capacity to report on health service complaints.

Recommendation 1

That the Health Care Complaints Commission collect and report on additional complaints data, including detail about the age of the recipient of care, so it can provide more detailed information about the standard of health services, including in rural, regional and remote areas.

Recommendation 2

That the Ministry of Health use the complaints data provided by the Health Care Complaints Commission to identify sub-standard health services, including the absence of services, in rural, regional and remote areas, and that this data be used to improve services in these areas.

New case management system for complaints data

1.65 The Commission is uniquely placed to collect a broad range of health complaint related data, and for that data to be used to identify deficiencies in the provision of health services across the state.

1.66 We heard that the Commission is working on the design and implementation of a new case management system. The Commissioner explained that the current system is about 20 years old and needs to be replaced. Upgrading the case management system will help improve the Commission's data collection and reporting capabilities. As the case management system is where complaints data is entered and then extracted for reporting purposes, it is important that it is able to capture a wide range of data. It is also important that the Commission is able to provide a detailed insight on the range of complaints made about the state's health system.[68]

1.67 The Commissioner explained that, as part of the case management replacement project, the Commission is looking at what data is needed in order to address 'contemporary questions that might be useful to answer, through our complaints

[66] Ms Dawson, Transcript of evidence, p 26.

[67] Ms Dawson, Transcript of evidence, pp 22, 26.

[68] Ms Dawson, Transcript of evidence, pp 12, 22.

data.' This includes improving the reporting on regional health complaints, allowing the Commission to provide a more detailed understanding about the nature of these complaints. The Commissioner went on to note that, as of the time of our public hearing, planning for the design of the new system was still in the 'early design phase'.[69] We look forward to hearing more about this project.

1.68 As part of the design process for the new system, we heard the Commission will consult with the Coordinator-General for Regional Health about what health complaint data is needed to help with planning health services in rural and regional areas. The Commissioner advised that the Commission wants to ensure that it captures data that will 'be of most interest and utility for the health system as a whole, to shine a light on issues'.[70]

1.69 The Commissioner assured us that the ability to capture and analyse regional health complaints data 'will be central to the design' of the new case management system.[71]

1.70 In addition, the Commission is also looking to work with other regulatory partners who are working on similar system replacement projects. The aim of this is to 'strive for harmonised solutions' across agencies.[72]

Improved complaints data analysis

1.71 In addition to a new case management system, we were pleased to hear that the Commission is also investing resources to improve its ability to report on the broad range of health complaints data collected now and in the future.

1.72 The Commissioner told us that a new business analyst team is being set up with the aim of improving the Commission's ability to extract, analyse and report on its complaints data. We heard that this team would give the Commission the ability to provide a more detailed, evidence-based, view of what has led to a complaint and how services could be improved, including seeing if there are patterns in the issues raised in complaints.[73]

1.73 The Commissioner told us that setting up this team is part of the Commission's plan to make a stronger and more strategic contribution across the health system.[74] The Commission has set a priority of using its data as a strategic asset by improving its data classification, storage, extraction and reporting arrangements so it can provide real time performance information.[75]

1.74 As the Commissioner explained, the Commission wants to make greater use of its data to improve understanding of the health system:

[69] Ms Dawson, Transcript of evidence, pp 12, 22.
[70] Ms Dawson, Transcript of evidence, p 22.
[71] Ms Dawson, Transcript of evidence, p 22.
[72] *Annual Report 2020-21*, p 106.
[73] Ms Dawson, Transcript of evidence, pp 24-25.
[74] Ms Dawson, Transcript of evidence, pp 24-25; *Annual Report 2020-21*, pp 105, 106.
[75] *Annual Report 2020-21*, p 106.

> … we are going to get the best out of our data when we sit with the folks in NSW Health and the folks in the Bureau of Health Information and the experts to say, "What questions ought we be asking of this data?" and "How do we pick the surprises?" and "How do we have a methodology that allows us to pick the surprises".[76]

1.75 We welcome this initiative as we regard the Commission's data as a valuable yet underutilised resource. We strongly support the Commission taking a more strategic approach to the use of its data and sharing it with NSW Health and other health agencies. Better understanding of how and why complaints happen will help improve the overall standard of health care. As noted earlier, the Commission's data can also be of use with the planning and delivery of health services across NSW.

1.76 We also agree with the Commission that taking a stronger proactive approach to complaints management can help prevent complaints being made in the first instance.[77]

1.77 As noted above, better use of the Commission's data could be particularly helpful with improving rural, regional and remote health services. This includes not just reporting on complaints about existing health services, but also reporting on the absence of services in these areas so that service gaps can also be addressed.[78]

1.78 The Commissioner explained that data about the absence of services is currently recorded under the Commission 'access' category. However, she acknowledged that more could be done to make people aware that they can complain to the Commission about the absence of services, and that the Commission could improve its reporting on this issue.[79]

1.79 We also heard that the Commission is aware that data from more low-level or less serious complaints could also be better utilised. As an example, the Commissioner said that looking at complaints that were discontinued because there was nothing the Commission could do still provided insight as they highlighted issues such as a lack of transport services.[80]

Data sharing with NSW Ministry of Health

1.80 The Commissioner advised that she has a quarterly meeting with the Secretary of NSW Health where she reports on the types of complaints received and 'particular pressures' that the Commission is observing on the health system. These meetings cover strategic and policy issues as well as complaints-based issues. A quarterly report is given to the Minister as well as discussions with the Minister about areas of concern that may arise.[81]

[76] Ms Dawson, Transcript of evidence, p 25.
[77] Ms Dawson, Transcript of evidence, pp 16, 18; *Annual Report 2020-21*, p 105.
[78] Ms Dawson, Transcript of evidence, p 22.
[79] Ms Dawson, Transcript of evidence, p 22.
[80] Ms Dawson, Transcript of evidence, p 27.
[81] Ms Dawson, Transcript of evidence, pp 13-14.

1.81 With the recent setting up of a new Regional Health Division for NSW Health,[82] we wanted to know how the Commission will report and share its complaints analysis with this new division.

1.82 The Commissioner informed us that there will be a bimonthly meeting with the Coordinator-General for Regional Health. This meeting will focus on operational issues and will also include the Clinical Excellence Commission. The Commissioner stated that this operational level meeting has always been in place and will now include the Coordinator-General. We heard that these meetings are quite 'granular' in terms of how they discuss operations, including looking at what action has been taken on recommendations the Commission has made following its investigations into public health facilities.[83]

1.83 The Commissioner went on to say that as the Regional Health Division is a new structure there will be discussion about the nature of the meetings as the Division becomes operational.[84]

1.84 The Commissioner also advised that she meets with the Minister for Health 'on an as-needs basis' and these meetings tend to follow on from her quarterly meetings with the Secretary of NSW Health.[85]

Definitional issues

1.85 One of the challenges the Commission faces when collecting data concerns defining or classifying what is a 'health organisation', or a 'health service'.

1.86 Having asked how the Commission deals with this issue, the Commissioner explained how the nature of health organisations can change over time. These changes include the advent of virtual health organisations or body modification clinics. As the Commission deals with a range of public and private health organisations and facilities, it does not necessarily try to define the organisation, but considers who is delivering a health service within the meaning of the *Health Care Complaints Act*. 'The Act defines what a health service is, and then any organisation or individual delivering that kind of service' is within the Commission's jurisdiction.[86]

1.87 The rise in beauty and cosmetic treatment services and centres has also proved challenging. The Commissioner explained to us that if a beauty treatment facility provides services that include skin penetration, that treatment should be carried out by a suitably qualified person. Tattoo parlours or body modification clinics performing body implants can also be classified as a health service by the Commission. These centres can perform procedures that involve skin penetration and suturing that should be done in accordance with sterile treatment

[82] NSW Health, *NSW Government to deliver a strengthened focus on regional health*, media release, 8 April 2022, viewed 8 August 2022.

[83] Ms Dawson, Transcript of evidence, pp 14, 23.

[84] Ms Dawson, Transcript of evidence, p 14.

[85] Ms Dawson, Transcript of evidence, p 13.

[86] Ms Dawson, Transcript of evidence, p 10.

practices.[87] The issue of complaints about cosmetic services is discussed later in the report.

1.88 We were interested to know more about how the Commission distinguishes between metropolitan and regional areas, especially in relation to its definition for regional New South Wales.

1.89 NSW Health classifies seven local health districts as being rural and regional, and eight as being metropolitan.[88] As noted in the recent report on *Health outcomes and access to health and hospital services in rural, regional and remote New South Wales*, there are four local health districts that are metropolitan but also crossover to regional areas.[89]

1.90 The Commissioner told us that the Commission does not refer to those distinctions between local health districts when doing its rural and regional complaints analysis. Instead we heard that the Commission extracts information by postcode. The Commissioner went on to say that they have not as yet mapped their postcode split to the seven rural and regional local health districts or to the four crossover districts.[90]

1.91 When further asked how the Commission categorises regional services, and if this is based on the patient's postcode or where the health service they received is located, the Commissioner explained that both postcodes are recorded. The Commissioner went on to advise that this situation presents challenges, but that the Commission has 'a line of sight from where the complainant was located as well as where the provider was located.'[91]

Outreach, education and engagement

Recommendation 3

That the Health Care Complaints Commission prioritises completing and enacting its First Nations Engagement and Connection strategy, and reports on its outreach and engagement work with Aboriginal and Torres Strait Islander people.

Engagement with Aboriginal and Torres Strait Islander communities

1.92 We have had an ongoing concern about the low volume of complaints from Aboriginal and Torres Strait Islander people. We have previously noted that the low volume of complaints from Aboriginal and Torres Strait Islander people may

[87] Ms Dawson, Transcript of evidence, p 11.

[88] NSW Health, Local health districts and speciality networks, viewed 8 August 2022.

[89] Portfolio Committee No. 2, *Health outcomes and access to health and hospital services in rural, regional and remote New South Wales*, report no. 57, Legislative Council, Parliament of New South Wales, May 2022, p 6. The four crossover local health districts are: Central Coast, Illawarra Shoalhaven, Nepean Blue Mountains, and South Western Sydney.

[90] Ms Dawson, Transcript of evidence, p 11.

[91] Ms Dawson, Transcript of evidence, p 14.

not be consistent with their experiences with the New South Wales health system.[92]

1.93 We were interested to know whether the Commission has a Reconciliation Action Plan (RAP). The Commissioner told the Committee that, at this stage, the Commission has not connected its engagement strategies with Aboriginal and Torres Strait Islander people with the formal structure and methodology of a RAP.[93]

1.94 However, the Commission reported that its First Nations Engagement and Connection strategy has been developed to meet the expectations and goals of the RAP framework. The Strategy has been developed to reflect 'the core RAP pillars of relationships, respect, and opportunities'.[94]

1.95 We were told that the Commission has been consulting with a First Nations Engagement Advisor, Mr Justin Noel. Mr Noel has worked with the Commission on their First Nations Engagement Strategy, and confirmed that the Strategy reflects these core RAP pillars.[95]

1.96 We recommend that the Commission prioritises completing and enacting its First Nations Engagement and Connection strategy according to RAP principles.

1.97 At present, the Commission's engagement with Aboriginal and Torres Strait Islander people is consistent with a 'Reflect' level of maturity. Under the guidance of Mr Noel, and with the actions planned within the Strategy for 2022-23, the Commission reported it is 'progressing to an Innovate level of maturity'.[96]

1.98 We heard from the Commissioner about the different approaches that the Commission uses to communicate and engage with Aboriginal and Torres Strait Islander communities. This includes visiting communities, using social media, and developing print resources.[97]

1.99 The Commissioner noted that Commission staff adopt a 'listening mode' when visiting communities and working with Indigenous health consumers. They also try to leverage individual complaints as a way of engaging with broader community health concerns.[98]

1.100 We heard that individual complaints may trigger an assisted resolution process where, for example, Commission staff visit a remote community. Consultation between an Indigenous family making a complaint, the local Aboriginal Liaison

[92] Committee on the Health Care Complaints Commission, *Review of the Health Care Complaints Commission's 2017-18 and 2018-19 annual reports*, p 6; *Review of the Health Care Complaints Commission's 2019-20 annual report*, pp 4-5.

[93] Ms Dawson, Transcript of evidence, p 7.

[94] Reconciliation Australia, The RAP Framework, viewed 14 July 2022; Answers to questions on notice, p 3.

[95] Ms Dawson, Transcript of evidence, p 4; Answers to questions on notice, p 3.

[96] Ms Dawson, Transcript of evidence, p 4; Reconciliation Australia, The RAP Framework, viewed 14 July 2022; Answers to questions on notice, p 3.

[97] Ms Dawson, Transcript of evidence, pp 6-7.

[98] Ms Dawson, Transcript of evidence, p 5.

Officers and the First Nations Engagement Advisor, can help design an appropriate resolution process.[99]

1.101 However, such visits to communities also provide opportunities for the Commission to engage with Aboriginal and Torres Strait Islander health concerns, beyond the level of individual complaints. With the guidance of the First Nations Engagement Advisor, Commission staff may also sit with Elders and yarn about community experiences with health services. The Commissioner summarised the process:

> We are wanting to understand what is your experience of your local health services, how can we draw any issues that you are having to the attention of the health administration, and how can we also learn about how you might feel safe to make a complaint in the future? It is leveraging off an individual resolution event to connect with community and with the right people in the community, with good expert advice on Indigenous engagement.[100]

1.102 We were also interested in whether the Commission has explored using print resources and social media for engaging with Aboriginal and Torres Strait Islander communities. The Commissioner reported that the Commission is planning focus groups with communities to explore the best format for engaging with Indigenous health consumers. The Commission has also commenced developing more culturally accessible print material, such as brochures and postcards, as part of its broader outreach and engagement activity.[101]

Cultural awareness training for staff

1.103 We were pleased to hear that the Commission continues to provide all staff with training for cultural awareness and cultural safety. We note that, in the previous reporting period, Commission staff were receiving cultural competency training from the Centre for Aboriginal Health.[102]

1.104 We heard that the Commission is now nearing completion of the mandatory cultural awareness training for all staff. This training has been used by staff during complaint triaging and case management. It has assisted them in identifying different strategies for helping Aboriginal and Torres Strait Islander complainants during various stages of the complaint process, including assessment, review and investigation.[103]

1.105 In our review of the Commission's 2019-20 annual report, we recommended that the Commission include the outcomes of its strategies to engage with Aboriginal communities in its annual reporting. The Government response to this recommendation noted that the Commission 'will continue its current practice' of

[99] Ms Dawson, Transcript of evidence, p 5.

[100] Ms Dawson, Transcript of evidence, p 5.

[101] Ms Dawson, Transcript of evidence, pp 6-7; *Annual Report 2020-21*, p 79.

[102] *Review of the Health Care Complaints Commission 2019-20 annual report*, p 5.

[103] Ms Dawson, Transcript of evidence, p 5.

reporting on actions taken to implement its engagement strategies and improving cultural awareness in the Commission.[104]

1.106 We would like future reporting on these initiatives to incorporate data on the outcomes of these actions. This could include, but would not be limited to, reporting data on any changes in the number of complaints that are received by people who identify as Aboriginal and/or Torres Strait Islander. Reporting on any quantifiable initiatives would also be valuable, such as the number of remote communities that are visited by Commission staff each year.

1.107 We commend the Commission for the steps it has already taken to build RAP principles into its First Nations Engagement Strategy. We also note the ongoing commitment the Commission has demonstrated in developing its engagement with Aboriginal and Torres Strait Islander communities over successive reporting periods.

COVID-19 and vaccine misinformation

Finding 3

The Health Care Complaints Commission's work with other state and federal agencies to counter the spread of vaccine and health misinformation is welcome. However, it is concerning that high profile individuals continue to be able to promote health misinformation, particularly in situations such as a pandemic.

Recommendation 4

That the Health Care Complaints Commission strengthens its collaborative work with health regulators on the issue of vaccine misinformation and broadens its public outreach and education work to counter the spread of misinformation.

Recommendation 5

That the NSW Government introduces legislation to limit or prevent the spread of health-related misinformation during a declared pandemic.

Dealing with misinformation that poses a risk to public health and safety

1.108 The Commissioner explained to us that gaps in the underlying regulatory framework for health misinformation have made the oversight of health misinformation on COVID-19 treatments and vaccines difficult. This is not only an issue in New South Wales, but a nationwide problem. The Commissioner suggested that opinions expressed in COVID-19 health misinformation often contained commentary that treaded a very fine line. This misinformation is typically generated via broadcast methods and is not 'judicially bounded' by legislation or regulation.[105]

1.109 The Commissioner noted that while the Therapeutic Goods Administration (TGA) has the most direct regulatory authority over COVID-19 health misinformation, its

[104] *Review of the Health Care Complaints Commission 2019-20 annual report*, p 4; NSW Government, *Response – Review of the Health Care Complaints Commission 2019-20 annual report*, p 3.

[105] Ms Dawson, Transcript of Evidence, p 9.

powers were likely not designed to deal with a situation where political material might be used to protest against public health initiatives. The Commissioner stated that the deprecation of public health initiatives risks threatening health consumers' safety.[106]

1.110 The Health Care Complaints Commission's regulatory mandate is limited to complaints on the delivery of a 'health service'. The Commissioner explained that in order to respond to the public health risk associated with health misinformation it utilised its referral and information sharing powers under section 99B of the *Health Care Complaints Act.*

1.111 Using these powers, the Commission referred misinformation complaints and documentation to the TGA, the Australian Communication and Media Authority (for verbally broadcasted misinformation) and to the Australian Electoral Commission. This was done to bring the complaints to the attention of the agencies with the power to address those complaints.[107]

1.112 In addition to referring complaints to other agencies, the Commission issued a joint public statement with the TGA, Australian Health Practitioner Regulation Agency (AHPRA) and the Queensland Office of the Health Ombudsman. This statement advised consumers to rely only on authoritative advice for information on health care and treatment, and about vaccinations. It further advised consumers not to be swayed by sensationalised commentary or the opinions of unqualified public figures.[108]

Stakeholder and customer engagement

1.113 To promote community awareness of the Commission's existence and its role, the Commission publishes information on its website and operates an outreach program. The Commissioner explained that under this program, staff go into the community to work with community groups, health organisations and others to deliver training and education.[109]

1.114 For example, when resolving complaints in regional or remote areas, the resolution officer will offer training and development in complaints management to local service providers.[110] Additionally, to improve customer engagement via its website, the Commission has embedded links to its e-complaints portal on every page and via the search engine. The Commission also updated its 'Understanding Complaints' section and included important updates in its home page banner during 2020-21.[111]

[106] Ms Dawson, Transcript of Evidence, p 9.

[107] Ms Dawson, Transcript of Evidence, p 9; Therapeutic Goods Administration, *COVID-19 and COVID-19 vaccines: Get the best advice for you and your family*, August 2021, viewed 11 August 2022.

[108] Ms Dawson, Transcript of Evidence, pp 9, 10.

[109] Ms Dawson, Transcript of Evidence, p 18.

[110] *Annual Report 2020-21*, p 50.

[111] *Annual Report 2020-21*, p 78.

Complaints about cosmetic services

Finding 4

The low number of complaints about cosmetic procedures may reflect a lack of public awareness about the health complaints process.

Recommendation 6

That the Health Care Complaints Commission, in partnership with NSW Health, develop and promote public education materials about the health complaints process that specifically targets people who are considering cosmetic procedures.

Concern about the low number of cosmetic services related complaints

1.115 During the public hearing, the Committee queried the Commission about the low number of cosmetic services complaints received in 2020-21 compared to the size of the cosmetic services industry.

1.116 The Commissioner explained that because individuals often seek cosmetic services to address basic issues they have about their appearance, these individuals may feel too self-conscious to raise a complaint.[112]

1.117 Further to this, Mr Kofkin added that most of the cosmetic service complaints received related to the lack of refunds and lack of corrective surgery. Mr Kofkin hypothesised that if refunds or free revision surgery were provided to individuals, this may be sufficient to discourage people from lodging a complaint with the Commission or commencing civil litigation.[113]

1.118 The Commissioner also noted that there are no mandatory reporting requirements for revision/corrective surgeries by individuals or health facilities in the cosmetic services space.[114]

1.119 We noted that, given consumers of cosmetic services often seek recompense for poor treatment outcomes, they may see cosmetic services as business transactions rather than healthcare services. We asked what could be done to educate consumers about their rights. In response, the Commissioner, said that there are opportunities to strengthen consumer education on aftercare, which is a common complaint area. This includes education on what consumers can expect when they return home after a procedure, appropriate wound care regimes and the follow-up services that should be provided.[115]

1.120 In the absence of complaints, the Commissioner also outlined how regulators are undertaking proactive preventative strategies in the cosmetic services space:

[112] Ms Dawson, Transcript of Evidence, pp 15, 16.

[113] Mr Kofkin, Transcript of Evidence, p 16.

[114] Ms Dawson, Transcript of Evidence, p 16.

[115] Mr Kofkin and Ms Dawson, Transcript of Evidence, p 16.

- NSW Fair Trading, following the Committee's 2018 inquiry into cosmetic services, ran a public campaign to help consumers understand their rights and responsibilities when receiving cosmetic services.
- The Ministry of Health has improved information available to the public about licensing and regulatory requirements for private health facilities on its website.
- In 2020 AHPRA ran a #besafefirst campaign aimed at informing consumers about what questions they should be asking and the things they need to prepare for when considering cosmetic surgery.[116]

1.121 The following graphic provides an overview of cosmetic services complaints received and/or assessed by the Commission in 2020-21.

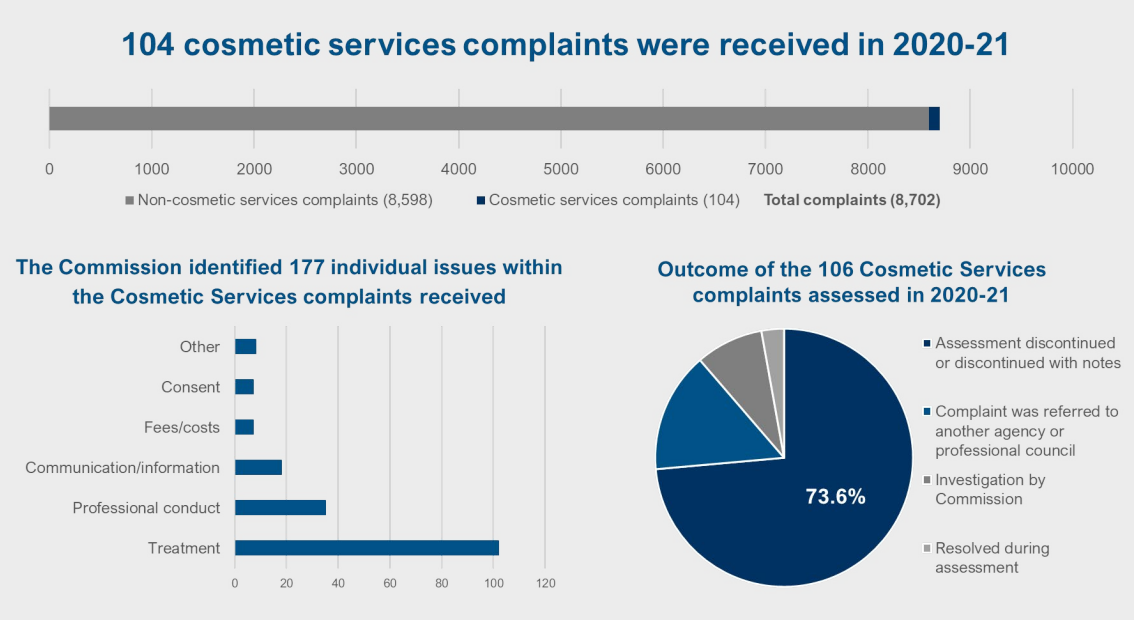

Figure 1: Cosmetic services complaints received and/or assessed by the Health Care Complaints Commission during 2020-21[117]

Cosmetic procedures performed by dentists

1.122 In last year's annual review, the Committee was concerned about dentists performing procedures outside dentistry's usual scope of practice. We heard that the scope of practice may be evolving, in that some dentists were performing (and conducting professional training seminars on) cosmetic procedures that do not involve the teeth or mouth. For example, some dentists offered carboxytherapy, which involves injections of carbon dioxide into the skin to reduce cellulite or darkness under the eyes.[118]

[116] Ms Dawson, Transcript of Evidence, p 16.

[117] *Annual Report 2020-21*, tables A.10, A.11, A.18, pp 164-167, 176.

[118] *Review of the Health Care Complaints Commission 2019-20 annual report*, pp 8-9.

1.123 The Commissioner told us that in the 2020-21 reporting period there appeared to be less activity from dentists in this area. The Commission investigated seven complaints that related to one practitioner who was delivering educational seminars considered to be outside the scope of dentistry. These matters were referred to AHPRA as part of a co-ordinated national response.[119]

1.124 The Commissioner noted a further two complaints relating to dentists performing cosmetic procedures outside the usual scope of practice. One complaint was referred to an external professional council, while the other contained allegations that were unsubstantiated.[120]

1.125 The Commissioner noted that the low volume of complaints in this area may have been influenced by the COVID-19 pandemic, and the overall reduction in dental services due to public health restrictions.[121]

1.126 She also noted the outreach and education work that was undertaken by the Dental Council of NSW in collaboration with other regulators as being a possible factor. Educational material was developed by the Dental Council, Australian Dental Association of NSW and Guild Insurance to advise practitioners 'about the importance of ensuring that they had appropriate skills, education and training in the context of any decision that they made to perform some of the riskier cosmetic procedures'.[122]

1.127 We were pleased to hear that the Commission continues to monitor the volume of complaints relating to cosmetic procedures performed by dentists, and about the co-regulatory activity that is taking place in this area.

National reviews of cosmetic services

1.128 We questioned the Commissioner about the title and use of 'cosmetic surgeon' and whether there are sufficient protections for consumers who undergo cosmetic surgery.

1.129 The Commissioner responded by highlighting the national reviews underway regarding cosmetic surgery. One of these is the independent review of the regulation of medical professionals who perform cosmetic surgery. The review, commissioned by AHPRA and the Medical Board of Australia looked at issues in the cosmetic surgery industry, including how to strengthen regulation of practitioners and matters such as informed consent, independent psychological assessments, cooling off periods and minimum treatment standards.[123]

[119] Ms Dawson, Transcript of evidence, p 19; *Annual Report 2020-21*, p 61.

[120] Ms Dawson, Transcript of evidence, p 19.

[121] Ms Dawson, Transcript of evidence, p 19.

[122] Ms Dawson, Transcript of evidence, p 19.

[123] Ms Dawson, Transcript of Evidence, p 17; Australian Health Practitioner Regulation Agency, Independent review of the regulation of medical practitioners who perform cosmetic surgery, 1 September 2022, viewed 12 September 2022.

Independent review of the regulation of medical practitioners who perform cosmetic surgery

1.130 The report, *Independent review of the regulation of medical practitioners who perform cosmetic surgery,* was publicly released on 1 September 2022.[124] Sixteen recommendations were made to AHPRA and the Medical Board of Australia aimed at improving patient safety, with all recommendations accepted.[125]

1.131 AHPRA will set up a Cosmetic Surgery Enforcement Unit that will work with the Medical Board of Australia to set clear standards in cosmetic surgery. This is to make it easier for consumers to know who is trained and qualified to perform this surgery safely. There will also be a crackdown on advertising, including a ban on misleading testimonials. The underreporting of complaints will be addressed by AHPRA writing to every doctor in the country to inform them about what they need to report and when. A campaign will be launched to strengthen patients' voices so they understand that honest disclosure to regulators is legal and their right when things go seriously wrong. The Medical Board of Australia will also strengthen its guidance for medical practitioners performing cosmetic procedures and surgery as a way of reinforcing and strengthening existing guidelines. Changes will also be made to the way that AHPRA and the Medical Board deals with complaints so that dangerous doctors might be removed more quickly. Work with state and territory health authorities will also be done to close loopholes and address inconsistencies in areas such as licensing facilities and rules for drugs and poisons.[126]

1.132 The Committee notes some of the report's key findings and recommendations. One key finding was that 'when it comes to cosmetic surgery, universal minimum standards for education, training and qualifications are non-existent in Australia'.[127]

1.133 To address this, the review recommended that AHPRA and the Medical Board of Australia establish an area of practice endorsement. This would recognise practitioners who have an extended scope of practice in specific areas because they have obtained an approved qualification for that area. Consumers could then find out which practitioners have an endorsement using a public register. The review argued that endorsement is needed to give consumers clarity about the training and qualifications of cosmetic surgery practitioners. The review argued that title protection alone of the term 'surgeon' is inadequate given the unique factors of the cosmetic surgery sector.[128]

1.134 The review also found that there is 'significant underreporting of safety issues by registered health practitioners and employers in the cosmetic surgery sector'.

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[124] Independent review of the regulation of medical practitioners who perform cosmetic surgery, 1 September 2022, viewed 12 September 2022.

[125] Australian Health Practitioner Regulation Agency, Review of cosmetic surgery outlines 16 areas to improve patient safety, 1 September 2022, viewed 12 September 2022.

[126] Australian Health Practitioner Regulation Agency, Ahpra and Medical Board accept recommendations of the cosmetic surgery review in full, 1 September 2022, viewed 12 September 2022.

[127] Australian Health Practitioner Regulation Agency and the Medical Board of Australia, *Final report: Independent review of the regulation of medical practitioners who perform cosmetic surgery,* August 2022, p 5, viewed 12 September 2022.

[128] *Final report: Independent review of the regulation of medical practitioners who perform cosmetic surgery,* pp 6-7.

This echoes the concerns the Committee raised in the public hearing about the low volume of complaints the Commission received in 2020-21. To increase reporting, the review recommended that AHPRA and the Medical Board:

- Review education material on mandatory and voluntary notifications.
- Commence a targeted education campaign on these notifications in the cosmetic surgery sector.[129]

1.135 Following the release of the review, AHPRA rolled out a dedicated cosmetic surgery complaints hotline.[130] The Committee is interested to see the impact of this complaints hotline, and if it results in increased complaints to NSW regulators such as the Commission.

1.136 Federal and state health ministers met following the release of the review. All health ministers agreed to:

- Preventing unqualified medical practitioners from describing themselves as cosmetic surgeons.
- Ensuring that people who conduct cosmetic procedures are qualified.
- Confining surgeries to suitably accredited facilities with minimum hygiene and safety standards.
- Banning the use of patient testimonials for cosmetic surgery, including on social media.
- Providing better information for patients on the risks and their rights so that they can make informed decisions.[131]

Use of the title "cosmetic surgeon"

1.137 The Health Ministers' Meeting, formerly the Council of Australian Governments (COAG) Health Council, has released a Consultation Regulation Impact Statement on the use of the title "surgeon". Under current regulation all medical practitioners can use the title "surgeon" and "cosmetic surgeon", despite different levels of training and qualifications. Stakeholders were invited to comment on whether this creates confusion for members of the public. This Statement considered options such as maintaining the status quo, increasing public awareness, strengthening existing regulation and/or restricting the title "surgeon" under the National Law. At the time of writing, no decision has been made public.[132]

[129] *Final report: Independent review of the regulation of medical practitioners who perform cosmetic surgery*, pp 8-9.

[130] Australian Health Practitioner Regulation Agency, Cosmetic surgery complaints hotline now open, 5 September 2022, viewed 12 September 2022.

[131] Department of Health and Aged Care, *Crackdown on 'cosmetic cowboys'*, media release, 6 September 2022, viewed 12 September 2022.

[132] Engage Victoria, Medical practitioners' use of the title surgeon under the National Law, viewed 20 July 2022.

NSW Public Health Regulation 2022

1.138 In 2020, the *Health Legislation (Miscellaneous Amendments) Act 2020* was introduced and amended the Commission's powers. These amendments required 'relevant health organisations' to comply with a code of conduct and empowered the Commission to investigate and take action against those who breach the code.[133]

1.139 In early 2022, the NSW Ministry of Health consulted with stakeholders on a new code of conduct for relevant health organisations. The new code, contained in Schedule 4 of the Public Health Regulation 2022, commenced on 1 September 2022.[134] It builds on the existing code of conduct for non-registered health practitioners contained in Schedule 3 of the same regulation. These changes enable the Commission to use its powers, introduced in the 2020 amendments, to prohibit relevant health organisations from operating if they pose a risk to public health or safety. The Public Health Regulation 2022 also clarifies some of the equipment requirements for premises that perform skin penetration procedures.[135]

Organisation and governance

Revenue and expenditure

1.140 During 2020-21, the Commission successfully recovered $825,000 in legal costs. This was $175,000 more than the $650,000 it budgeted to recover.[136] The Commissioner explained that both legal cost recoveries and adverse legal costs are unpredictable. The Commissioner went on to say that if the Commission receives unexpected recoveries in June, this can result in surpluses against budgeted recoveries. The Commissioner also noted that the Commission currently has a 98 per cent success rate in prosecuting cases.[137]

1.141 As previously noted, in 2020-21, there was a 10.8 per cent increase in the number of complaints received.[138] We asked about the Commission's budget compared to the increasing complaints workload. The Commissioner stated that the Commission is committed to being more efficient and effective in managing the increasing complaints workload, but that 'there is only so much efficiency improvement that you can do'.[139]

1.142 The Commissioner went on to note that the Commission has a good working relationship with the Ministry of Health, which funds the Commission via cluster

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[133] NSW Health, *Codes of conduct for non-registered health practitioners and certain health organisations: Impact assessment statement*, viewed 28 September 2022, p 4.

[134] Correspondence to the Committee on the Health Care Complaints Commission from the Minister for Health, the Hon Brad Hazzard MP, Letter from the Minister for Health, 13 May 2022, p 2; NSW Health, Public Health Regulation 2022 – Key changes, 6 September 2022, viewed 12 September 2022.

[135] Minister for Health, *Powers to stop unsafe health practitioners*, media release, 23 September 2022, viewed 28 September 2022; NSW Health, Public Health Regulation 2022 – Key changes, 6 September 2022, viewed 28 September 2022.

[136] *Annual Report 2020-21*, p 117; Ms Dawson, Transcript of Evidence, p 12.

[137] Ms Dawson, Transcript of Evidence, pp 12-13.

[138] *Annual Report 2020-21*, pp 4, 10, 15.

[139] Ms Dawson, Transcript of Evidence, p 13.

grants. She stated that the Ministry 'fully understand that we want to operate on what we call an activity-based funding model'.[140] She went on to say that the Ministry understands the pressures that the Commission is dealing with as a result of its increased workload.[141]

1.143 During 2020-21, the Commission received a four per cent budget increase to its cluster grant funding, compared to the previous period.[142]

Staff retention and wellbeing

1.144 At the public hearing, the Commissioner noted that workload pressures remain an ever-present issue in managing staff retention. The Commissioner also noted, that like many other agencies, the effects of COVID-19 have added to staff retention issues. The Commissioner explained that as a small agency, receiving more complaints each year, workload pressures remain genuine and serious. The relentless volume and sensitive nature of the complaints received further contributes to workload pressures.[143]

1.145 In order to manage staff wellbeing and retention, the Commissioner explained that she places staff safety and wellbeing and their motivation at the centre of the Commission's workplace practices. As the Commission transitions out of COVID-19, there is also a focus on retaining the benefits of a highly functional hybrid work environment. Further, the Commission is using flexible arrangements, such as secondments, to provide staff with a reprieve from the relentless nature of the complaints management process.[144]

1.146 Despite the Commission's efforts to improve staff wellbeing, we note from the Commission's 2021 results in the People Mater Employee Survey (PMES), that there are specific areas where improvement is needed. The PMES is an annual survey of all public sector employees about their experiences at work. We considered trends in year-on-year results and the Commission's results compared to the public sector average, in particular noting:

- The Commission's worst scoring PMES topic was **grievance handling**. It scored 47 per cent (2020: 43 per cent). In this area employees' 'confidence in the ways my organisation handles grievances' achieved the lowest score.
- The Commission's scores for **job satisfaction** and **recruitment** decreased the most from 2020 to 2021, with job satisfaction falling from 71 per cent to 62 per cent and recruitment falling from 58 per cent to 53 per cent.
- The Commission's scores for **job satisfaction** and **learning and development**, were both more than five per cent below the public sector average. For job satisfaction the 2021 average was 69 per cent compared to the Commission's

[140] Ms Dawson, Transcript of Evidence, p 13.
[141] Ms Dawson, Transcript of Evidence, p 13.
[142] *Annual Report 2020-21*, pp 14, 117.
[143] Ms Dawson, Transcript of Evidence, p 27.
[144] Ms Dawson, Transcript of Evidence, p 27.

62 per cent. For learning and development the 2021 average was 57 per cent compared to the Commission's 51 per cent.[145]

1.147 The Committee will continue to monitor the Commission's performance in the areas of staff management and governance in future reviews.

[145] NSW Public Service Commission, *PMES 2021: Response rates and reports - Independent and other agencies - Health Care Complaints Commission*, viewed 21 July 2021, pp 6, 25, 12, 24.

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

20 May 2022
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 12
1:43pm, Wednesday 30 March 2022
Room 1043 and via videoconference

Members Present

Dr McGirr (Deputy Chair), Mrs Cusack, Mr Donnelly, Mr Layzell, Ms Washington, Mrs Williams
By videoconference: Mr Pearson

Officers in Attendance

Rohan Tyler, Kieran Lewis, Matthew Johnson, Ilana Chaffey

1. Deliberative meeting

Under standing order 284, Dr McGirr opened the meeting as Deputy Chair.

1.1 Committee membership

The Deputy Chair advised the Committee of the changes in membership, as recorded in the Legislative Assembly Votes and Proceedings, no 128, entry no 15, and the Legislative Council Minutes no 113, entry no 4 of Thursday 24 February 2022.

Mr Dave Layzell MP has been appointed to the Committee in place of Mr Gurmesh Singh MP.

The Hon. Catherine Cusack MLC has been appointed to the Committee in place of the Hon. Lou Amato MLC.

The Deputy Chair welcomed the new members and thanked both of the outgoing members.

2. Election of Chair

There being a vacancy in the office of Chair of the Committee, the Deputy Chair called for nominations for the office of Chair.
Mr Donnelly moved that Dr McGirr be the Chair of the Committee, seconded by Mrs Cusack.
No further nominations were received.

There being only one nomination, Dr McGirr was declared to be the Chair.

Dr McGirr took the Chair.

3. Election of Deputy Chair

There being a vacancy in the office of Deputy Chair of the Committee, the Chair called for nominations for the office of Deputy Chair.

Mrs Williams moved that Mr Layzell be the Deputy Chair, seconded by Mrs Cusack. No further nominations were received. There being only one nomination, Mr Layzell was declared to be Deputy Chair.

4. Confirmation of minutes

Resolved on the motion of Mr Donnelly, seconded by Ms Washington, that the minutes of the meeting of 9 August 2021 be confirmed.

5. ***

6. ***

7. Review of the Health Care Complaints Commission 2020-21 annual report

Resolved on the motion of Mrs Williams, seconded by Mr Donnelly, that the Committee:

- conduct a review of the 2020-21 annual report of the Health Care Complaints Commission: and
- invite the Commissioner and her staff to give evidence at a public hearing on 20 May 2022 as part of the review.

8. ***

9. General business

The Committee discussed potential questions to ask the Commission during the upcoming public hearing.

The Committee agreed that the secretariat prepare suggested questions for members to ask the Commission, and that members identify select questions to send to the Commission prior to the public hearing.

The Committee also agreed that the Commission does not need to provide a written response to the questions.

10. Next meeting

The Committee adjourned at 2:06pm until Friday 20 May 2022.

MINUTES OF MEETING No 13
8:53am, Friday 20 May 2022
Jubilee Room, Parliament House and by videoconference

Members Present
Dr McGirr (Chair), Mr Layzell (Deputy Chair), Mr Donnelly, Mr James, Mr Pearson
By videoconference: Mrs Cusack

Officers in Attendance
Rohan Tyler, Kieran Lewis, Matthew Johnson, Jordan Manning, Nicolle Gill

1. Deliberative meeting

1.1 Committee membership

The Chair advised the Committee of the change in membership, as recorded in the Legislative Assembly Votes and Proceedings, no 134, entry no 17.

Mr Timothy James MP has been appointed to the Committee in place of Mrs Leslie Williams MP, discharged.

1.2. Media orders

Resolved, on the motion of Mr Donnelly, seconded by Mr Pearson, that the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 20 May 2022, 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 Mr Donnelly, seconded by Mr James, 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. Discussion of members' questions for the hearing

The Committee discussed the content and organisation of the questions sent to the Health Care Complaints Commission prior to the hearing.

The Chair closed the meeting at 9:00am.

2. Public hearing – Review of the Health Care Complaints Commission's 2020-21 annual report

Witnesses and the public were admitted. The Chair opened the public hearing at 9.03am 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 Committee questioned the witnesses.

Evidence concluded and the witnesses withdrew.

The public hearing concluded at 12:03pm.

3. Post hearing deliberative meeting

The Chair opened the meeting at 12:12pm.

3.1. Confirmation of minutes

Resolved, on the motion of Mr Pearson, seconded by Mr Layzell, that the minutes of the meeting of 30 March 2022 be confirmed.

3.2. Publication of transcript

Resolved, on the motion of Mr James, seconded by Mr Donnelly, that the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

3.3. ***

3.4. ***

3.5. ***

3.6. General business

Members discussed the next steps for the inquiry.

4. Next meeting

The meeting adjourned at 12:21pm until a date and time to be determined.

UNCONFIRMED MINUTES OF MEETING No 14
1:41pm, Wednesday 19 October 2022
Room 814/815, Parliament House

Members Present
Dr McGirr (Chair), Mr Layzell (Deputy Chair), Mr Donnelly, Mr James, Mrs MacDonald, Mr Pearson, Ms Washington

Officers in Attendance
Rohan Tyler, Ilana Chaffey, Jordan Manning

1. Confirmation of minutes

Resolved, on the motion of Mr Donnelly: That the minutes of the meeting of 20 May 2022 be confirmed.

2. ***

3. Committee membership

The Chair advised the Committee of the following changes in membership:

As recorded in the Legislative Assembly Votes and Proceedings, no 149, entry no 11, and the Legislative Council Minutes no 135, entry no 10 of Thursday 11 August 2022, The Hon Scott Farlow MLC was appointed to the Committee in place of the Hon Catherine Cusack.

As recorded in the Legislative Assembly Votes and Proceedings, no 152, entry no 6, and the Legislative Council Minutes no 138, entry no 14 of Wednesday 21 September 2022,

The Hon Aileen MacDonald MLC was appointed to the Committee in place of the Hon Scott Farlow MLC.

The Chair welcomed Mrs MacDonald to the Committee.

4. ***

5. Review of the Health Care Complaints Commission's 2020-21 annual report

5.1. Response to questions taken on notice

The Committee noted the receipt of a response to questions taken on notice by the Health Care Complaints Commission at the public hearing on 20 May 2022.

Resolved, on the motion of Mr Donnelly, seconded by Mr James: That the Health Care Complaints Commission's response to questions taken on notice at the public hearing be accepted and published on the Committee's webpage.

5.2. Response to supplementary questions

The Committee noted the receipt of a response to supplementary questions from the Health Care Complaints Commission issued following the public hearing on 20 May 2022.

Resolved, on the motion of Mr Pearson, seconded by Mrs MacDonald: That the Health Care Complaints Commission's response to supplementary questions issued following the public hearing be accepted and published on the Committee's webpage.

5.3. Consideration of Chair's draft report

The Committee considered the Chair's draft report.

Resolved, on the motion of Mrs MacDonald, seconded by Mr Pearson: That the Committee consider the Chair's draft report in globo.

Resolved, on the motion of Mr Donnelly, seconded by Mr Pearson: That recommendation 1 on page 11 of the draft report be amended to include the words ", including detail about the age of the recipient of care" following "data", so the recommendation reads:

That the Health Care Complaints Commission collect and report on additional complaints data, including detail about the age of the recipient of care, so it can provide more detailed information about the standard of health services, including in rural and regional areas.

Resolved, on the motion of Mr Donnelly, seconded by Mrs MacDonald: That recommendation 2 on page 11 of the draft report be amended to delete the words "rural and regional" following "in", and instead insert the words "rural, regional and remote", so the recommendation reads:

That the Ministry of Health use the complaints data provided by the Health Care Complaints Commission to identify sub-standard health services, including the

absence of services, in rural, regional and remote areas, and that this data be used to improve services in these areas.

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

1. That the draft report, as amended, be the report of the Committee, and that it be signed by the Chair and presented to the House.
2. That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors, and to make consequential amendments.
3. That, once tabled, the report be published on the Committee's webpage.

6. ***

7. ***

8. Next meeting

The meeting adjourned at 2:03pm until a date and time to be confirmed.