

**PARLIAMENTARY COMMITTEE ON THE HEALTH CARE COMPLAINTS
COMMISSION**

**REVIEW OF THE HEALTH CARE COMPLAINTS COMMISSION'S 2021-22 AND
2022-23 ANNUAL REPORTS**

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1. INTRODUCTION

Pharmaceutical Defence Limited (PDL) appreciates the opportunity to make a submission to the Parliamentary Committee on the Health Care Complaints Commission Review of the Health Care Complaints Commission's (HCCC) 2021-22 and 2022-23 Annual Reports. As a member-based mutual representing over 31,000 pharmacist members, PDL is Australia's first national pharmacy body, established in 1912 by pharmacists for pharmacists. We are dedicated to the pharmacy profession and attend to a wide network of pharmacist members nationally, comprised of community, hospital, clinical and research pharmacists, intern pharmacists and pharmacy students.

In addition to risk management advice, PDL provides professional indemnity insurance for its members via a third-party underwriter. PDL is not an insurance company, but a cooperative owned by its pharmacist members. A core function of the organisation is to provide practical support and advice to members and the broader pharmacy profession on a wide range of practice issues. It is in this context that we are pleased to be able to contribute to this important consultation.

PDL recognises the primary consideration of the Health Care Complaints Commission is the health and safety of the public and the appreciates the purpose of this consultation is to consider the performance of the HCCC regarding the appropriateness of timeframes for assessing, reviewing and investigating complaints made against health practitioners.

This submission specifically addresses questions 1 and 3 and in doing so, makes two recommendations for reform.

1. Under section 22(a) of the *Health Care Complaints Act 1993* (NSW), the HCCC must carry out its assessment of complaints within 60 days after receiving the complaint. Is 60 days an appropriate timeframe for assessing complaints?

Recommendation 1: PDL recommends the HCCC time frame for assessing complaints should be less than 60 days.

The current time frame of 60 days for assessment of complaints can have negative outcomes for pharmacists and complainants. Timely assessment of complaints is important to pharmacists particularly where the outcome may involve serious allegations about a pharmacist.¹ Pharmacists who are the subject of a regulatory notification can ‘experience heightened levels of stress, anxiety and shame’.² This can negatively impact on their personal and professional lives.³ This is significant as the 2021-22 Annual Report shows that 46.6% of complaints were discontinued by the HCCC and a further 15.7% were discontinued with comments.⁴ Similarly, in 2022-23 54.8% of complaints were discontinued by HCCC and a further 12.1% were discontinued with comments by the HCCC.⁵ Timely assessment of complaints is also important for complainants as lengthy delays can lead to distrust in the complaint mechanism.⁶

The time frame for assessing a health complaint should be reduced to 30 calendar days. Reducing the time frame for assessing a complaint to 30 days would align the HCCC with the time frames followed by other statutory health complaint bodies such as the Queensland Office of the Health Ombudsman. New South Wales and Queensland both operate under a co-regulatory model for health practitioner regulation however, differences exist between the time frames for finalising an assessment. In Queensland, the Office of the Health Ombudsman must complete an assessment of a health complaint within 22 business days (30 calendar days).⁷ The HCCC aims to complete reviews of assessment within 60 days, which is significantly longer

¹ Evgenia Bourova, Ian Ramsay and Paul Ali, 'Cause to Complain? Consumer Experiences of the Internal and External Dispute Resolution in the Context of general Insurance' (2020) 30 *Australian Dispute Resolution Journal* 302, 303.

² Susan Biggar et al, 'Virtual Daily Grief - Understanding Distress in Health Practitioners Involved in a Regulatory Complaints Process: A Qualitative Study in Australia' (2023) 35(4) *International Journal for Quality in Health Care* 1, 1.

³ Ibid.

⁴ Health Care Complaints Commission, '2021-2022 Annual Report', (Web Report) 28 <<https://www.hccc.nsw.gov.au/Publications/Annual-Reports>>.

⁵ Health Care Complaints Commission, 'Annual Report 2022-23', (Web Report) 36 <<https://www.hccc.nsw.gov.au/Publications/Annual-Reports>>.

⁶ Evgenia Bourova, Ramsay and Ali (n 1) 304.

⁷ *Health Ombudsman Act 2013* (Qld) s 49(1) ('*Health Ombudsman Act*').

than the time taken by the Office of the Health Ombudsman despite both bodies receiving and managing similar numbers of complaints. Reducing the time frame for assessment of complaints is an important aspect in promoting the primary purpose of the HCCC which is the protection of the health and safety of the public.⁸ Consistency in timelines for assessment of complaints across jurisdictions is also an important aspect of procedural fairness for pharmacists.⁹

Recommendation 2: The HCCC should develop a systematic approach to identifying the party to whom the complaint should be directed as part of the assessment of complaint process.

PDL acknowledges that complaint resolution processes can be complex and time-consuming.¹⁰ At the same time, deficiencies in compliant handling processes can lead to unnecessary stress for pharmacists. Patient complaints are subjective and often emotive and may criticise the pharmacist's professional skills.¹¹ Further, patient complaints often do not reflect an understanding of the specific factors that may have led to an incident occurring, for example, workloads, stock shortages, and professional, legal or ethical obligations.¹² Improvements to the complaint handling process are critical to reducing these negative experiences.

PDL is responsible for triaging notifications received by the members from regulatory bodies including the HCCC in New South Wales. Several situations have arisen where pharmacists have received a notification from the HCCC however, the complaint notification has not been directly addressed to our pharmacist member. Failure to address a notification clearly and correctly is confusing for our members and can lead to delays in responding to the complaint. Further, this confusion of who should respond to the notification often results in conflict between the employee pharmacist and the pharmacy owner. To overcome this, PDL recommends the HCCC adopt a systematic approach to identifying the party to whom the complaint should be directed as part of the assessment of complaint process.

⁸ *Health Care Complaints Act 1993* (NSW) s 3(2) ('*Health Care Complaints Act*').

⁹ John Braithwaite, Judith Healy and Kathryn Dwan, *The Governance of Health Safety and Quality* (Discussion Paper, Commonwealth of Australia, 2005) 36.

¹⁰ Marie Nagy et al, 'Health Care Complaint Journeys for System Comparison' (2018) 31(8) *International Journal of Health Care Quality Assurance* 878, 878.

¹¹ Tom W Reader, Alex Gillespie and Jane Roberts, 'Patient Complaints in Healthcare Systems: A Systematic Review and Coding Taxonomy' (2014) 14(23) *BMJ Quality and Safety* 678, 679.

¹² *Ibid.*

In your experience, has the HCCC consistently assessed complaints within the 60-day timeframe?

The average time taken by the HCCC to assess a complaint in the 2021-2022 year was 45 days which is within the 60-day statutory period.¹³ PDL notes that in 2022-23 Annual Report the average time taken to assess a complaint was 48 days which is an increase on the previous year.¹⁴ PDL agrees with the HCCC that this ‘decline in timeliness’ requires correction.¹⁵

3. Complaints are referred for investigation by the HCCC in situations where an initial assessment raises a potentially significant issue of public health or safety; significant departures from clinical treatment and professional conduct standards; and/or where there may be grounds for disciplinary action. The HCCC aims to complete all investigations within 12 months. Is 12 months an appropriate timeframe for completing of investigations?

PDL supports the 12-month timeframe for completing investigations. PDL acknowledges that alleged complaints against pharmacists are becoming more complex. Some complaints may require a high level of expertise, particularly as a pharmacist’s scope of practice is rapidly expanding to include complex compounding, supply of medicinal cannabis, provision of services to, and in aged care facilities, vaccination services, diabetes education and many more areas. At the same time, it is important that obstacles be removed to facilitate timely completion of investigations.¹⁶ As noted above, this includes correctly identifying the party who is required to respond to the complaint. Timely completion is important to promote public safety through identification of risk,¹⁷ and professional accountability but also provides certainty for pharmacists.¹⁸

Timely investigation and resolution of complaints is important for both consumers and pharmacists. PDL acknowledges that a thorough investigation into an alleged complaint is necessary to uphold patient safety.¹⁹ Thorough investigation and prompt

¹³ Health Care Complaints Commission, '2021-2022 Annual Report' Commission (n 4) 28.

¹⁴ Health Care Complaints Commission, 'Annual Report 2022-23' (n 5) 22.

¹⁵ Ibid 35.

¹⁶ Evgenia Bourova, Ramsay and Ali (n 1) 303.

¹⁷ Benjamin M Nowotny et al, 'Sharing the Pain: Lessons from Missed Opportunities for Healthcare Improvement from Patient Complaints and Litigation in the Australian Health System' (2019) 43 *Australian Health Review* 382, 386.

¹⁸ Christine M Sansom, 'Creating a Complaint Resolution Analysis for Professional Accountability and Public Protection' (April 2017) 8(1) *Journal of Nursing Regulation* 38, 39; Benjamin M Nowotny et al (n 17) 383.

¹⁹ Benjamin M Nowotny et al (n 17) 385.

complaint/investigation is important as it allows for learning and improvement in the delivery of health care by pharmacists. At the same time, lengthy investigations can cause uncertainty for both consumers and pharmacists as they are left without finality.²⁰ Where the investigation process is too lengthy, missed opportunities for learning and continuous quality improvement may arise.²¹ This in turn may place the public at a risk of harm. Further, where there is no clear timeline for the investigation, this can be detrimental to pharmacist health and well-being.²² Consequently, a balance needs to be found between public safety, accountability and certainty for patients and pharmacists. In finding this balance, PDL recommends the HCCC maintain regular and transparent communication with pharmacists throughout the investigation process. HCCC should keep pharmacist updated on progress throughout the investigation process. Clear timelines should be provided to pharmacists who are subject to an investigation.

Please do not hesitate to contact PDL, should you wish to further explore our views in relation to the submission or any of the issues raised.

Benjamin M Nowotny et al, 'Sharing the Pain: Lessons from Missed Opportunities for Healthcare Improvement from Patient Complaints and Litigation in the Australian Health System' (2019) 43 *Australian Health Review* 382

Christine M Sansom, 'Creating a Complaint Resolution Analysis for Professional Accountability and Public Protection' (April 2017) 8(1) *Journal of Nursing Regulation* 38

Commission, Health Care Complaints, '2021-2022 Annual Report', (Web Report)

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Commission, Health Care Complaints, 'Annual Report 2022-23', (Web Report)

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Evgenia Bourova, Ian Ramsay and Paul Ali, 'Cause to Complain? Consumer Experiences of the Internal and External Dispute Resolution in the Context of general Insurance' (2020) 30 *Australian Dispute Resolution Journal* 302

Health Care Complaints Act 1993 (NSW)

Health Ombudsman Act 2013 (Qld)

John Braithwaite, Judith Healy and Kathryn Dwan, 'The Governance of Health Safety and Quality', (Discussion paper)

Marie Nagy et al, 'Health Care Complaint Journeys for System Comparison' (2018) 31(8) *International Journal of Health Care Quality Assurance* 878

Susan Biggar et al, 'Virtual Daily Grief - Understanding Distress in Health Practitioners Involved in a Regulatory Complaints Process: A Qualitative Study in Australia' (2023) 35(4) *International Journal for Quality in Health Care* 1

²⁰ Evgenia Bourova, Ramsay and Ali (n 1); Susan Biggar et al (n 2) 4.

²¹ Benjamin M Nowotny et al (n 17) 385.

²² Susan Biggar et al (n 2) 4.

Tom W Reader, Alex Gillespie and Jane Roberts, 'Patient Complaints in Healthcare Systems: A Systematic Review and Coding Taxonomy' (2014) 14(23) *BMJ Quality and Safety* 678