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Submitted by email to: chcc@parliament.nsw.gov.au

Response to questions on notice – review of the 2012-13 annual report of the Health Care Complaints Commission

Thank you for your letter of 28 March 2014 enclosing questions on notice for the Committee's forthcoming hearing on Wednesday, 16 April 2014.

The Commission's response to the questions on notice is attached. Please note that the response to question 5 contains complaint-related information and I request the Committee to direct that this part of the Commission's submission be treated confidential under section 72(1)(b) of the *Health Care Complaints Act*.

Yours sincerely,



Kieran Pehm
Commissioner

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Question 1

The Commission saw a 10.3% increase in the number of written complaints compared to the previous year. What proportion of these were mandatory notifications which were legally deemed as complaints as of June 2012?

Response

Since mandatory notifications were legally deemed to be complaints from June 2012, the Commission has treated them as normal complaints and has not been tracking this cohort of complaints separately. However, the health professional Councils include information about the number of mandatory notifications in their annual reports. In total, the Council registered 231 mandatory notifications in 2012-13, which due to the co-regulatory arrangements were notified to the Health Care Complaints Commission and dealt with as formal complaints.

For the Committee's convenience, the relevant information for the 2012-13 year has been replicated in the table below.

Table 1: Number of mandatory notifications received as reported in health professional Councils' annual reports for the 2013 year

Council	Mandatory notifications 2012-13
Aboriginal and Torres Strait Islander Health Practice Council of New South Wales	-
Chinese Medicine Council of New South Wales	1
Chiropractic Council of New South Wales	-
Dental Council of New South Wales	3
Medical Council of New South Wales	87
Medical Radiation Practice Council of New South Wales	3
Nursing and Midwifery Council of New South Wales	120
Occupational Therapy Council of New South Wales	1
Optometry Council of New South Wales	-
Osteopathy Council of New South Wales	1
Pharmacy Council of New South Wales	4
Physiotherapy Council of New South Wales	3
Podiatry Council of New South Wales	-
Psychology Council of New South Wales	8
Total	231

Data provided by David Rhodes, Assistant Director, Allied Health, Nursing and Midwifery, Health Professional Councils Authority

Question 2

Can you provide additional information about the University of Sydney research project that is comparing complaint handling in NSW to other Australian jurisdictions?

Response

The research project is titled *National registration of health practitioners: a comparative study of the complaints and notification system under the national system* and aims to:

- analyse the different processes of health practitioner complaint handling, including investigation and disciplinary procedures by the Health Professional Council Authority (HPCA) in co-regulation with the NSW Health Care Complaints Commission (HCCC) and nationally through the Australian Health Practitioner Regulation Agency (AHPRA)
- provide advice on best practices in relation to the receipt, assessment, method for resolution and outcomes, in order to establish which system offers the most effective and efficient system for managing complaints/notifications involving health professionals
- ascertain complainants' perceptions and experiences of the processes in the two different complaint notification systems.

The project consists of five studies, each of which is briefly explained below based on information provided by the research coordinator Claudette Satchell.

Study I: Comparative Analysis of Health Complaints Data

Contact: Patrick Kelly, School of Public Health, University of Sydney

Study I comprises the collation and analysis of health complaints data, including matters that were investigated and their outcomes, for the period 1st Jul 2012 to 30th Jun 2014. Data access is facilitated through AHPRA, HPCA and the NSW HCCC and comparisons will be made between the NSW and National data sets. Data will be collected for complaints made against the following five health practitioner groups: dentistry, medicine, nursing and midwifery, pharmacy and psychology. These professions are selected as they represent key members of the health workforce within Australia and because of their differing models for receiving notifications under the national scheme. Medicine, nursing and midwifery and dentistry have state and territory Boards in all jurisdictions that will have notifications committees for receiving and processing complaints; psychology has a hybrid model of regional Boards; and pharmacy only has a national Board with a notifications committee. The following information will be collected for each complaint:

- Type of complaint (e.g. boundary violations, financial irregularities, fraud, assault, poor performance, medication irregularities)
- Complaint assessment process (undertaken by the AHPRA or HPCA staff and/or national Board notifications committees).
- Outcomes of assessment (e.g. decisions to refer or not proceed).
- Methods used for complaint resolution: investigation and conciliation/mediation as well as the categories and types of complaints that fit into the different resolution methods.
- Outcome of complaint, by broad headings (e.g. prosecution, suspension, resolution, letter to respondent, letter to complainant, refer to impaired panel, refer for competence assessment).

- Panel/Professional Standards Committee (PSC)/ Tribunal decisions (by broad headings). The outcomes of Panel/PSC/Tribunal decisions will be recorded by matching complaints and complaint type to determinations. The Tribunal and PSC decisions are recorded and kept on file in both the national and NSW offices and it will be necessary to track backwards to identify the number of complaints of a particular type that go to disciplinary hearing.
- Demographic information (e.g. gender, age, state/territory).

Study II: Case studies on the life of a complaint

Contact: Marie Nagy, School of Nursing, University of Sydney

Study II tracks a number of selected paired complaints from NSW and the national scheme from initial receipt of the notification to finalisation. It will give insight both into the decision making processes and the complexity of working in a protective jurisdiction. These complaints will be selected through negotiation with the notifications bodies and will be given a code number (potentially identifiable) to allow tracking the complaint journey. Data will be de-identified for Study II because comparisons will need to be made between the two processes, it would be undesirable to make comparisons between the outcomes. The study will be able to make general observations about how different categories of complaints are handled and their outcomes. The same complaints will be tracked across all five professional groups.

Study III: Surveys of Key Personnel and Quasi-Judicial Decision-Makers

Contact: Claudette Satchell, School of Nursing, University of Sydney

Study III comprises surveys of AHPRA, HPCA and HCCC staff, as well as Panel, Tribunal and Committee members involved in complaint/notifications handling and management from both systems to determine their priorities and decision making processes. This process will survey the following aspects of complaint handling and quasi-judicial decision making through a series of open-ended questions:

Factors taken into account on receipt of a complaint in terms of preliminary assessment. i.e. what factors would be most likely to lead to the range of decisions available from declining to accept a complaint through referral for investigation.

Factors taken into account at disciplinary hearings i.e. what factors might lead to the range of decisions available from imposing conditions through the Panel to referral to a Tribunal;

The results of this survey will be compared with and analysed against best practice criteria for notifications/ complaints handling.

Study IV: Complainant Follow-up Questionnaire

Contact: Suzanne Pierce, School of Public Health, University of Sydney

Complainants will be followed-up through an anonymous process whereby AHPRA and HPCA/HCCC will send out a questionnaire to complainants with the letters of advice about the outcome of a completed complaint.

Complainants will be asked to complete a questionnaire on their experiences and perceptions of the complaints handling process. These would be compared with and analysed against best practice criteria for notifications/complaints handling. This study will involve every matter that is closed during the period July 2013 to July 2014. In addition, a

notice is placed on both the AHPRA and HPCA/HCCC websites seeking voluntary input from other complainants whose matters are completed. The questionnaire will take care to differentiate between experiences of processes and satisfaction about outcomes.

Study V: Theoretical comparison of governance models

Contact: Belinda Bennett, Health Law Research Centre, Queensland University of Technology

Study V will be a theoretical and analytical article which will mainly focus on the regulatory laws for notification and complaint handling and the various models in existence and/or previously suggested.

- Productivity Commission recommended model
- actual models – AHPRA, NSW
- newly established models – QLD
- comparison between AHPRA, NSW and QLD models
- best practice model

After model-mapping, outcomes from the other studies will be used to assess pros and cons of AHPRA and NSW complaints systems.

Question 3

Has there been an increase in complaints referred to the Commission's Resolution Service over recent years? Can you comment on trends in the number and type of referrals to this service?

Response

On average over the past five years – 2008-09 to 2012-13 – the Commission referred 696 complaints annually to its Resolution Service, ranging from 615 in 2011-12 to 735 in 2009-10. The actual numbers vary from year to year and other than a slight decrease in the overall proportion of complaints that are assessed as being suitable for resolution, no clear trend can be established.

The decision to refer a complaint to the Resolution Service is made by assessing each individual complaint taking into account whether the patient has an ongoing relationship with the health service provider and evaluating the prospects that a resolution of the issues can be achieved. Given that resolution processes are voluntary and rely on the consent of both parties to engage in the process, complaints where one party refuses to engage, or makes it clear that resolution is not desired, will not be referred to the Resolution Service.

Question 4

It is stated that people can call, email or make inquiries online to the Commission. Are there comparative statistics available about how people access the Commission to make complaints and are there any notable trends over the past five years?

Response

The vast majority of inquiries to the Commission are made by phone. Phone inquiries accounted for 94.7% of all inquiries received in 2012-13, a slightly smaller proportion compared to the previous four years in which between 95.1% to 96.0% of inquiries were made by phone.

In 2012-13, 3.2% of inquiries were made via email or by using the Commission's online inquiry form, up from 1.4% in 2008-09. A small number of inquiries are made by people visiting the Commission.

Given the legislative requirement for complaints to be made in writing, in 2012-13, almost half of all complaints were made using the Commission's printed complaint form or writing a letter (49.3%), followed by electronic submission via email (26.5%) or using the Commission's online complaint form (23.9%).

In the period from 2008-09 to 2012-13, the proportion of complaints submitted via electronic means has significantly increased from 3.0% of all complaints being received electronically in 2008-09 to 50.4% in 2012-13. The Commission has worked and continues to work on improving its website and online complaint form to be easily accessible via computer and electronic mobile devices.