



# HEALTH COMPLAINTS COMMISSIONER

Supporting safe and  
ethical healthcare

# ANNUAL REPORT 2022-23



## OUR MISSION

**OUR INDEPENDENT SERVICE ASSISTS CONSUMERS AND HEALTHCARE PROVIDERS, THROUGH FAIR AND EFFECTIVE COMPLAINT HANDLING, EDUCATION AND REGULATORY ACTIONS.**

## OUR VALUES

### ACT WITH INTEGRITY

**WE OPERATE IN AN IMPARTIAL AND INDEPENDENT WAY. WE ALWAYS MAINTAIN HIGH PROFESSIONAL STANDARDS.**

### BE SUPPORTIVE

**WE FOCUS ON PROTECTING AND PROMOTING THE HEALTH AND WELLBEING OF OUR PEOPLE AND THE COMMUNITY. WE STRIVE TO EQUIP PEOPLE TO HELP THEMSELVES THRIVE.**

### BE RESPECTFUL

**WE RESPECT OTHERS AND ALWAYS TAKE A PERSONAL FOCUSED APPROACH.**

### BE INNOVATIVE

**WE ARE COMMITTED TO CONTINUOUS LEARNING AND IMPROVEMENT IN THE HEALTH SERVICES SECTOR AND IN THE WAY WE OPERATE EVERY DAY.**

## TRADITIONAL CUSTODIANS

The Health Complaints Commissioner respectfully acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land and waterways and recognises their ongoing connection to land, waters and community. The Health Complaints Commissioner pays respect to the Elders, both past and present.

## DIVERSITY STATEMENT

At the office of the Health Complaints Commissioner, we recognise and value that diversity, equity, and inclusion are at the core of who we are as an organisation. These values are central to our mission to assist consumers and healthcare providers, through fair and effective complaint handling, education and regulatory actions. We celebrate having diverse and inclusive perspectives to help us better understand our stakeholders and generate better ideas. Our commitment is to create a workplace that cultivates diversity, equity and inclusion and which reflects the diversity of the Victorian community we serve.

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## FOR MORE INFORMATION

This Annual Report details our performance over the 2022 – 2023 financial year against our mission and service charter.

Our office administers the *Health Complaints Act 2016* and *Health Records Act 2001*. Some of our key functions are described in this Report.

### FOR CONSUMERS

If you want more information about our role or if you want to make a complaint about a health service, please visit [hcc.vic.gov.au](http://hcc.vic.gov.au) or call us on 1300 582 113.

## FOR HEALTH SERVICE PROVIDERS

If you would like more information about our process, if we received a complaint about you, or about training, resources or your responsibilities under the *Health Complaints Act 2016* and *Health Records Act 2001*, please visit [hcc.vic.gov.au](http://hcc.vic.gov.au) or call us on 1300 582 113.

*All names used in the case studies throughout this report have been changed for privacy reasons. The images accompanying case studies are not of complainants or health service providers.*

# A MESSAGE FROM THE COMMISSIONER

It is my pleasure to present the Annual Report for the Health Complaints Commissioner (HCC) for 2022-23. Since commencing as Commissioner on 1 July 2022 I have focused on learning about the work of the HCC, the people behind the important work we do, and the diverse stakeholders who rely on us to support safe and ethical healthcare in Victoria. I feel privileged to have the opportunity to build upon the HCC's solid foundations and to strengthen the way in which our office works to achieve the key objectives of the *Health Complaints Act (2016)*.

In 2022-23, complaint volume was relatively stable compared to previous years post COVID. Key highlights and success over the last year have included meeting with leaders and staff at over 50 organisations. These have included both metropolitan and regional public health services, a wide range of government agencies, commissioners and regulators, and peak bodies representing groups of general health service providers that deliver services such as massage and myotherapy, hypnotherapy, naturopathy, private drug and alcohol services, and social work. The visits provided an understanding of the challenges providers face with health complaints, their experiences with our office, and how we can work collaboratively towards effective complaints management and protecting the Victorian public.

The visits also included consultation to inform and revise our strategic plan. I look forward to extending stakeholder relationships as well as seeking broader engagement with organisations and groups to ensure that the HCC is accessible and responsive to the needs of priority population groups and communities throughout Victoria.

In response to changes in service demand and expectations, this year we commenced a review of our processes to find better ways of working and be more responsive to those using our service. We have taken steps to optimise our complaints management processes and practices, and better meet the needs of our consumers, our staff and the organisation. The success of this work is evident in ongoing improvement in our performance data and the experiences of those using our service.

Maintaining our close working relationship with co-regulators, such as national health complaint Commissioners across Australia, Ahpra, and the Australian Commission on Safety and Quality in Health Care has been essential for our local health complaint system to work effectively.

During the current reporting period, we delivered our four-year strategic plan. This plan will guide our priorities and work until 2027.



ADJUNCT PROFESSOR

BERNICE REDLEY

HEALTH COMPLAINTS  
COMMISSIONER

The plan outlines our purpose to support consumers' voice and learn from complaints to help drive ongoing improvement in the quality of health services in Victoria. It is supported by four strategic priorities: Provide excellence in service for 'Our Customers'; Create a great place to work for 'Our Staff'; deliver best practices in complaint management through 'Our Processes'; and 'Our Impact', making a difference with system-wide change. Additional detail is provided later in this report.

Our focus for the year ahead is to continue our wide consultation to engage with consumer groups, health services and providers on meeting our core functions. We will revise the Complaint Handling Standards, as required by the *Health Complaints Act 2016* every three years, to better reflect the needs of the Victorian Community. Similarly, we will also revise the Service Charter that describes the services we provide and how our customers can expect to be treated. We will also explore how we build collaboration with other agencies to protect public safety, and better use our technology tools to help meet our strategic priorities.

Finally, I would like to thank all staff and stakeholders of the HCC for the warm welcome and support that I have received since my commencement in this important role. I feel honoured to lead such a

dedicated and skilled group of staff who are committed to making a positive difference to the people of Victoria and work hard to continuously improve our processes and the quality of the services we provide. I also acknowledge the thousands of Victorians who have raised their concerns about the provision of health services with our office, enabling us to take action on these safety and quality issues.

**Adjunct Professor Bernice Redley**  
Health Complaints Commissioner

# OUR ADVISORY COUNCIL

The HCC Advisory Council is appointed by the Victorian Minister for Health. Its functions are to:

- Liaise with health service providers and consumers to advise the Commissioner in the development of a practice protocol and complaint handling standards, and
- Provide advice to the Commissioner, on the request of the Commissioner, regarding any function or power of the Commissioner.

## THE HCC ADVISORY COUNCIL FOR 2022-2023

Our advisory council again this year provided us with some valuable support and guidance as we developed our strategic plan and implemented some process changes across our organisation.

We farewelled our council member Rosemary McKenzie this year and thank her for her generous contributions to our work over the preceding six years. The current terms for the Advisory Council end in August 2023 and a recruitment process is underway to appoint members for the next three-year term.

### PRESIDENT

**MS CATHERINE DUNLOP**

### PROFESSOR

**ANDREA DRISCOLL**

### MR

**ANTHONY MCBRIDE**

### MRS

**JENNIFER MORRIS**

### DR

**SUSAN SDRINIS**

### ASSOCIATE PROFESSOR

**ROSEMARY MCKENZIE**



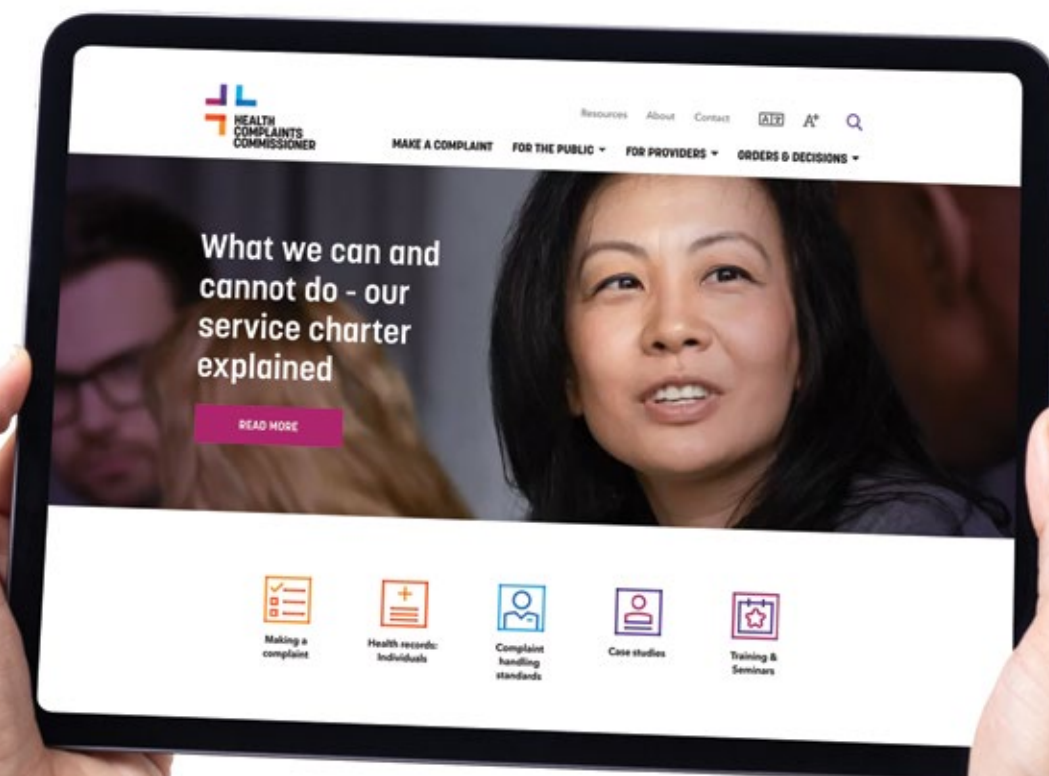
# OUR SERVICE CHARTER

Our Service Charter reflects our commitment to good customer service. It sets out the standards of service that complainants and health service providers can expect from us, as well as what we expect from them when they engage with our office. Our Charter also explains what we can and cannot do, how we will work with complainants and health service providers and how someone can make a complaint about a service they received from us. This service charter will be reviewed in 2023 in line with our obligations under our legislation and a stakeholder engagement exercise is in place.

## COMPLAINTS ABOUT US

During the year we received 76 complaints about our service delivery. Of those, 36 were made directly by complainants, and 40 were enquiries raised by the Victorian Ombudsman on receipt of a complaint about the HCC. None of the Ombudsman enquiries escalated to investigation. Of the finalised service delivery issues raised, 24% were substantiated. Most common issues related to complaint handling and timeliness. To address these complaints, we have reviewed our processes internally and improved the way we record and deal with complaints. We hope that these new ways of working will expedite our work and offer a better service to the community.

→ [VIEW THE FULL COPY OF OUR SERVICE CHARTER AT HCC.VIC.GOV.AU/ABOUT/OUR-SERVICE-CHARTER](https://hcc.vic.gov.au/about/our-service-charter)



# OUR NEW STRATEGIC PLAN

Considerable work has been undertaken this year to formulate our new Strategic Plan to lead us through the next four years. Staff across all areas of the Health Complaints Commissioner's office worked with our Advisory Council and external stakeholders to inform how we can continue to best support safe and ethical healthcare for all Victorians. Our actions and approach are framed by the *Health Complaints Act 2016* and other related Acts and regulations.

We understand that we operate in a complex, constantly evolving environment where the range of health services on offer is expanding, and the public expects oversight of all health care providers.

Our strategic priorities for the next four years will see us focus on our users, our people, our processes and our impact. We aim to provide excellence in customer service, create a great place for our staff to work, deliver best practice in complaint management and make a difference with system wide change.

We have taken the first steps in activities to listen to our consumers, work to improve our processes and build collaborative relationships for system influence and impact.

Our Consumer Focus workgroup is looking at consumers' experiences of accessing and using our service, the contact and communication channels they use, and what they understand about how and what we can do to assist them resolve their complaint.

Work to improve our complaints handling processes has involved a group of dedicated staff who have been working to clarify detail of each step in the process of what we do with each complaint, from the moment we answer the phone or receive the details via our web form, to our contact with providers and complaint outcomes. We are improving our process so that complaints are handled as quickly as possible and proceed to resolution.

Our Great Place to Work group has identified three core areas of focus for the next 12 months: Psychological Safety, Workloads and Learning & Development. We have commenced a strategy to engage with staff to build and foster a positive and supportive workplace.



## OUR STRATEGIC PRIORITIES



VIEW OUR STRATEGIC PLAN AT  
[HCC.VIC.GOV.AU/ABOUT/OUR-STRATEGIC-PLAN-2023-2027](https://hcc.vic.gov.au/about/our-strategic-plan-2023-2027)



### OUR USERS

#### EXCELLENCE IN CUSTOMERSERVICE

Our service demonstrates understanding, impartiality and transparency for all involved.



### OUR PEOPLE

#### CREATE A GREAT PLACE TO WORK

We are a thriving organisation, with a high performing and engaged workforce, enabled by a culture of support and continuous learning.



### OUR PROCESSES

#### BEST PRACTICE IN COMPLAINT MANAGEMENT

We deliver efficient, effective, and fit-for-purpose complaints management.



### OUR IMPACT

#### MAKING A DIFFERENCE WITH SYSTEM-WIDE CHANGE

We use our data, insights, and collaborative relationships to identify regulatory and other changes to improve quality of the health sector.

HIGHLIGHTS

# THE YEAR IN REVIEW 2022-2023

## IN 2022-23 WE RECEIVED



**5,724**  
COMPLAINTS



**2,586**  
ENQUIRIES

## OF THE 5,724 COMPLAINTS RECEIVED



**5,500**  
COMPLAINTS  
UNDER THE HCA

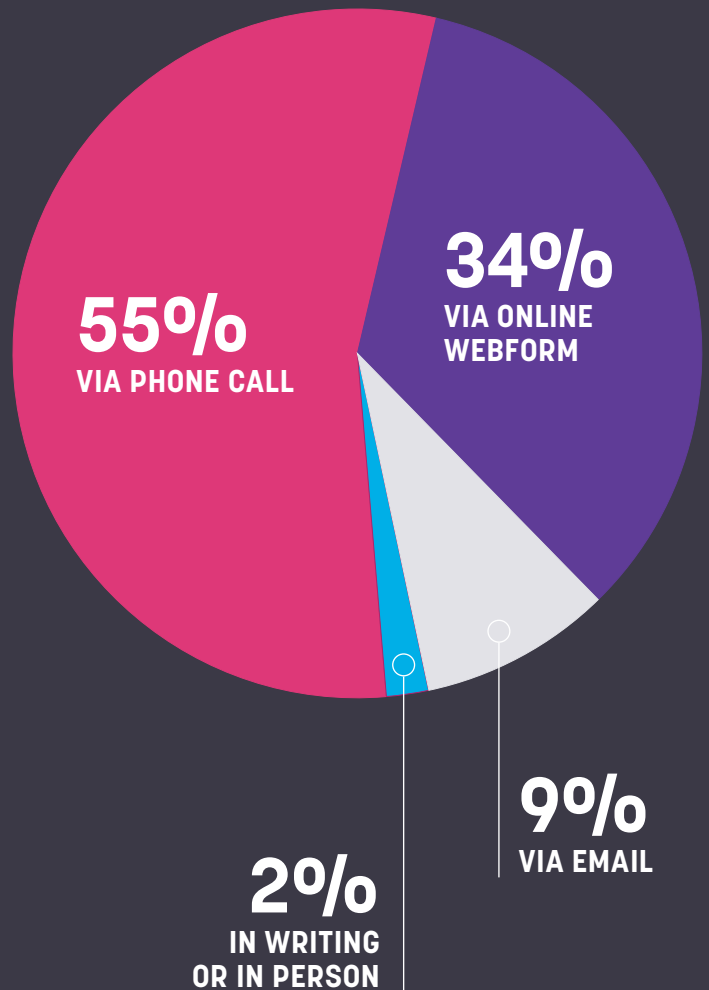


**223**  
COMPLAINTS  
UNDER THE HRA



**1**  
COMPLAINT  
UNDER THE HSCRA

## HOW COMPLAINTS WERE MADE



## WE FINALISED



**5,466**

COMPLAINTS



**2,409**

WITHIN 30 DAYS



**3,780**

WITHIN 90 DAYS

## INVESTIGATIONS

We commenced

**24**

INVESTIGATIONS  
UNDER THE HCA

This comprised of

**10**

COMPLAINT  
INVESTIGATIONS

**14**

OWN-MOTION  
INVESTIGATIONS

The Commissioner  
issued

**50**

ORDERS

and published

**3**

GENERAL HEALTH  
WARNING STATEMENTS

We finalised

**51**

INVESTIGATIONS

Across these finalised  
investigations we  
identified

**238**

CODE BREACHES

and

**4**

BREACHES

of the Complaint  
Handling Standards

There was

**1**

REVOCATION  
OF A PROHIBITION  
ORDER

# OUR IMPACT

## HCC VISITS TO PUBLIC HEALTH SERVICES

It has been such a pleasure to visit a number of our metropolitan and regional public Health Services in the last few months. This has provided a great opportunity for mutual information sharing. In particular, we have explored how we can make our service easy to use for those who need us, best support both health consumers and health providers to resolve concerns quickly and in the least formal way and identify those situations where we can add the most benefit for providers and consumers alike. Discussions also helped develop key actions for our long term operational plans to meet the objectives for the strategic priorities in our new strategic plan.

Our range of tools, education and information resources have been widely used by consumers to help them raise complaints. We also provide resources for health providers to assist them to handle complaints quickly and effectively as close as possible to the time when they occur.

Discussions at the public hospital visits were invaluable to help us understand what information is useful to help monitor complaint management performance and guide improvement. This year we are testing a metric to better understand and encourage direct resolution of complaints with health service providers before contacting the Health Complaints Commissioner.

## PUBLIC HOSPITALS WITH 10+ CLOSED COMPLAINTS

FY2022/23 COMPARED  
TO PREVIOUS YEAR

SORTED BY % ADVISED TO  
ATTEMPT DIRECT RESOLUTION

PUBLIC HOSPITALS	HOSPITAL CATEGORY	FY2021/22			FY2022/23		
		COMPLAINTS PER 1000 SEPARATIONS	% OF COMPLAINTS ADVISED TO ATTEMPT DIRECT RESOLUTION	% OF CASES REOPENED DUE TO UNSUCCESSFUL DIRECT RESOLUTION	COMPLAINTS PER 1000 SEPARATIONS	% OF COMPLAINTS ADVISED TO ATTEMPT DIRECT RESOLUTION	% OF CASES REOPENED DUE TO UNSUCCESSFUL DIRECT RESOLUTION
Hospital A	Regional	0.52	42%	40%	0.43	82%	0%
Hospital B	Regional	0.63	46%	0%	0.72	75%	8%
Hospital C	Metro	0.91	65%	17%	0.83	74%	5%
Hospital D	Specialist	0.68	63%	4%	0.68	73%	3%
Hospital E	Metro	0.74	51%	23%	0.60	68%	12%
Hospital F	Metro	0.70	49%	14%	0.49	67%	6%
Hospital G	Specialist	0.68	67%	21%	0.50	67%	0%
Hospital H	Regional	0.50	59%	0%	0.44	67%	0%
Hospital I	Metro	0.66	60%	10%	0.70	65%	5%
Hospital J	Regional	0.57	60%	17%	0.79	64%	22%
Hospital K	Specialist	0.71	44%	0%	0.77	64%	0%
Hospital L	Metro	0.84	59%	9%	0.91	63%	0%
Hospital M	Metro	0.71	66%	8%	0.69	62%	5%
Hospital N	Regional	0.69	40%	6%	1.06	62%	13%
Hospital O	Regional	0.61	52%	12%	0.71	60%	3%
Hospital P	Metro	0.44	44%	7%	0.55	58%	11%
Hospital Q	Metro	0.83	59%	19%	0.73	55%	10%
Hospital R	Metro	0.82	51%	16%	0.67	53%	5%
Hospital S	Regional	0.36	71%	0%	0.48	50%	20%
Hospital T	Specialist	NA	71%	8%	NA	48%	11%
Hospital U	Regional	0.64	72%	0%	0.86	46%	6%
Hospital V	Regional	0.28	64%	29%	0.40	44%	14%
Hospital W	Specialist	0.51	26%	17%	0.48	42%	20%
Hospital X	Regional	0.62	55%	0%	0.55	30%	0%

CASE STUDY

# APPENDIX MISDIAGNOSIS

## COMPLAINT

We received a complaint from a parent who had taken their child to a large regional public hospital. After waiting several hours in the emergency department, the child was diagnosed with COVID 19, and encouraged to return home to recover.

Shortly after returning home however, the child's condition worsened and the parent took the child to another hospital where emergency surgery was undertaken to remove the appendix.

Following this experience, the child was extremely nervous of pain and negatively associated it with their hospital experience. The parent feared that any future hospital attendance would only increase their child's trauma. This was of particular concern for the parent as the family lived in Regional Victoria, and access to healthcare in their area was limited. Having to attend an alternative hospital would involve additional travel time and was not a viable or practical solution for the family.



### WHAT WE DID

We relayed the complaint to the hospital through our usual channels and requested the hospital investigate the matter.

The hospital worked with the family. They provided a formal apology for wrongly sending them home and shared the service improvements implemented in the Emergency Department to reduce the risk of a similar misdiagnosis in future. The hospital also arranged complementary counselling sessions at the hospital for the child, to regain their trust and build a positive association with hospitals and healthcare more generally.





CASE STUDY

# COSMETIC SERVICES

## COMPLAINT

In 2022 our staff identified a pattern in complaints about the same clinic offering cosmetic services in Melbourne. Each complainant presented a similar story where they had agreed to a cosmetic procedure and were asked to pay a significant deposit in advance.

When a doctor at the clinic was suspended, and the complainants decided not to go ahead with the treatment, they found they were unable to obtain a reimbursement. In some cases, the complainants were encouraged by the clinic to seek the same treatment at an associated clinic interstate, rather than cancel their procedure and were not immediately offered a refund on their deposit. Those who chose not to travel interstate (at their own expense) asked for their money to be returned. Others who sought a secondary consultation to discuss their options were similarly denied a refund.

## WHAT WE DID

In total we identified 12 complaints about this clinic over an eight-month period. In each case we contacted the clinic and reminded them of their obligations under both the Code of Conduct and the Complaints Handling standards. We worked with the clinic and were able to secure refunds for several complainants.

## THE HCC AND THE AUSTRALIAN HEALTH PRACTITIONER REGULATION AGENCY (AHPRA) – WHAT’S THE DIFFERENCE?

At the HCC, we can accept complaints about the provision of any health service in Victoria. This includes complaints about individual health service providers, whether they are registered practitioners or general health service providers. We can also accept complaints about organisations, including hospitals and community health services.

We cannot take disciplinary action against registered health practitioners, but we can achieve other outcomes. We can also accept complaints about the handling of health information by organisations providing health services in Victoria, and by non-health service providers, such as schools and gyms.

Ahpra deals with the registration and accreditation, as well as the health, performance and professional conduct, of individual health practitioners across Australia.

Ahpra can also prosecute offences under the *Health Practitioner Regulation National Law Act 2009*, such as falsely claiming to be a doctor or performing certain types of procedures.

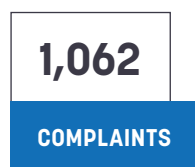
The HCC and Ahpra must (by law) share information about complaints and notifications that could be the subject of action by the other body and decide which agency is best placed to respond to a complaint.

During the reporting period we received



from Ahpra

Shared information on



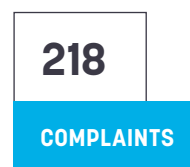
with Ahpra

Following consultation, Ahpra referred



to us

We referred



to Ahpra

And we referred



to the Mental Health Complaints Commissioner

## COMPLAINT HANDLING STANDARDS

Complaint handling is an important part of providing a safe and responsive health service. Providers with effective complaint-handling processes can often resolve most matters quickly and easily and can use the information from complaints to identify where they may make quality improvements. The existing complaint handling standards are due for a revision in 2023.

→ [READ MORE ABOUT THE COMPLAINT HANDLING STANDARDS AND GUIDING PRINCIPLES FOR IMPLEMENTATION ON OUR WEBSITE](https://www.hcc.vic.gov.au/providers/complaint-handling-standards)  
[HCC.VIC.GOV.AU/PROVIDERS/COMPLAINT-HANDLING-STANDARDS](https://www.hcc.vic.gov.au/providers/complaint-handling-standards)

## COMPLAINT RESOLUTION

We deal with most complaints as promptly and informally as is appropriate in the circumstances. This is consistent with the guiding principles of the HCA. We encourage parties to engage in conversation with each other and find that facilitating productive contact between the complainant and the health service provider is sometimes all that is required to reach a mutual understanding and agreement.

Of the 5,317 finalised HCA complaints, 2,675 (50%) were referred back to their health service provider to attempt local resolution in the first instance. From those complaints, an eventual 199 (7%) who attempted direct resolution with the health service provider, were unsuccessful.

CASE STUDY

# FAMILY HEALTH INFORMATION

## COMPLAINT

We received a complaint from Peter who sought advice from the Health Complaints Commissioner (HCC) regarding access to his and his family's health information. The family had recently moved clinics, as their doctor had moved from their usual clinic, (Clinic A) and they wanted to continue their healthcare with their family doctor.

He submitted a request for the family's records in writing directly to Clinic A, as required under *Health Records Act 2001*. The clinic did not respond and after several months of not hearing from them, Peter turned to the HCC for assistance. When we contacted the clinic, a much broader picture emerged. The doctor who had left Clinic A for another practice was evidently much loved, and many patients wished to follow this doctor to the new practice. This created an unprecedented burden on the previous clinic, as they received many requests for health information to be transferred to the new clinic and were overwhelmed by the demand.

We assisted the clinic to ensure that they were actioning all requests in line with the *Health Records Act 2001* and ensured that all further complaints submitted to the HCC about this clinic were managed in a coordinated way. This ensured that the clinic was able to action the requests promptly and without creating difficulties to their already increased workload.

## OUTCOME

The family received all their health information, and we were able to provide education and much needed assistance to Clinic A, not just for this matter, but for a number of matters that came through relating to the same problem.

# WHO COMPLAINTS WERE ABOUT

## FINALISED COMPLAINTS BY PROVIDER TYPE



GENERAL HEALTH  
SERVICE PROVIDER

276

General Health Service Providers are those providers whose health services do not require them to be registered with Ahpra.

The following figures show the complaints we finalised in 2022–2023 using these five categories, with additional details based on provider speciality.

Laboratory services	71	Physical therapy services	3
Mental health services	51	Dental/oral health support services	3
Cosmetic services	46	Disability services	3
Massage therapy	29	Health promotion	2
Allied health services	23	Nursing support services	1
Complementary and alternative health services	22	Reproductive/sexual health services	1
Aged care services	7	Operational support services	1
Diet and nutrition services	5	Optical Services	1
Community and social services*	4		
Birth related services	3		

\* Community and social services comprise of child and family health support workers, community health workers and palliative care staff.



HOSPITALS

1,525

Public Hospital	1,326
Private Hospital	199



PRISON HEALTH  
SERVICES

964



We group complaints data into five categories of health service providers:



**GENERAL HEALTH  
SERVICE  
PROVIDERS**



**HOSPITALS**



**REGISTERED  
PRACTITIONERS**



**PRISON HEALTH  
SERVICES**



**OTHER**



**REGISTERED  
PRACTITIONERS**

**1,281**

This category includes all practitioner types registered with Ahpra

Medical Practitioner	963	Palliative medicine	1
General practice	587	Intensive care medicine	1
Surgery	154	Pathology	1
Psychiatry	73	Dental	164
Physician	55	Psychology	51
Obstetrics & Gynaecology	26	Pharmacist	30
Paediatrics	13	Nursing and Midwifery	24
Dermatology	12	Physiotherapy	12
Ophthalmology	12	Optometry	10
Anaesthesia	10	Occupational Therapy	10
Pain medicine	6	Chiropractic	7
Radiology	5	Podiatry	6
Emergency medicine	4	Chinese Medicine	3
Rehabilitation medicine	3	Osteopathy	1



**OTHER**

**1,420**

Clinic	989	Nurse-on-Call	4
Pharmacy	132	Council	3
Community Health Services**	86	School	2
Ambulance and patient transport	80		
Medical Imaging	61		
Day Procedure Centre	33		
Non Health Service Provider	20		
Home Doctor	10		

\*\* Community health services provide state-funded primary healthcare including allied health services, dental health services, disability services, medical services etc.

# WHAT COMPLAINTS WERE ABOUT

Complaints can include more than one issue of concern. As such, the number of issues in finalised complaints is higher than the number of complaints finalised.

## ACROSS THE

**5,466**

COMPLAINTS  
FINALISED IN 2022-23

## WE RECORDED

**6,829**

ISSUES

## COMMON ISSUES RECORDED

The most common issues in finalised HCA complaints about general health service providers were:

**38%** SERVICES NOT BEING PROVIDED IN A SAFE AND ETHICAL MANNER

**11%** FINANCIAL EXPLOITATION

**9%** MISINFORMATION

The most common issues in finalised HCA complaints about non-general health service providers were:

**30%** TREATMENT

**23%** ACCESS

**12%** MEDICATION

The most common issues in finalised HRA complaints were:

**36%** ACCESS

**20%** USE AND  
DISCLOSURE

**12%** COLLECTION

**6,599**

**ISSUES IN FINALISED  
HCA COMPLAINTS**

**GENERAL HEALTH  
SERVICE PROVIDERS**

**471**

**ISSUES FOR FINALISED  
COMPLAINTS**

Safe and ethical manner	178	Privacy	9
Financial exploitation	54	Responding to adverse events	8
Misinformation	41	Claim to cure illnesses	5
Sexual misconduct	37	Access and display Code of Conduct	5
Consent	30	Report provider conduct	5
Conduct in relation to treatment advice	28	Human rights	2
Complaint management	24	Physical or mental impairment	2
Record keeping	22	Criminal offence	1
Insurance	10		
Infection control	10		

**NON-GENERAL  
HEALTH SERVICE  
PROVIDERS**

**6,128**

**ISSUES FOR FINALISED  
COMPLAINTS**

Treatment	1,848	Diagnosis	435
Access	1,387	Communication	360
Medication	746	Complaint management	127
Conduct and behaviour	592	Facilities	97
Fees, costs and billing	508	Human rights	28

**ALL HRA  
PROVIDERS**

**229**

**ISSUES IN FINALISED  
HRA COMPLAINTS**

Access	83	Correction	6
Use and Disclosure	46	Openness	4
Collection	27	Transborder Data Flows	3
Data Security & Retention	24	Human rights	1
Data Quality	22		
Making Information available to another Health Service Provider	13		

## COMPLAINT RESOLUTION PROCESS

An important aspect of the complaint resolution process is that it is voluntary for both health consumers and health service providers. We expect health service providers to engage in our complaint resolution processes and to make genuine attempts to address and resolve complaints. Where a provider fails to participate in a complaint resolution process without a reasonable excuse, the Commissioner may decide

to conduct an Investigation under Part 4 of the HCA if she believes the matter should be investigated. The decision to investigate however, does not rely on whether a health service provider is willing to participate, or if they withdraw from the process, but whether the decision is reasonable in the circumstances. It is also entirely at the Commissioner's discretion whether to conduct an investigation.

## COMPLAINTS FROM PRISONERS

The Health Complaints Commissioner operates a dedicated free call line to receive complaints from prisoners about health service provision.

Complaints from prisoners typically relate to issues with medication, concerns about treatment, seeking doctor appointments or concerns about delay in receiving treatment.

Medication	447
Access	447
Treatment	137
Diagnosis	45
Communication	24
Facilities	13
Conduct and behaviour	11
Human rights	9
Complaint management	6
Fees, costs and billing	1

### OUR TEAM HANDLED

1,140

PRISON HEALTH  
ISSUES IN 2022-23

### IN

964

FINALISED  
COMPLAINTS

CASE STUDY

# PRISONER COMPLAINT

## COMPLAINT

We received a complaint from a prisoner who was trying to see doctor about ongoing shoulder pain he had been experiencing for a six-month period. The prisoner informed us that his last appointment with a doctor had been two months prior, at which time an ultrasound was performed. The prisoner also complained that his most recent appointment had been changed without notice to be with a nurse, who was unable to share the results of the prisoner's earlier ultrasound. In addition to this, the prisoner also raised concerns that he was required to have an appointment with a doctor every six months for review of his single functioning kidney, however that this had not occurred in over 12 months.

## OUTCOME

We contacted the relevant health care provider at the prison and advised them of the prisoner's complaint and desired outcome. We also sought information about the communication between the parties with respect to the issues raised. The prisoner had advised us that he had sought to escalate his concerns with the prison via their internal process on eight separate occasions prior to making contact with us.

In responding to the complaint, the prison health manager confirmed that an appointment with a doctor had recently taken place in the period after we had been contacted by the prisoner and prior to our contact with them.

They confirmed the ultrasound results had been shared with the prisoner and included details of the diagnosis. They also confirmed that further testing, which aimed to address all concerns raised, had been scheduled and that the prisoner also had an upcoming appointment to liaise directly with the prison's Health Services Manager about any outstanding or future concerns. The response provided an explanation to all matters raised and was detailed in a letter to the prisoner. The HCC deemed that the prison Health Service Provider had taken reasonable action that had resolved the complaint.

# OUTCOMES IN FINALISED COMPLAINTS

During the reporting period, we received 223 complaints about the handling of health information and finalised 147 complaints. In addition, we dealt with 500 enquiries relating to the *Health Records Act 2001*.

## OUTCOMES IN FINALISED HCA AND HRA COMPLAINTS

THE MOST COMMON AGREED  
OUTCOMES UNDER THE HCA WERE:

FOR HRA COMPLAINTS THE MOST  
COMMON AGREED OUTCOMES WERE:





## HEALTH RECORDS ACT 2001

The Health Complaints Commissioner administers the *Health Records Act 2001* which sets out eleven Health Privacy Principles that guide how health information is to be handled in Victoria. Under that Act, individuals may lodge complaints with us about an act or practice that may be an interference with the privacy of the individual. The complaint must be made in writing.

Health information should be collected with the person's consent and only used for the primary purpose it was collected, or for a directly related and reasonable

secondary purpose. Health information can only be used or disclosed for a non-related purpose in some circumstances, for example, if there is a serious risk to someone or the information is needed to evaluate a service the person received.

During the year, we received 223 complaints about the handling of health information and finalised 147 complaints. In addition, we dealt with 500 enquiries relating to the *Health Records Act 2001*.

# PROTECTING VICTORIANS — OUR INVESTIGATIONS

Protecting Victorians from unsafe and unethical health services and health service providers is a core purpose of the Health Complaints Commissioner. Part of this function is the power to conduct investigations into general health service providers where the Commissioner believes that the general health service provider has breached the Code of Conduct for general health service providers. In cases where there is or may be a serious risk to the life, health, safety or welfare of a person or the public, the Commissioner also has the power to issue Interim Prohibition Orders (IPOs) or Prohibition Orders (POs). Through IPOs or POs, the Commissioner can limit or prohibit entirely what services a general health service provider may offer or provide.

Under the *Health Complaints Act 2016* (the Act) the Commissioner can initiate a complaint investigation or own-motion investigation. The Minister for Health may also refer a matter for investigation.

In carrying out the regulatory functions under the Act, the Commissioner considers a number of regulatory practice principles she must apply.

## CONDUCTING INVESTIGATIONS, TO KEEP THE PUBLIC SAFE

The Commissioner may carry out enquiries into a matter under investigation as they believe necessary to establish the facts. This may include requesting clinical notes, treatment plans, policies and procedures, and conducting interviews with witnesses and health service providers. The Commissioner can also seek independent expert advice or apply for and execute search warrants. The aim is to, as far as practicable, take the least intrusive measures that are appropriate in the circumstances.

Once the relevant facts are established, the Commissioner then aims to identify what measures, if any, may need to be taken to protect the public from risk to their health, safety, and/or welfare while receiving a general health service in Victoria.



**YOU CAN ACCESS A FULL DESCRIPTION OF OUR REGULATORY PRACTICE PRINCIPLES  
AT REGULATORY PRACTICE PRINCIPLES | HEALTH COMPLAINTS COMMISSIONER  
[HCC.VIC.GOV.AU/REGULATORY-PRACTICE-PRINCIPLES](https://hcc.vic.gov.au/regulatory-practice-principles)**

## KEEPING THE PUBLIC SAFE DURING AN INVESTIGATION

At times during an investigation, the Commissioner may consider that allowing the provider to continue to offer general health services presents a serious risk to the public. In these circumstances, the Commissioner may decide to make an Interim Prohibition Order against the general health service provider to prohibit the provider from offering all or part of their health service while the investigation is underway. The provider is invited to respond to any allegations before an IPO is made.

If an IPO is made, the general health service provider must ensure they comply with the conditions or prohibitions imposed. Any contravention of an interim prohibition order is an offence under the Act. The Commissioner has the power to prosecute general health service providers where they contravene the orders, and significant penalties apply for breaching IPOs or POs, including fines, a term of imprisonment or both.

## WHEN AN INVESTIGATION IS COMPLETED

Once an investigation is complete, a report is issued to the health service provider. We may also provide the investigation report to other parties such as the complainant, Ahpra, the Minister for Health or the Secretary of the Department of Health, where necessary and appropriate.

The investigation report outlines the Commissioner's findings of any breaches of the Code of Conduct and recommendations to address those findings. These recommendations may include further education or training for a provider, or that the provider introduces or updates certain policies or procedures. Under the Act, the provider must respond to the Commissioner and explain how they will implement the Commissioner's recommendations. If a provider fails to provide a response or provide a reasonable excuse as to why the recommendations have not been implemented, the Commissioner can consider further action such as a prosecution or a follow-up investigation.

Following an investigation, the Commissioner may decide to impose a PO on a general health service provider. A PO will only be made where it is necessary to avoid a serious risk to the life, health, safety or welfare of an individual or the public by prohibiting the general health service provider from providing all or part of their health service or imposing conditions on them.

All IPOs and POs are published on the Health Complaints Commissioner website. The Commissioner can also publish a variety of public health warning statements in the media and on our website to provide details of a serious risk to the health, safety or welfare of the public.



**YOU CAN FIND FURTHER DETAILS ABOUT OUR INVESTIGATIONS  
AT INVESTIGATIONS | HEALTH COMPLAINTS COMMISSIONER  
[HCC.VIC.GOV.AU/PROVIDERS/INVESTIGATIONS](https://hcc.vic.gov.au/providers/investigations)**



CASE STUDY

# ALTERNATIVE HEALTH TREATMENT





## COMPLAINT:

We received two complaints about treatment received from the same general health service provider:

*Jim* alleged the provider had sent abusive and threatening text messages after he cancelled an appointment when Melbourne had been placed into lockdown during a COVID-19 outbreak.

*Leanne* alleged the provider claimed to be able to cure a serious illness using essential oils. The provider also reportedly advised *Leanne* there was no such thing as COVID-19, and that vaccines caused viruses and all other serious illnesses.

## WHAT WE DID

We conducted preliminary enquiries into the provider's practice which identified concerns that the provider may have misled clients regarding their professional title and qualifications. The provider also suggested that they had a device that could cure cancer.

In order to consider *Jim*, *Leanne* and the HCC's concerns together, the Commissioner decided to initiate an own motion investigation under s.47 of the *Health Complaints Act* (the Act). The Commissioner also decided to issue an Interim Prohibition Order (IPO) against the provider, prohibiting delivery of any general health services during the investigation period.

## OUTCOME

After careful consideration, the Commissioner determined that the provider had shown serious disregard for the risks posed by some of the treatments offered. Additionally, the provider was not providing general health services in a competent, safe or ethical manner, including by:

- providing services that were outside their expertise and scope of practise
- providing an inappropriate level of treatment, instead of referring clients to suitably qualified health care providers
- providing services contrary to Public Health directions, showing disregard for the stay-at-home orders in force in Melbourne at the time
- making claims to cure certain serious illnesses without evidence to substantiate these claims
- misinforming clients regarding the provider's qualifications and the efficacy of the treatments recommended.

The Commissioner found that the provider breached several Code clauses and posed a serious risk to the public. The Commissioner subsequently issued a Prohibition Order against the provider, prohibiting them from offering or providing any general health services in Victoria.

# KEEPING THE COMMUNITY SAFE

The past year has shown a continued trend in complaints about alleged boundary breaches, both personal and sexual. Most of these complaints involved counselling, massage or sonography services.

We continue to refine our approach in these cases and, where appropriate, take protective measures including IPOs, POs and warning statements. We implement learnings from tribunal or court decisions and from other regulators.

We delivered education sessions for the public and general health service providers about the HCC's investigative functions and the Code of Conduct. We also engaged with a number of professional associations to educate them on our functions and legislation so that they can provide accurate advice and guidance to their general health service provider members.

General health service providers—those health services which do not require registration with Ahpra—are subject to the Code of Conduct under the HCA. Registered practitioners may also be subject to the Code of Conduct if they provide services outside the scope of their registration. For example, registered psychologists are regulated by Ahpra, while counsellors and psychotherapists are regulated by the Health Complaints Commissioner. If a psychologist's registration is suspended, for example, by the Psychology Board of Australia, they may be able to continue to provide services as a counsellor. In this situation, the provider would be bound by the Code of Conduct.





## COUNSELLING / PSYCHOTHERAPY SERVICES

Counselling and psychotherapy service providers often treat vulnerable patients who may disclose intimate and sensitive information during their treatment. If appropriate boundaries are not set by counsellors, then the risk of further harm to their patients can be significant.



## MASSAGE SERVICES

As general health service providers, it is pertinent that individuals providing massage services uphold safe and ethical practices that align with the Code of Conduct under the *Health Complaints Act 2016*.

An inherent power imbalance exists between service providers such as massage therapists and their clients, which may result in the client being particularly emotionally or physically vulnerable. In light of this, complaints about the incidence of 'boundary violations', impropriety and sexual misconduct by massage providers are taken very seriously.

The obligations of Code clause 13 clearly outlines the importance of establishing and maintaining professional boundaries, which includes not engaging in sexually suggestive language or touch or romantic and sexual involvement with clients. We investigate matters of this nature thoroughly to ensure that the massage services are provided to the public in a safe and ethical manner.

CASE STUDY

# MASSAGE PROVIDER INVESTIGATION

## COMPLAINT

Betty contacted us about a massage she had received at her home. Massage services are general health services under the *Health Complaints Act 2016* (the Act).

Betty stated that in the course of the massage the provider had touched her lower body inappropriately, removed some of her clothing without her consent, and violated her physical boundaries by touching her intimately. After the massage, Betty immediately spoke to a family member about her experience and also relayed her concerns to a counsellor. Betty then made a complaint to us.

## WHAT WE DID

As the provider's alleged conduct was in breach of the 'Code of conduct for general health services' in Victoria (the Code) and given the serious nature of the complaint, the Commissioner decided to investigate Betty's concerns under s.45 of the Act. This section of the Act allows the Commissioner to conduct an investigation if they reasonably believe that the complaint is not suitable for a complaint resolution process, or the provider has contravened a code of conduct that applies to the general health service.

The Commissioner also issued an Interim Prohibition Order (IPO) to protect the public from harm during the investigation period. An IPO can be made for up to 12 weeks to address serious risks to the public while an investigation is ongoing. This particular IPO prohibited the provider from providing any general health services in Victoria during the investigation.

We took a formal statement from Betty, and also obtained evidence from third parties (Betty's counsellor and a family member) to whom Betty had first reported her concerns.

The provider was invited to respond to the allegations. They denied all allegations but chose not to provide a detailed account of their version of events or any clinical notes.

We also consulted industry guidelines relating to consent practices and professional boundaries which apply to the provision of massage.

As only two parties (Betty and the provider) were present during the massage, the Commissioner was required to make her decision based on the balance of probabilities. She also considered evidence from third parties that supported Betty's account of her experience.

## OUTCOME

The Commissioner found that the provider breached several Code clauses, including that they failed to provide a safe and ethical service; obtain consent; or respect professional boundaries in providing a massage to Betty.

Based on these findings, the Commissioner imposed a Prohibition Order against the provider to protect the public from serious risk and prohibiting them from offering or providing any general health services in Victoria.

# ENGAGING VICTORIANS

We continue to engage with our key stakeholders through our online education and training modules and education seminars. Our training sessions help educate health service providers about their obligations and responsibilities under the law, as well as the benefits of proactive and positive complaint handling.

Our online e-Learning modules offer *The General Code of Conduct* and *The Health Records Act* as two self-paced training modules, where participants can stay engaged with the education and training options we run, while completing their training in a safe manner.

Our regular education seminars, *Understanding the Health Records Act* and *Successful Complaint Handling* have likewise been fully booked by providers. We have delivered two seminars on *Health Records* to 84 people, while our *Successful Complaint Handling* seminars attracted an audience of 208 individuals. Our *General Code of Conduct* seminars attracted an audience of 79 individuals.

## **HEALTH RECORDS ACT 2001 TRAINING**

In addition to dealing with complaints about the handling of health information, another function of the Health Complaints Commissioner under the *Health Records Act 2001* is to promote an understanding and acceptance of the Health Privacy Principles and their purpose.

Our website provides information for both the public as well as organisations that hold health information about their respective rights and responsibilities.

### IN THE REPORTING PERIOD

**9,361**

**PEOPLE HAVE  
UNDERTAKEN THE  
GENERAL CODE  
OF CONDUCT**

### WHILE

**53,376**

**INDIVIDUALS  
UNDERTOOK THE  
HEALTH RECORDS  
ACT ONLINE MODULE**



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DOWNLOAD THESE RESOURCES AT  
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PUBLICATIONS](https://www.hcc.vic.gov.au/resources/publications)**

# PROTECTED DISCLOSURES AND DISCLOSURES UNDER THE HCA

## PROTECTED DISCLOSURES

*The Protected Disclosure Act 2012* (the PD Act) creates the legislative framework for receiving protected disclosures and protecting those who make them.

Under the PD Act, the Independent Broad-based Anti-Corruption Commission (IBAC) has a key role in receiving, assessing and investigating disclosures about corrupt or improper conduct and police personnel conduct or improper conduct as well as preparing and publishing guidelines to assist public bodies to interpret and comply with the protected disclosures regime. The PD Act also broadens the operation of the previous whistle-blower scheme to match the scope of the new integrity system and applies to disclosures about all public bodies and officers within IBAC's jurisdiction.

Section 16 of the PD Act requires that any disclosures relating to the HCC must be made to either the Victorian Ombudsman or IBAC.

For the current reporting period, the HCC reports the following:

- number of disclosures — nil
- public interest disclosures referred to the Ombudsman or IBAC — nil
- disclosures referred to the HCC — nil
- disclosures of any nature referred to the Ombudsman — nil
- investigations taken over by the Ombudsman — nil

## DISCLOSURES UNDER THE HCA

Section 138 of HCA requires us to report on specific information in relation to the exercise of the Commissioner's powers and functions.

This includes the frequency of disclosure of information under Division 1 of Part 13 of the HCA, as follows:

- disclosure under section 150(2)(a) — 1
- disclosure under section 150(2)(b)(i) — 1
- disclosure under section 150(3) — 4



Supporting  
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