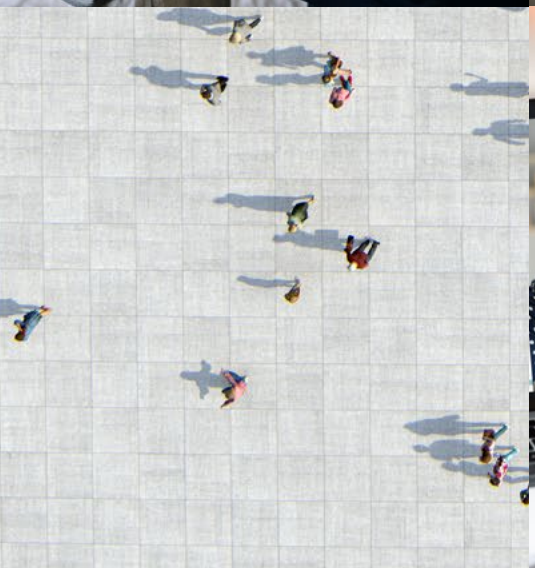
HEALTH COMPLAINTS COMMISSIONER

Supporting safe + ethical healthcare



ANNUAL REPORT 2020–21

OUR MISSION

WE WORK WITH ALL VICTORIANS TOWARDS SAFE AND ETHICAL HEALTHCARE

OUR VALUES

IMPARTIALITY

WE ARE FAIR AND TRANSPARENT IN ALL WE DO

COLLABORATION

WE ARE INCLUSIVE AND ENGAGED IN OUR APPROACH

INTEGRITY

WE PROVIDE SERVICES WITH HONESTY AND IN A RESPECTFUL AND ETHICAL MANNER

COURAGE

WE ACT WITH STRENGTH AND ARE COMMITTED TO OUR PURPOSE

ACKNOWLEDGEMENT OF 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 and to those Elders of the future, for they hold the memories, the traditions, the cultures and the hopes of all First Nations people.

We are proud to be part of a Victorian community with the commitment shown by our Government to work towards a Treaty.

Despite major physical changes, the land always was, always will be, Aboriginal land.

DIVERSITY STATEMENT

At the Health Complaints Commissioner's office, 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 work with all Victorians towards safe and ethical healthcare. We celebrate having diverse and inclusive perspectives to help us 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.

CONTENTS

FOR MORE INFORMATION

This Annual Report details our performance over the 2020 – 2021 financial year against our vision and values.

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 or call us on **1300 582 113**.

FOR HEALTH SERVICE PROVIDERS

If you would like more information about our process if we receive 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 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

KAREN CUSACK
HEALTH COMPLAINTS COMMISSIONER

When we began this reporting year parts of Victoria were in the midst of strict lockdowns as nationally and around the world we continued to live with the challenges and uncertainty of the COVID-19 global pandemic. Living with what continues to be one of the biggest global health crises for several generations has fundamentally changed how we as a community conduct our lives and our businesses. When we made the shift to flexible, remote based work in March 2020, we had no idea that 15 months on this would remain the norm for our reporting year.

I AM SO PROUD OF HOW WELL OUR STAFF HAVE ADAPTED TO THIS CHANGE, SHOWING GREAT RESILIENCE AND THEIR UNWAVERING COMMITMENT TO THE WORK WE DO AND TO ENSURE THAT WE CONTINUE TO SUPPORT SAFE AND ETHICAL HEALTH CARE FOR ALL VICTORIANS.

Despite our remote working arrangements, our performance numbers remain high, albeit that complaint and enquiry numbers are down on the previous reporting year. This is not surprising given that during the second wave lockdown, which lasted more than 100 days in the early part of this reporting year in Melbourne, elective surgery had been suspended and there were fewer episodes of care in many health services. We did however receive a total of 560 complaints and 230 enquiries related specifically to COVID-19, with the larger percentages of those related to access to health services and concerns about risks of exposure to COVID-19 infection.

We also noted that during this period many general health services such as massage therapists and cosmetic treatment providers were not permitted to operate at all. The trend is now changing and since February this year we have begun to see an increase in the numbers of complaints and enquiries we receive.

Like complaints resolution, our investigations have also continued unabated with the commencement of 49 investigations and a further 32 investigations finalised during the year. Almost 100 interim and permanent prohibition orders were made against those general health services who posed a serious risk to the public. Of particular note in our investigations work are those areas where we continue to see concerning numbers of unsafe and unethical practices. This past year cosmetic treatment services continue to be an area of concern, but increasingly, massage therapists and psychotherapy and counselling services have also been on the increase in both number and severity of risk posed.

Another worrying trend is the number of general health service providers who make claims to be able to cure cancer or other serious diseases. We continue to monitor these areas closely with particular concern about this type of predatory behaviour.

Stakeholder engagement and our training and seminars continue to be important functions of our office. This year, we have had to find ways to utilise technology to deliver presentations on areas such as successful complaint handling, the complaint handling standards, health records and the importance of good complaints resolution. While we have lost some of the benefits that delivering these seminars in a face-to-face environment bring, we have been able to reach a much larger audience by using the technology and this has enabled us to expand our engagement with regional and rural parts of Victoria.

A key stakeholder engagement piece that we have begun in this reporting year, but which will have more significance in to next, is the follow up to our Inquiry into Assisted Reproductive Treatment (ART) practices. We submitted our report to the Minister for Health last year and the Minister has publicly released the report. Our staff worked extensively on this inquiry for a 12-month period, consulting and researching ART and making recommendations specifically to ART service provision in Victoria. I am immensely grateful to the individuals and families in the Victorian communities who provided submissions and participated in our consultation forums to assist us with this Inquiry. Naturally, this was a highly emotional and stressful experience for those people and I particularly thank them for having the courage to share their stories with us. I also want to thank the ART and fertility clinics and services that participated in the Inquiry. There was considerable good will and a genuine desire by many to work with us to improve on areas such as complaint handling, communication and patient-centredness. I look forward to progressing that work with the ART sector in the coming year.

Another major achievement for us was the State Government's acceptance of our recommendations for new legislation to prohibit change or suppression practices which came out of our Inquiry into Conversion Therapy. *The Change or Suppression (Conversion) Practices Prohibition Act 2021* was passed by the Victorian Parliament in February 2021. This is a really important step towards preventing and responding to the serious damage and trauma caused by change or suppression practices. The Act ensures that LGBTQA+ Victorians can live their lives authentically with pride and makes clear that a person's sexual orientation and gender identity is not one that needs to be fixed. I am particularly heartened that our work has led to this legislation and it reinforces the importance of what we do daily to improve the health, safety and welfare of all Victorians.

Although the pandemic continues to have an impact on the health and safety of all Victorians and indeed all Australians, I strongly believe that my staff will continue to meet each new challenge COVID-19 brings with purpose and with commitment to our shared values and mission to support safe and ethical healthcare for all Victorians. I want to thank each and every one of them.

OUR ADVISORY COUNCIL

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

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

The *Health Complaints Act 2016* established Interim Complaint Handling Standards that applied when it (the *Health Complaints Act 2016)* first came into operation. Following extensive consultation with health service providers, consumers and other key stakeholders, the HCC Advisory Council and our office developed Complaint Handling Standards that now apply across all health service provider settings in Victoria.

With the support and assistance of the Advisory Council, we will conduct widespread engagement in 2021-22 to help health service providers embed the Standards as part of their everyday practices. We will also be engaging with Victorian consumers to help them understand what the Standards mean for them.

THE HCC ADVISORY COUNCIL

PRESIDENT

MS CATHERINE DUNLOP

PROFESSOR

ANDREA DRISCOLL

MS

JEN MORRIS

MR

TONY MCBRIDE

DR

SUSAN SDRINIS

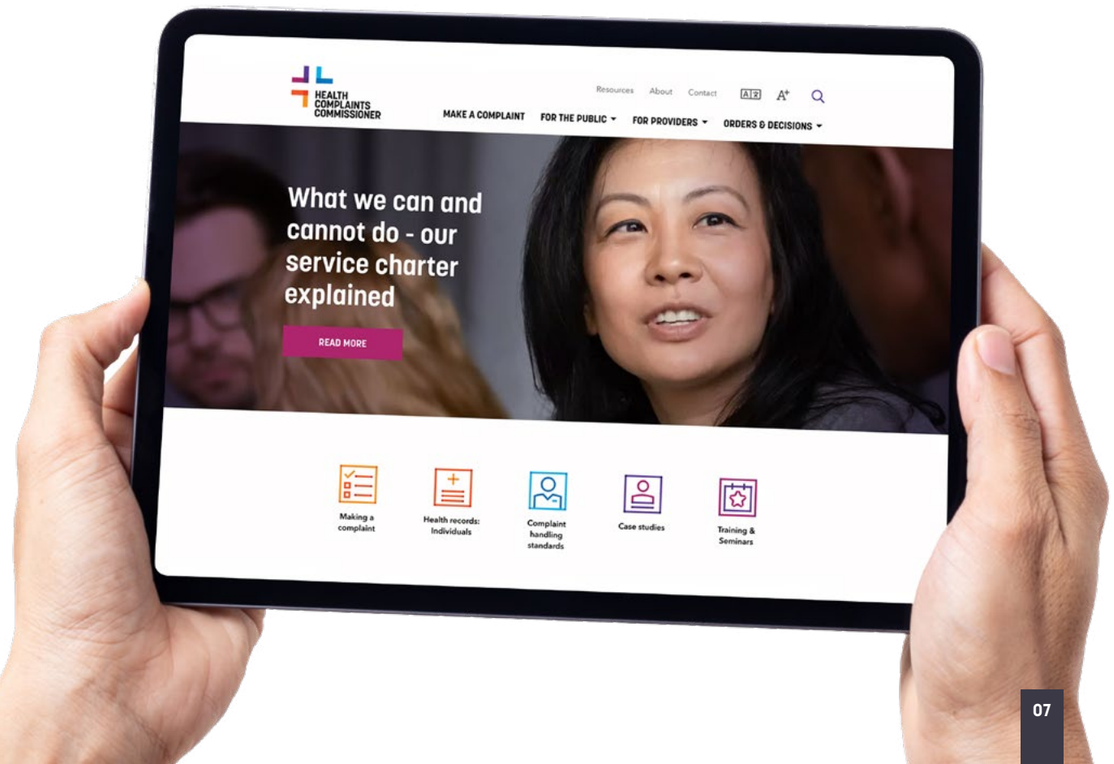
ASSOCIATE PROFESSOR

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. See page 49 for more information on our service charter.

→ **VIEW THE FULL COPY OF OUR SERVICES CHARTER AT HCC.VIC.GOV.AU/ABOUT/HCC.SERVICE**



OUR LEGISLATION

The Health Complaints Commissioner **(the Commissioner)** is an independent and impartial statutory officer appointed under the ***Health Complaints Act 2016,*** responsible for administering two pieces of legislation:

the *Health Complaints Act 2016 and the Health Records Act 2001*

These Acts are available at **legislation.vic.gov.au**

HEALTH COMPLAINTS ACT 2016 (HCA)

Under the HCA our powers and functions include:

- helping resolve complaints about health services
- providing an accessible service and free alternative to legal proceedings
- protecting the public from any serious risk that a health service provider poses to their health, safety or welfare
- monitoring and reviewing trends in complaints data, and
- educating consumers and providers about their rights and responsibilities.

The HCA also empowers the Commissioner to investigate complaints and referrals from the Minister and to initiate 'own motion' investigations. These powers are a key part of our role in protecting the public from risks posed by health service providers in Victoria.

CODE OF CONDUCT FOR GENERAL HEALTH SERVICE PROVIDERS

The HCA includes a General Code of Conduct in respect of general health services (the Code). The Code supports safe and ethical health care by prescribing minimum legal standards that apply to all general health service providers in Victoria.

General health service providers are those health service providers whose health services do not require them to be registered with the Australian Health Practitioner Regulation Agency (Ahpra).

In summary, under the code, general health service providers in Victoria:

MUST

- provide safe and ethical healthcare
- obtain consent for treatment
- take care to protect clients from infection
- minimise harm and act appropriately if something goes wrong
- report concerns about other general health service providers
- keep appropriate records and comply with privacy laws
- be covered by insurance
- display information about the general code of conduct and making a complaint.

MUST NOT

- mislead clients about their products, services or qualifications
- put clients at risk due to any physical or mental health conditions that affect their ability to provide a general health service practice under the influence of drugs or alcohol
- make false claims about curing serious illnesses, such as cancer
- exploit clients financially
- have an inappropriate relationship with a client
- discourage clients from seeking medical treatment.

→ **VIEW THE FULL COPY OF THE CODE AT HCC.VIC.GOV.AU**

HEALTH RECORDS ACT 2001 (HRA)

The HRA defines rights and responsibilities in relation to handling health information in Victoria.

Under the HRA, health information should only be collected with consent and used or disclosed 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 limited circumstances, such as when there is a serious risk to someone, or if the information is needed to evaluate the service received.

Any organisation collecting health information must ensure the information is up to date and relevant to their work. They must also store, transfer and dispose of health information securely to protect privacy.

If a health service provider moves or closes down, it must post a public notice about what will happen with patient records and how patients can access their health records.

HIGHLIGHTS

THE YEAR IN REVIEW 2020 – 2021

2020 – 2021 CONTINUED TO PRESENT CHALLENGES FOR DELIVERING ON OUR ONGOING COMMITMENT TO SUPPORTING SAFE AND ETHICAL HEALTHCARE DURING THE GLOBAL COVID-19 PANDEMIC

IN 2020 – 21 WE RECEIVED

5,246
COMPLAINTS

2,521
ENQUIRIES

HOW COMPLAINTS WERE MADE

WE FINALISED

5,103
COMPLAINTS

3,218
WITHIN 30 DAYS

4,413
WITHIN 90 DAYS

INVESTIGATIONS

We commenced
49
INVESTIGATIONS UNDER THE HCA

This comprised of
29
COMPLAINT INVESTIGATIONS

20
OWN-MOTION INVESTIGATIONS

The Commissioner issued
97
ORDERS

and published
2
GENERAL HEALTH WARNING STATEMENTS

We finalised
32
INVESTIGATIONS

Across these finalised investigations we identified
112
CODE BREACHES

and
10
BREACHES of the Complaint Handling Standards

Other investigations finalised
A MAJOR INVESTIGATION
INTO PRIVATE DRUG AND ALCOHOL REHABILITATION SERVICES

OF THE 5,246 COMPLAINTS RECEIVED

5,045
COMPLAINTS UNDER THE HCA

200
COMPLAINTS UNDER THE HRA

and
1
COMPLAINT UNDER THE HEALTH SERVICES (CONCILIATION AND REVIEW) ACT

(Which was the legislation that preceded the HCA.)

HANDLING COMPLAINTS

Anyone with a concern about a health service provider in Victoria can lodge a complaint. Complaints are not limited to treatment or service provided to the complainant, they can also be about treatment, or a service provided to another person, an unreasonable failure to provide a health service, unreasonable treatment of a carer, poor complaint handling or concerns that a general health service provider may have breached the Code of Conduct. Health service staff and volunteers, concerned members of the public and professional organisations can also contact us to raise concerns, noting there may be limitations on what action we can take if the complaint is made without the knowledge of the health consumer.

When we receive a complaint, we will usually ask whether the complainant has tried to resolve the matter directly with the health service provider. Where the complaint remains unresolved, or that step has already been unsuccessful, we may then be able to assist. In some cases, we may accept a complaint without requiring the consumer to attempt direct resolution, for example where it would be unreasonable to expect them to do so, or where the complaint relates to a failure by a general health service provider to comply with the General Code of Conduct in respect of general health services.

We can only assist with complaints related to the provision of a health service, as defined in the HCA. This means that sometimes there will be matters where we cannot help. In other cases, we may also need to consider factors such as when the complaint arose or if another forum, such as a court, is a more suitable body to deal with the matter. A complainant can also contact us if they need help with how to present their complaint to a health service provider. Similarly, we will also assist health service providers with guidance on their legal obligations, our processes and what to do, if they receive a complaint.

Importantly, participation in our complaint resolution process is voluntary and free and we remain impartial and independent throughout that process. We do not advocate for one party over another.

Our customer service team is the first point of contact for people wishing to make an enquiry or lodge a complaint. Our new way of working during 2020 – 21 has seen a change to the way we receive and handle complaints. While telephone continues to be the most popular form of contact for most people, and we received almost 11,000 calls during the year, our new online and interactive web complaint and enquiry forms have proven to be a very welcome addition to our process.

WHAT IS THE DIFFERENCE BETWEEN A COMPLAINT AND AN ENQUIRY?

COMPLAINT

A complaint must meet strict legal criteria before we can handle it through our resolution process.

ENQUIRY

An enquiry is a contact or a query, from members of the public, health service providers or other organisations, seeking information about our processes or about the obligations of health service providers or holders of health records or seeking other information or data.

NEW INTERACTIVE WEB FORMS

COMPLAINT WEBFORM	2,178
ENQUIRY WEBFORM	615
TOTAL	2,793

HOW WE HANDLE COMPLAINTS — OUR COMPLAINT RESOLUTION PROCESS

1

AFTER A COMPLAINT IS RECEIVED, WE WILL...

ASSESS YOUR COMPLAINT

We check the matter is within our jurisdiction, if any limits apply and if we are the right entity to deal with the complaint.

In some cases, we may refer your complaint to another body or notify them of your complaint.

2

WE CONSIDER THE BEST PATHWAY FOR THE COMPLAINT

— early resolution; complaint resolution process; or if the Commissioner determines, investigation

EARLY RESOLUTION

This is the quickest and least formal way in which we can help resolve a complaint. It is suited to less complex matters where a solution might be reached using a few phone calls or emails.

OR

COMPLAINT RESOLUTION

This is a more formal resolution process under the Act which may involve us promoting discussion or negotiation of the complaint between the parties or conciliation where we assist the negotiating parties by proposing options for resolution and terms for agreement. The process requires both our and the complainant's agreement to a description of the complaint and may include more formal correspondence, meetings, access to medical records and independent medical advice.

3

WE RECORD THE OUTCOMES ACHIEVED BY THE PARTIES

These vary from case to case, but common outcomes include:

- an explanation or apology
- access to treatment
- correction of records
- changes in policy
- a refund or customer service gesture.

In some cases, a health service provider may also give us a formal undertaking that we can then follow up.

In many cases, the Health Complaints Commissioner's office assists consumers by providing information to help them address their concerns with the most appropriate body.

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

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 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 in excess of

1,700

NOTIFICATIONS

from Ahpra

Shared information on approximately

1,500

COMPLAINTS

with Ahpra

Following consultation, Ahpra referred close to

150

NOTIFICATIONS

to us

and we referred approximately

350

COMPLAINTS

to Ahpra

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.

Complaint Handling Standards came into effect on 4 June 2020. Comprising 11 separate obligations, the Standards set the minimum legal criteria for all health service providers in Victoria to meet when handling complaints about their services.

The new Standards also include guiding principles for implementation. All health service providers must ensure their complaint handling processes align with the Standards.

COMPLAINT HANDLING IS AN IMPORTANT PART OF PROVIDING A SAFE AND RESPONSIVE HEALTH SERVICE

COMPLAINT HANDLING STANDARDS

STANDARD 1

The health service provider fosters an open and receptive culture to feedback and complaints that leads to continuous improvement of the quality of their health service.

Source: Victorian Ombudsman, Complaints: Good Practice Guide for Public Sector Agencies, September 2016.

STANDARD 2

All reasonable steps are taken to support a person to make a complaint about a health service provided to, or sought by, a person, or an offer of a health service to a person.

STANDARD 3

No person shall experience reprisals because of providing feedback or making a complaint to a health service provider.

STANDARD 4

The complaint is acknowledged by the health service provider to the complainant as soon as practicable or within three working days. Where applicable, the complaint is remedied at the time it is made.

STANDARD 5

The complainant and the health service provider must mutually agree on a method and frequency of communication throughout the complaint handling process.

STANDARD 6

The health service provider aims to give the complainant a clear and timely response to the complaint within 30 working days of receiving it. Where this cannot be achieved the reason for this and the expected timeframe for responding to the complaint is communicated to the complainant as soon as possible.

STANDARD 7

A response to the complainant includes information about how to make a complaint to the Health Complaints Commissioner.

STANDARD 8

The personal information, collected from a complaint, must be kept confidential in accordance with the *Health Records Act 2001*, the *Privacy and Data Protection Act 2014*, the *Privacy Act 1988 (Cth)*, the *My Health Records Act 2012 (Cth)* and, where applicable, the *Health Services Act 1988*.

STANDARD 9

Records of complaint handling must be kept separate from a person's health information.

STANDARD 10

Where possible, the staff dealing with a complaint must identify, declare and manage any conflicts of interest when handling the complaint.

STANDARD 11

The health service provider's complaint records form part of continuous quality improvement and must be managed in accordance with all relevant legislation and regulations and policies issued with respect to complaint records as amended from time to time, including these Complaint Handling Standards.

→ **READ MORE ABOUT THE COMPLAINT HANDLING STANDARDS AND GUIDING PRINCIPLES FOR IMPLEMENTATION ON OUR WEBSITE – 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 services is sometimes all that is required to reach a mutual understanding and agreement.

During the year, we finalised 1,882 HCA complaints or 38% of all HCA cases through early, informal resolution process.

CASE STUDY

REFUND OF EXPENSES

COMPLAINT

Quan was referred for an ultrasound at a radiology clinic by his GP. The ultrasound report stated that Quan was presenting with a particular type of hernia and he was referred to a specialist for further examination. Quan's specialist reported that he could not locate the presence of a hernia and advised Quan that he often saw this type of error associated with his condition and ultrasounds.

Quan contacted the radiology clinic and requested a refund for the cost of the ultrasound and the specialist appointment. He also asked for an explanation as to why the ultrasound report stated he had a hernia, when his specialist advised otherwise. The radiology clinic advised they had reviewed the report with the radiologist who interpreted the ultrasound and the radiologist stood by his findings. Quan asked them further questions but did not receive a response. Quan subsequently contacted us and lodged a complaint.

WHAT WE DID

We contacted the radiology clinic and found that there was new management since Quan had made his complaint. We discussed the complaint with the new Chief Medical Officer who advised they were willing to engage with the complainant and to discuss the issues directly with Quan and his specialist.

OUTCOME

The Chief Medical Officer contacted Quan and the hernia specialist, who in turn explained there was an issue with the wording of the ultrasound reports. The radiology clinic agreed to review its policy regarding ultrasound reports for suspected hernias and offered Quan a reimbursement for his out-of-pocket expenses. Quan confirmed he was happy with the outcome of his complaint and with our assistance to resolve his concerns.

WHO COMPLAINTS WERE ABOUT

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

HOSPITALS | REGISTERED PRACTITIONERS | GENERAL HEALTH SERVICE PROVIDERS | PRISON HEALTH SERVICES | OTHER

FINALISED COMPLAINTS BY PROVIDER TYPE

The following figures show the complaints we finalised in 2020 – 21 using these five categories, with additional details based on provider speciality.

HOSPITALS

1,452

Public Hospital	1,255
Private Hospital	197

REGISTERED PRACTITIONERS

1,310

This category includes all practitioner types registered with Ahpra.

Medical Practitioner	**925**
General practice	533
Surgery	110
Physician	81
Psychiatry	79
Obstetrics & gynaecology	29
Dermatology	22
Paediatrics	9
Anaesthesia	13
Pain medicine	7
Ophthalmology	21
Pathology	2
Radiology	6
Radiation oncology	6
Sport & exercise medicine	1
Emergency medicine	1
Occupational and environmental medicine	3
Addiction medicine	1
Rehabilitation medicine	1
Dental	**209**
Psychology	**56**
Nursing and Midwifery	**41**
Pharmacist	**23**
Optometry	**8**
Podiatry	**4**
Chiropractic	**9**
Physiotherapy	**16**
Occupational Therapy	**5**
Chinese Medicine	**9**
Osteopathy	**4**
Paramedic	**1**

GENERAL HEALTH SERVICE PROVIDER

260

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

Laboratory services	71
Mental health service	46
Cosmetic service	36
Complementary and alternative health service	23
Massage therapy	22
Allied health service	16
Aged care service	14
Optical service	10
Community and social services *	7
Diet and nutrition service	4
Dental / oral health support service	3
Physical therapy service	2
Nursing support service	2
Birth related services	2
Operational support service	1
Disability service	1

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

PRISON HEALTH SERVICES

981

OTHER

1,100

This category includes a range of entities which do not fit into the health service provider categories set out above.

Clinic	678
Community Health Services #	140
Pharmacy	85
Ambulance and patient transport	66
Medical Imaging	65
Day Procedure Centre	30
Non-Health Service Provider	24
Home Doctor	6
Nurse-on-Call	4
School	2

Community health services are services that provide state-funded primary healthcare, including, but not limited to allied health services, dental health services, disability services and medical services.

CASE STUDY

POOR DENTAL TREATMENT OUTCOMES

COMPLAINT

Alannah had her wisdom teeth removed by a dentist and subsequently suffered a numb tongue soon after her surgery. Alannah returned to the dentist who told her the numbness would go away with time, however, a year later Alannah's condition had worsened.

Alannah attended a meeting with the dental clinic's Practice Manager and was told to see an oral specialist at her own cost and, if the oral specialist suggested something the practice could do for Alannah, they would assess this. Alannah was not happy with this outcome and complained to the HCC.

WHAT WE DID

Upon receiving the complaint from Alannah, we notified Ahpra as the complaint related to a dentist. Ahpra requested referral of the complaint. We then closed the complaint.

Ahpra investigated Alannah's complaint and the Dental Board of Australia took regulatory action against the dentist, imposing multiple conditions on his practice. Ahpra closed the file and Alannah was then able to return to our office for the financial aspect of her complaint to be considered. Ahpra regulates registered health practitioners and can take disciplinary action against them. (See more about the relationship between our office and Ahpra on page 14.

We contacted the dentist, who referred the matter to his insurer. All further communication occurred through this insurer. We formulated a formal description of Alannah's complaint and forwarded this to the dentist's insurer. The insurer responded that it was willing to organise a referral to a nerve specialist for an opinion on Alannah's condition, at its cost, in order to assess the compensation aspect of the complaint. The insurer explained that a nerve specialist could look at potential treatments to re-build any nerve damage that had occurred and that if this was suggested, the insurer would be happy to pay for this treatment.

We presented this option to Alannah who was happy to explore it, as she believed she was going to have a numb tongue for the rest of her life and there was no option for the condition to improve.

Alannah attended the appointment with a nerve specialist, as organised by the insurer. The report showed minor nerve damage, which is not classed as severe, and is not significantly impacting her life.

OUTCOME

The insurer made a financial offer which Alannah accepted and the matter was settled. Alannah was very grateful to us for our assistance in resolving her complaint.

CASE STUDY

REFUND FOR INEFFECTIVE TREATMENT

COMPLAINT

Nora was undergoing a three-month weight loss program with her health service provider for which she paid approximately $6,000. The program consisted of drinking tonic teas and receiving acupuncture and massage. After the first four weeks, Nora was concerned as she noticed that her hair had started falling out and she decided to stop the program. Nora sought advice from her health service provider as to whether the hair loss was a normal reaction to her treatment but failed to receive any information or feedback from him.

After a period of time, Nora decided to re-start the program, but again failed to hear from her health service provider. She then decided to approach us to raise her concerns. Nora told us that she had decided that rather than restart the program, she would prefer a partial refund for the unused portion of the program and teas.

WHAT WE DID

An important part of our assessment of a complaint is clarifying whether a health service provider is a registered health practitioner or a general health service practitioner. We can check the status of a registered provider via the Australian Health Practitioners Regulation Agency (Ahpra) public register. In Nora's case, we confirmed that the provider's medical practitioner registration had been suspended.

We then proceeded to work with Nora to put together a formal description of her complaint, identifying her key concerns and the outcomes she was seeking.

In his response, the provider initially offered a full refund, on the proviso that Nora's complaint was removed from our system entirely.

All complaints made to the Health Complaints Commissioner remain on our system, irrespective of whether they were resolved or not. As such, we told the practitioner that we would not agree to remove the complaint.

In light of this, the provider changed his offer to a partial refund for Nora. Nora was unhappy with the offer and decided to pursue a full refund after learning more about the provider's suspension.

OUTCOME

After further negotiation, the provider agreed to offer Nora a full refund, if she was willing to sign a deed of release, discharging the provider from any future claims in relation to this matter. Nora accepted the offer, signed the deed of release and received a full refund.

Nora was happy that with our assistance, the provider provided her with his response and achieved an outcome that was better than what she had expected.

WHAT COMPLAINTS WERE ABOUT

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

ACROSS THE

5,103

COMPLAINTS WE FINALISED IN 2020 – 21

WE RECORDED

6,187

ISSUES

COMMON ISSUES RECORDED

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

- **35%** TREATMENT
- **19%** ACCESS
- **11%** MEDICATION

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
- **12%** FINANCIAL EXPLOITATION
- **8%** ON THE MANAGEMENT OF COMPLAINTS

The most common issues in finalised HRA complaints were:

- **39%** ACCESS
- **20%** USE AND DISCLOSURE
- **9%** DATA SECURITY AND RETENTION

ISSUES IN FINALISED COMPLAINTS

NON-GENERAL HEALTH SERVICE PROVIDERS

5,565 ISSUES FOR FINALISED COMPLAINTS

Non-general health service providers include all provider types but excludes general health service providers.

Treatment	1,987
Access	1,088
Medication	624
Conduct and behaviour	581
Communication	461
Fees, costs and billing	342
Diagnosis	248
Facilities	105
Complaint management	97
Human rights	32

GENERAL HEALTH SERVICE PROVIDERS

391 ISSUES FOR FINALISED COMPLAINTS

Safe and ethical manner	150
Financial exploitation	47
Complaint management	32
Record keeping	24
Misinformation	22
Infection control	22
Sexual misconduct	18
Consent	18
Conduct in relation to treatment advice	16
Responding to adverse events	16
Insurance	8
Report provider conduct	4
Physical or mental impairment	3
Privacy	2
Claim to cure illnesses	2
Human rights	2
Breach of prohibition order	1
Access and display Code of Conduct	1
Criminal offence	1
Infectious medical condition	1
Statutory offences	1

ALL HRA PROVIDERS

230 ISSUES FOR FINALISED COMPLAINTS

Access	90
Use and Disclosure	48
Data Security & Retention	21
Collection	19
Making Information available to another Health Service Provider	18
Data Quality	17
Correction	9
Openness	5
Transfer or Closure of the Practice	1
Transborder Data Flows	1
Human rights	1

COMPLAINTS UNDER THE HEALTH SERVICES (CONCILIATION AND REVIEW) ACT

1 SAFE AND ETHICAL MANNER

We recorded 1 issue across complaints finalised under the *Health Services (Conciliation and Review) Act* (the legislation the office of the Health Services Commissioner operated under prior to 1 February 2017).

CASE STUDY

HOSPITAL TREATMENT

COMPLAINT

Anthony complained to the hospital about the care and treatment provided to his father, Fred, in the hospital's emergency department when Fred experienced a sudden blurred vision in his right eye. Fred spent most of the day in the emergency department and had different examinations and investigations.

The family were told the appropriate eye examination was not available at the hospital and Anthony was asked to take Fred to a specialist hospital for assessment of his eye. The specialist hospital assessed and examined Fred and diagnosed a retinal artery occlusion, otherwise known as an ocular stroke. They then advised Anthony to return his father to the original hospital where a stroke unit was located.

The family were extremely concerned that Fred, who was in his mid 80s, was not given his medications through the day and that his clinical state was deteriorating. On his return to the first hospital, just after midnight, Fred's family was told there were no beds or trolleys available for him to rest. Anthony remonstrated with staff until a trolley for his father was located.

Anthony claimed the delay in diagnosis of retinal artery occlusion contributed to Fred's irreversible loss of sight in his right eye. Following his hospitalisation, Fred was admitted to an Aged Care Residential Service as he could no longer care for himself at home after the loss of sight of his eye.

Anthony complained to the hospital and after a lengthy delay received a response about the concerns he had raised. The hospital advised that a formal review of Fred's treatment had been completed and that actions had been, or were to be, taken to improve the care and treatment provided to their patients.

WHAT WE DID

Anthony made a complaint to us as he was not convinced that the hospital had taken, or would indeed take, action as they had said. He was also concerned about the length of time it had taken to respond to his complaint.

We prepared a formal description of the complaint to put to the hospital. Anthony wanted evidence of the changes made by the hospital to reassure him, and his family, that action had been taken, and prevent others from having the same experience. Anthony also requested compensation for his father. He detailed the out-of-pocket costs associated with his father's aged care since he was admitted. He requested the hospital reimburse these costs.

OUTCOME

The hospital responded as requested and addressed all the issues detailed in the formal description of the complaint. The hospital advised the specific actions that had been taken regarding complaint management and monitoring, specialist ophthalmology advice for the emergency department, the availability of staff accredited to utilise an assessment tool and the purchase of specialist ophthalmic equipment for the Emergency Department.

The hospital requested the issue of compensation be dealt with in conciliation and was represented by lawyers in the conciliation process. Compensation was declined.

COMPLAINT RESOLUTION PROCESS

An important aspect of the complaint resolution process established by the *Health Complaints Act 2016* is that it is voluntary for both health consumers and health service providers. We expect health service providers to engage in our processes and to make genuine attempts to address and resolve complaints. Where a health service 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 a reasonable one in all the circumstances. It is also entirely at the Commissioner's discretion whether to conduct an investigation.

The case study below is an example of a situation where we considered that the health service provider's decision to withdraw was reasonable.

CASE STUDY

WITHDRAWAL FROM THE PROCESS

COMPLAINT

Laura had a procedure to treat a chronic bladder and pelvic condition at a hospital.

She complained she was treated in an uncaring manner by nurses in recovery, and that she suffered complications after the procedure that were not diagnosed or treated in a timely manner.

Laura sought a detailed explanation from the hospital, as well as policy and procedure changes to improve the patient experience for others.

WHAT WE DID

We worked with Laura to prepare a formal description setting out her concerns and what she was seeking from the hospital.

The hospital in turn provided a response which addressed some of the issues, but Laura remained dissatisfied. We put further questions to the hospital for a response.

The hospital's second response provided detailed answers to all of Laura's questions, including references to relevant research, policies, procedures, and clinical decision-making frameworks. The hospital highlighted the complexity of Laura's condition and the existence of differing views amongst medical practitioners about the appropriate treatments available.

OUTCOME

As a result of Laura's complaint, the hospital undertook a thorough investigation into her admission, addressed her concerns in two detailed written responses, and provided acknowledgements of where care could be improved. Laura remained dissatisfied with the responses from the hospital as they did not align sufficiently with her views about what should happen.

Laura then requested a meeting with hospital staff to further discuss her concerns. The hospital formed the view that it did not have anything further to add to the written response and withdrew from the complaint resolution process. In this case we closed our file as we considered the action of the provider to be reasonable.

COMPLAINTS FROM PRISONERS

The Health Complaints Commissioner operates a dedicated free call line to receive complaints from prisoners about health service provision. During the year, apart from a brief period immediately after implementing remote work arrangements, we prioritised answering live calls from prisoners. This was necessary to accommodate the prisoners as they have more limited means of communication, including a time limit on the calls they can make.

Complaints from prisoners typically relate to requests for specific medication or dosage, concerns about inadequate treatment, seeking doctor appointments or concerns about delay in receiving treatment.

Our team this year handled over 1,000 of these issues and finalised 981 complaints.

CASE STUDY

SOCIAL DISTANCING

COMPLAINT

At the beginning of the COVID-19 pandemic, David contacted us on the dedicated line from a Victorian corrections facility which is a toll-free number. He complained about a lack of social distancing in the health centre where his medication was dispensed.

WHAT WE DID

We contacted the prison's Health Service Manager outlining David's concerns and the Chief Nursing Officer was also informed. The Health Service Manager responded outlining the measures the prison had taken to educate and reassure both staff and prisoners about social distancing guidelines and how they should be maintained. The Manager also advised that information was being provided to all staff and prisoners via three public announcements a day, advising of a 1.5-metre social distancing requirement, hand washing guidelines and that everyone should cough into their elbows if necessary.

OUTCOME

David's complaint ensured that the prison health service was aware of the prisoner's concerns and alerted to possible gaps in adherence to the rules at that early stage.

CASE STUDY

EARLY TRIAGE

COMPLAINT

Tanya complained that after her eye became sore, red and swollen, it took 13 days for her to see a doctor once she lodged a medical request form. Tanya was concerned that the doctor had not examined her eye but had prescribed eye drops, which she had still not received six days later.

WHAT WE DID

Our staff contacted the prison health service to seek a response to Tanya's concerns. The health service explained that the doctor had seen Tanya on a Saturday and did not mark the eye drops as urgent. The eye drops were received from the pharmacy three days later and a notification slip was sent to Tanya to advise her that the eye drops were ready at the health centre. Tanya however did not receive the notification slip and was only issued with them after calling the health centre six days later. The health service advised that it would follow up why the notification slip did not reach Tanya.

We discussed the health service's response with Tanya who remained concerned that she should have been seen more urgently and the doctor's examination should have been more thorough. We prepared a formal description of the complaint, with Tanya's agreement, and sought a more formal response from the health service.

The health service advised that when a prisoner complains about vision problems, they should be seen by a nurse in the first instance and triaged appropriately. The health service apologised that an early triage did not take place in Tanya's case and reminded their staff about the proper protocol. The health service also reviewed the doctor's notes of the consultation and concluded that the care provided had been appropriate in the circumstances.

OUTCOME

Tanya accepted the response provided by the health service.

OUTCOMES IN FINALISED COMPLAINTS

Under the law, we require complainants to raise their complaint directly with a health service provider first, before approaching us, unless it is unreasonable or inappropriate for them to do so. Our customer service team can offer advice and assistance on how to do this. If a person remains dissatisfied with a provider's response, we encourage them to lodge a complaint with us.

OUTCOMES IN FINALISED HCA AND HRA COMPLAINTS

THE MOST COMMON AGREED OUTCOMES UNDER THE HCA WERE:

- **43%** EXPLANATION RECEIVED
- \+
- **21%** ACCESS TO SERVICE PROVIDED
- \+
- **14%** APOLOGY PROVIDED

OTHER TYPES OF AGREED OUTCOMES IN HCA MATTERS INCLUDED:

- **12%** RECEIVED A REFUND
- \+
- **5%** FEE WAS WAIVED
- \+
- **3%** COMPENSATION OFFERED
- \+
- **2%** WERE REFERRED TO PROVIDER FOR RESOLUTION

FOR HRA COMPLAINTS THE MOST COMMON AGREED OUTCOMES WERE:

36% ACCESS PROVIDED TO RECORDS + **21%** EXPLANATION GIVEN + **18%** APOLOGY OFFERED

OUR OPERATIONS DURING THE CORONAVIRUS (COVID-19) PANDEMIC

This past year, we received over 2,500 enquiries and dealt with well over 5,000 complaints. Although these figures are lower than in previous years, they appear to reflect the overall reduction in instances of health care provided during the past year due to COVID-19 restrictions. Continued COVID-19 restrictions on elective surgery have meant that fewer procedures have been carried out at hospitals, while many general health service providers were not permitted to provide any services at all for several months throughout the reporting period.

COMPLAINTS AND ENQUIRIES RELATING TO CORONAVIRUS (COVID-19)

From July 2020 through to June 2021, we continued to receive complaints and enquiries relating to the pandemic. This year we received a total of 560 complaints and 230 enquiries.

THE MOST COMMON CONCERNS RAISED ACROSS THESE MATTERS RELATED TO:

- **29%** ACCESS TO HEALTH SERVICES
- **12%** EXPOSURE TO COVID-19 INFECTION
- **7%** COVID-19 VACCINE RELATED

HEALTH RECORDS ACT 2001

Health service providers like hospitals, medical or dental clinics, psychologists or physiotherapists as well as non-health service providers such as schools, gyms, insurers, employers and government agencies all collect health information about individuals. The information may include medical histories, test results, sick leave certificates, medication lists and more. There are legal requirements about how organisations must handle these health records.

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.

The Health Complaints Commissioner administers the *Health Records Act 2001* which sets out the 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.

During the year, we received 200 complaints about the handling of health information and finalised 179 complaints. In addition, we dealt with 566 enquiries relating to the *Health Records Act 2001*.

An enquiry is a case which does not meet the strict legal requirements to be classified as a complaint under the *Health Records Act 2001*, for instance, it is not made in writing, or it relates to the privacy of another person, but it raises genuine concerns relating to the application of health privacy principles

In many cases, the Health Complaints Commissioner's office assists consumers by providing information to help them address their concerns with the most appropriate body.

CASE STUDY

ACCESS TO MEDICAL RECORDS

ENQUIRY

Jane's mother was admitted to a palliative care unit in a public hospital and passed away two weeks later. Jane requested her mother's medical records from the hospital under the *Freedom of Information Act 1982 (FOI Act)* and sought our assistance as despite several attempts she was unable to obtain the records from the hospital.

WHAT WE DID

A customer service officer outlined our role to Jane and explained the application of the *Health Records Act 2001* that we administer and the FOI Act, administered by the Office of the Victorian Information Commissioner (OVIC). As Jane's concerns related to access to records under the FOI Act, our customer service officer advised Jane to contact OVIC directly to address her concerns. We also provided Jane with the appropriate contact details to assist her in directing her concerns to the most appropriate body.

OUTCOME

Although the matter was not within our jurisdiction, we helped Jane by explaining the different laws that apply to health records and providing information to enable her to address her complaint with the appropriate body.

CASE STUDY

PERSONAL PRIVACY

COMPLAINT

Anika complained that when she presented to reception for an appointment at a multidisciplinary community health service, the reception staff did not ask her to provide any identifying information or identification. Instead, the staff recited her address, phone number and email address aloud, and asked her if these details were correct. Anika said this practice raised privacy and safety concerns for her and she was concerned that her personal details could be overheard by other staff and patients in the waiting area, just as she had overheard other patient details.

Anika also complained that her counselling records were accessible to non-counselling staff within the clinic. Anika said that on more than one occasion, non-counselling staff read this sensitive information on their computer screens during appointments with her. Those staff then asked her personal questions not relevant to those appointments. Anika had complained to staff at the health service in the past about these practices but was not satisfied with the response.

Anika requested to remain anonymous in our process as she did not want the complaint to impact on her relationship with the health service.

WHAT WE DID

As Anika elected to remain anonymous, under the *Health Records Act 2001*, we were unable to deal with her concerns as a complaint. Instead, we decided to use our powers under section 87 of that Act to examine and assess the impact on personal privacy of any act or practice of an organisation and to provide advice.

We worked with Anika to set out in writing the issues identified through her experience at the health service, ensuring this was done without the risk of potentially identifying her. We then wrote to the health service setting out the issues and seeking a response from them.

The health service responded and agreed for a copy of its letter to be provided to the complainant. The health service explained its policies but advised that without knowing the full details of the incidents described, it was unable to discuss the incidents with the staff who were directly involved.

Anika was not fully satisfied with the response, as she had observed that the behaviour of the receptionists had continued. We worked with Anika to convey her observations to the health service and make suggestions on how an organisation could protect the privacy of health information.

The health service responded to our suggestions by stating that patients could provide their personal details in writing or on identification cards rather than verbally. The health service also provided training to its counselling staff on how to lock clinical information in their patient management system to avoid unnecessary access.

OUTCOME

Anika was not fully satisfied with the health service's response but did not wish to relinquish her anonymity and limit the actions that we or the health service could take to further explore the specific examples she had raised. We decided not to take further action but did provide additional comments from Anika to the health service to ensure it was able to consider her experience as a patient.

PROTECTING VICTORIANS – OUR INVESTIGATIONS

The Health Complaints Commissioner has the power to conduct investigations under the *Health Complaints Act 2016* and can initiate own-motion investigations in certain circumstances. The Minister for Health may also refer a matter for investigation. The aim of an investigation is to establish the facts and identify if any measures should be taken to protect the public.

Investigations are undertaken differently to our approach to complaint resolution. In exercising any regulatory function there are a range of options available, from education and advice through to imposing prohibitions on the provision of health services and prosecution in some instances. We do this by combining the formal regulatory tools conferred on us by the *Health Complaints Act 2016*, such as prohibition orders or executing search warrants, with other tools to achieve changes in practice, such as education and training, to both health service providers and consumers of those services.

In deciding what regulatory action to take in response to an issue, the Commissioner considers the statutory purpose of the powers establishing the Act and the guiding principles of the Commissioner, most importantly, that, as far as practicable, the Commissioner must act in the public interest and protect the public from any serious risk to the health, safety or welfare of the public.

In carrying out her regulatory functions, the Commissioner has regard to a number of regulatory practice principles. These have been developed in consideration of the framework under the Act which the Commissioner must apply. The principles underpinning all regulatory actions are applied ensuring they are carried out:

- legally
- consistently
- impartially
- using a risk-based approach
- in a proportionate and intelligence-led manner
- focussing on outcomes
- transparently
- collaboratively and
- efficiently.

In applying these principles in the exercise of all regulatory functions, it enhances the accountability and transparency of decision-making and allows the Commissioner to contribute to the continuous improvement of the health sector.

→ **YOU CAN ACCESS A FULL DESCRIPTION OF OUR REGULATORY PRACTICE PRINCIPLES AT:**

HCC.VIC.GOV.AU/REGULATORY-PRACTICE-PRINCIPLES

CONDUCTING INVESTIGATIONS

When we conduct an investigation, the Commissioner may carry out as many enquiries into the matter under investigation as she believes are necessary to establish the facts. These 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, act as expeditiously and with as little formality as are appropriate in the circumstances.

Once we can establish the relevant facts, we then aim to identify what measures, if any, need to be taken to protect the public from serious risk to their health, safety, and welfare.

KEEPING THE PUBLIC SAFE DURING AN INVESTIGATION

Sometimes, when an investigation is ongoing, 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 health service provider to prohibit the provider from offering all or part of their health service while the investigation is underway.

If an interim prohibition order is made, the health service provider (or providers) must ensure they comply with the conditions or prohibitions imposed, and any contravention of an interim prohibition order is an offence under the *Health Complaints Act 2016*. The Commissioner has the power to prosecute health service providers where they contravene the orders, and significant penalties apply for breaching interim and permanent prohibition orders including fines and 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, in limited circumstances, provide a copy of the investigation report to other parties, including the complainant. However this is at the discretion of the Commissioner.

The Investigation report must set out the Commissioner's findings and recommendations. The recommendations can range from requiring a provider to complete further education or training to ensuring they have proper complaint handling processes. If we believe the provider has failed to make these improvements, we can take further action. Under the *Health Complaints Act 2016*, 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 or fails to 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.

At the conclusion of an investigation, the Commissioner may also decide to impose a permanent prohibition order on a health service provider. A prohibition order 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 preventing the health service provider from providing all or part of their health service or imposing conditions on them. All interim and permanent prohibition orders are published in the Victorian Government Gazette and on the Health Complaints Commissioner website.

In addition to the powers described above, 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.

As a negative licensing regulator (i.e., where we do not licence or register the health service providers about whom we conduct investigations), we rely on notifications from members of the public or any third part, including other health service providers.

More information about the Health Complaints Commissioner's regulatory functions and more detail about the regulatory practice principles are on our website at hcc.vic.gov.au/regulatory-practice-principles

KEEPING THE COMMUNITY SAFE

We have noted, with concern, a rise in the complaints we receive in several general health service areas, but particularly cosmetic treatment, counselling/psychotherapy and massage services. This has in turn led to an increase in our regulatory actions. These are areas where we are increasingly exercising functions to avoid a serious risk to the health, safety or welfare of the public, including carrying out investigations, issuing prohibition orders and warning statements.

General health service providers, all those health services which do not require registration, are subject to the Code of Conduct. It is important to understand that the Code may also apply to registered health practitioners if they provide services outside the scope of their registered practice. For example, registered clinical psychologists are regulated by Ahpra, while counsellors and psychotherapists are regulated by the Health Complaints Commissioner.

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 trauma and harm to their patients can be significant.

COSMETIC SERVICES

While for many months of the reporting period most cosmetic treatment services were not permitted, due to COVID-19 public health restrictions, our office continued to receive complaints about such services. The areas of concern within cosmetic services complaints, apart from breaching Chief Health Officer restrictions, included unsafe use of dermal fillers/ Botox injectables, poor infection control measures and unqualified providers delivering cosmetic treatment services.

MASSAGE SERVICES

One of the most concerning aspects of complaints about massage therapists is the incidence of 'boundary violation' complaints and allegations of impropriety or sexual misconduct. Complainants are often in a vulnerable position when receiving massage services and it is incumbent on all massage therapists that they maintain safe and ethical practices and uphold the Code of Conduct which, under the *Health Complaints Act 2016*, applies to all general health service providers, including massage therapists.

Since February 2017 we have received 115 complaints relating to massage therapy services and massage treatment providers.

Recognising the seriousness of the complaints we have received, 30 investigations into massage therapy services have been conducted.

This represents more than a quarter of all the complaints received about massage therapy services that have been dealt with as investigations under the *Health Complaints Act 2016*.

CASE STUDY

COUNSELLING / PSYCHOTHERAPY SERVICES

COMPLAINT

Our office received information from the Australian Health Practitioner Regulation Agency (Ahpra) regarding a psychologist that Ahpra had suspended from practising. When a previously registered health practitioner provides services outside the scope of their registered profession, they will be a general health service provider and subject to the minimum legal requirements in the Code of Conduct for general health services. In this case, it was alleged that the former psychologist continued to offer general health services, namely psychotherapy and counselling services, in an unsafe and unethical manner in contravention of the Code of Conduct. Our office also received information that the general health service provider had failed to maintain professional boundaries and may have been misinforming clients about the services that the general health service provider could provide.

WHAT WE DID

As noted, despite not being registered to practice as a psychologist, the person was providing services as a psychotherapist and counsellor, and therefore was a general health service provider. This is an example of how our office works closely with other regulators, in this case, Ahpra. With the information that we had received the Commissioner decided to initiate an investigation into this general health service provider. The Code of Conduct for general health service providers stipulates, among other things, that a general health service provider must not offer treatment or care to clients while suffering from a physical or mental impairment, condition or disorder that is likely to place clients at risk of harm. The Code also requires general health service providers not to misinform clients.

Given the nature and seriousness of the concerns raised by the allegations, the Commissioner made interim prohibition orders against the general health service provider while the investigation was conducted, prohibiting them from providing any general health service in Victoria.

As part of the conduct of the investigation, we sought information from the general health service provider to satisfy our office that they did not have a health impairment that would place clients at risk of harm. We also sought to have the general health service provider undergo an independent health assessment. The general health service provider did not provide any information to our office and did not participate in the requested assessment.

THE OUTCOME

Based on the evidence gathered during the investigation, the Commissioner found that the general health service provider had breached the Code of Conduct. The breach included failing to provide general health services in a safe and ethical manner and using their possession of a particular qualification to mislead or deceive clients as to their ability to provide treatment.

At the conclusion of her investigation, the Commissioner made a permanent prohibition order against the general health service provider, banning them from providing any general health services, paid or otherwise, in a clinical or non-clinical capacity.

The general health service provider can apply to have the prohibition order varied or revoked if they are able to provide evidence that they no longer pose an ongoing risk to the health, safety or welfare of the public.

CASE STUDY

UNSAFE COSMETIC TREATMENT

COMPLAINT

Our office received two separate complaints from Sarah and Claire involving a general health service provider who performed cosmetic injectable treatments on them without being appropriately qualified. It was also alleged that in providing the treatments, the general health service provider had financially exploited Sarah and Claire.

Cosmetic injectables, such as Botox® injections and dermal fillers, are schedule 4 poisons and can only be possessed, stored and administered by an appropriately qualified person within the meaning of the *Health Practitioner Regulation National Law Act 2009* (Vic) (the National Law), such as a registered medical practitioner.

WHAT WE DID

The Commissioner initiated an investigation under the HCA. Given the nature and seriousness of the concerns, the Commissioner also made interim prohibitions orders against the general health service provider prohibiting them from advertising, offering or providing any general health service, paid or otherwise, while the investigation was conducted. Depending on the circumstances, interim prohibition orders may ban a general health service provider from providing all or some general health services in Victoria or impose conditions on the general health service provider during the investigation.

Sarah and Claire provided detailed witness statements and copies of email exchanges and text messages with the general health service provider. They also provided details of their bank statements and other relevant documents with regard to the allegation of financial exploitation.

We gave the general health service provider the opportunity to respond to the matters being investigated. They were asked to provide any relevant information and evidence, such as copies of their qualifications, to prove that they were a qualified person within the meaning of the National Law and to put their side of the story.

THE OUTCOME

Having considered the information provided by all parties and witnesses, the Commissioner found that the general health service provider was not legally permitted to provide cosmetic injectable services or possess, administer or store schedule 4 poisons in Australia, and had also breached several clauses of the Code of Conduct.

The breaches included a failure to obtain fully informed consent, providing misleading information about their training and qualifications, and breaching their obligation to not financially exploit clients.

Given her findings, the Commissioner considered that a permanent prohibition order against the general health service provider was necessary to avoid a serious risk to the health, safety or welfare of the public. The prohibition order permanently banned the general health service provider from advertising, offering or providing any general health service, paid or otherwise, in a clinical or non-clinical capacity.

CASE STUDY

MASSAGE THERAPIST

THE COMPLAINT

Jane contacted our office regarding massage therapy services she had received. She raised her concerns that the general health service provider had made flirtatious and sexualised comments during massage therapy treatments. Jane also told us that an intimate relationship developed with the general health service provider while she was receiving ongoing massage treatment.

Our Code of Conduct requires all general health service providers to provide services in a safe and ethical manner. The Code also requires general health service providers not to engage in sexual misconduct. Sexual misconduct includes not engaging in behaviour of a sexual or close personal nature with a client.

WHAT WE DID

Based on the evidence available and the alleged sexual nature of the behaviour, the complaint was not suitable for a complaint resolution process and the Commissioner decided to conduct an investigation into the complaint.

We contacted Jane to obtain further evidence concerning her complaint. This included Jane providing a witness statement and screenshots of the text messages and photos exchanged between her and the general health service provider. We also obtained a witness statement from a third party.

We then contacted the general health service provider to obtain their account of the conduct in question and the allegations made. The general health service provider admitted that an intimate relationship had developed with Jane while she was receiving ongoing massage treatment. While acknowledging that they had breached the Code, the general health service provider stated that the intimate relationship was a consensual one and that Jane had initiated some of the interactions.

The Commissioner made interim prohibition orders against the provider to protect the public while we conducted our investigation. The interim prohibition orders banned the general health service provider from offering, advertising or providing general health services, that involved massage therapy, to any female clients.

THE OUTCOME

The Commissioner found, that based on all the evidence, the general health service provider had breached the Code of Conduct, including the obligation to provide services in a safe and ethical manner and the obligation not to engage in sexual misconduct. Whether Jane initiated some of the interactions was irrelevant as the onus to establish and maintain professional boundaries lies solely with the general health service provider.

On completing the investigation, the Commissioner issued an investigation report which made several findings and recommendations, which included requirements that the general health service provider must complete further education and training in establishing and maintaining professional boundaries with clients; and must compile a reflective practice report to the Commissioner's satisfaction. The general health service provider complied with all of the Commissioner's recommendations.

MAJOR SECTOR-WIDE INQUIRIES

INQUIRY INTO ASSISTED REPRODUCTIVE TREATMENT PRACTICES

Our report on the Inquiry into Assisted Reproductive Treatment (ART) practices in Victoria was released by the Victorian Minister for Health, the Hon Martin Foley, MP in January 2021.

The report made recommendations regarding ART service provision in Victoria, including several recommendations relating specifically to communication and counselling services and complaint handling.

Infertility affects people of all genders, ethnicities and socioeconomic backgrounds and ART is a unique field in medicine, that is strongly impacted by social and scientific changes. The industry has had to adapt to changing social mores, clinical advances and legal and ethical issues.

In the coming months we will be working closely with ART and fertility clinics to work through some of the recommendations. The response of this sector has been very pleasing and there is a strong willingness to collaborate to improve areas we identified through our inquiry as needing change. We look forward to working with the ART and fertility sector.

CONVERSION THERAPY LEGISLATION

Following an inquiry we conducted into practices which sought to change, suppress or eliminate an individual's sexual orientation or gender identity, the Commissioner provided our final report to the Minister for Health in March 2020. One of the recommendations in that report, based on the findings of the inquiry, was that the Government consider introducing legislation to prohibit conversion practices in Victoria.

What has followed is the introduction of the Change or Suppression (Conversion) Practices Prohibition Act 2021, which was passed by the Victorian Parliament on 4 February 2021 and which introduces a general prohibition in Victoria on practices which attempt to change or suppress a person's sexual orientation or gender identity. This Act, among other things, creates criminal offences for trying to change or suppress a person's sexual orientation or gender identity, or for removing someone from Victoria for the purpose of change or suppression. It is also an offence to advertise change or suppression practices. The Change or Suppression (Conversion) Practices Prohibition Act 2021 is an important step towards preventing and responding to the serious damage and trauma caused by change or suppression practices. It ensures LGBTQA+ Victorians can live their lives authentically with pride and makes clear that a person's sexual orientation and gender identity are not broken and do not need to be fixed.

The Victorian Equal Opportunity and Human Rights Commission is empowered under the Change or Suppression (Conversion) Practices Prohibition Act 2021 to consider and respond to reports of change or suppression practices from any person, as well as launch outcomes where there is evidence of serious or systemic change or suppression practices. In addition to the legislative ban on practices, work is also occurring to assist mental health practitioners to better understand the trauma experienced and how to offer services to people who have been subjected to change or suppression practices. The Commissioner was recently asked to provide an introduction to the training being rolled out through La Trobe University.

We are pleased that the work of our office has played a part in such important legislative and social change.

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.

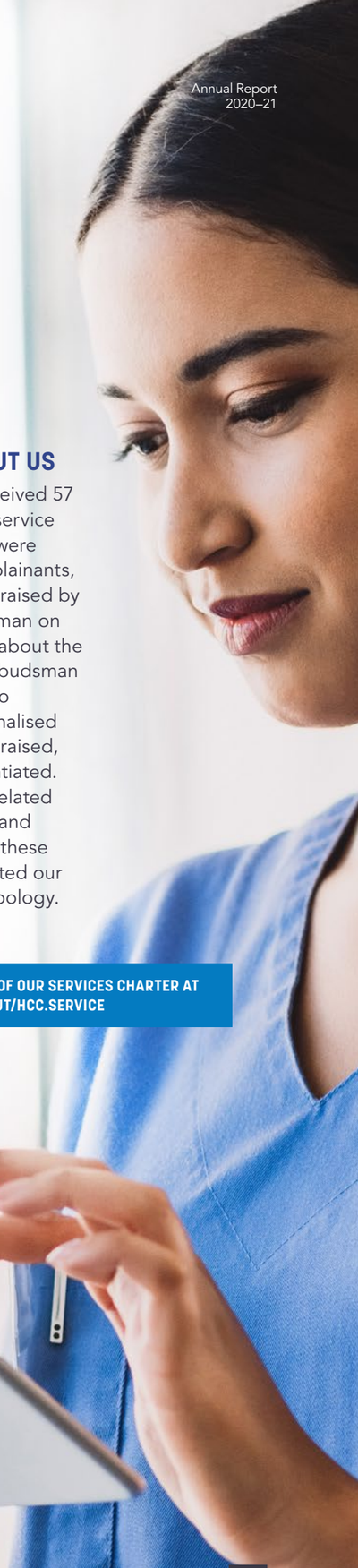
Specifically, the Charter explains that we:

- will assist persons to make complaints
- require health service providers to provide us with information in a timely manner in their response to the complaint
- do not take sides and will work with all parties in a fair, transparent and impartial manner
- will inform all parties of the outcome of the complaint resolution process and reasons for decisions we make, and
- provide opportunities for feedback and complaints about our service.

COMPLAINTS ABOUT US

During the year we received 57 complaints about our service delivery. Of those, 34 were made directly by complainants, and 23 were enquiries raised by the Victorian Ombudsman on receipt of a complaint about the HCC. None of the Ombudsman enquiries escalated into investigation. Of the finalised service delivery issues raised, only 21% were substantiated. Most common issues related to complaint handling and timeliness. To address these complaints, we expedited our work and offered an apology.

→ VIEW THE FULL COPY OF OUR SERVICES CHARTER AT HCC.VIC.GOV.AU/ABOUT/HCC.SERVICE



ENGAGING VICTORIANS

Our education and training programs offer us a platform to engage with our key stakeholders, strengthen relationships and foster a greater understanding and recognition of our role across Victoria. Our training sessions also help educate health service providers about their obligations and responsibilities under the law, as well as the benefits of proactive and positive complaint handling.

In addition, the Commissioner conducts presentations nationally and on alternative dispute resolution, benefits of good complaints resolution and health regulation, as well as delivering presentations to university students from a variety of health and health /law disciplines.

We have continued to deliver our training sessions in new ways with the ongoing pandemic and have moved to online platforms to continue to meet the needs of health service providers, consumers and other key stakeholders. Our staff have conducted three training sessions to groups this year while the Commissioner presented to ten external organisations.

Our online Learning Management 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 the training in a COVID-19 safe manner.

A major emerging engagement piece, which commenced in this reporting period and will continue into the next, is the work we are doing with the ART and fertility sector.

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 addition, the Commissioner offers an online training module on the *Health Records Act* as well as regular presentations. During the year, we conducted two public online presentations on the *Health Records Act*.

COMMUNICATIONS

While 2020-2021 has provided us with continued challenges, we have used the opportunity to enhance our use of technology and find different ways of engaging with both providers and the public.

We actively engage and work collaboratively with media outlets to ensure that our role is clearly understood and that we are recognised in the Victorian community. We respond to media questions with evidence-based data where appropriate and welcome these opportunities to keep the wider community informed of our work.

We continue to work on our digital channels and have revised our website content to ensure that we provide clear information for the public and providers and on how to make a complaint through the Health Complaints Commissioner.

The latest news and decisions on Prohibition Orders or Warning Statements is easily accessed through our website and regularly updated. We also have a list of resources available in 26 community languages other than English and provide answers to the frequently asked questions throughout our web pages.

A suite of available resources on our website includes brochures, posters and fact sheets that outline how to make a complaint, how to access health records, the General Code of Conduct and complaint handling standards as well as other publications for providers and the public. These are available to download and print if desired and are also in poster format should you wish to display them.

→ YOU CAN ACCESS AND DOWNLOAD THESE AT HCC.VIC.GOV.AU/RESOURCES/PUBLICATIONS

FACTS AND FIGURES

OUR WEBSITE 2020 – 2021

MORE THAN
259,455
PAGE VIEWS

OUR MOST POPULAR WEBPAGE IS OUR COMPLAINT FORM

WITH MORE THAN
22,730
UNIQUE PAGE VIEWS

WE WELCOMED
75,158
NEW USERS TO OUR WEBSITE

OF ALL OUR COMPLAINTS WERE RECEIVED VIA THE ONLINE COMPLAINT FORM
42%

OF TOTAL TRAFFIC TO OUR WEBSITE ARE NEW USERS
28%

OF USERS ACCESS OUR WEBSITE VIA DESKTOP COMPUTERS
62%

OF USERS ACCESS OUR WEBSITE VIA MOBILE DEVICES
36%

OF USERS ACCESS OUR WEBSITE VIA A TABLET DEVICE
2%

RELATIONSHIP WITH OTHER COMPLAINT BODIES

The Health Complaints Commissioner works closely with other regulators and complaint entities to identify matters which could be subject to oversight by another body. Where we identify that a complaint could be the subject of a complaint or an investigation under a "relevant law" as defined under the *Health Complaints Act 2016*, we consult with the other relevant body and may refer the complaint to that body.

During the reporting period we referred 18 matters to the Mental Health Complaints Commissioner.

In Victoria, the Mental Health Complaints Commissioner handles complaints about the public mental health services. The Mental Health Complaints Commissioner's jurisdiction does not extend to private mental health service providers. Complaints about private mental health services are handled by the Health Complaints Commissioner. We work closely with the Mental Health Complaints Commissioner's office to identify which of us should deal with specific complaints about mental health treatment.

The Australian Health Practitioner Regulation Agency (Ahpra) and the Health Complaints Commissioner have partly overlapping jurisdiction and are required to exchange information about complaints and notifications received by each body if those complaints or notifications could also be the subject of a complaint or notification to the other body.

In practice this means we inform Ahpra of each complaint about a registered practitioner received by the Health Complaints Commissioner. Similarly, Ahpra informs us of each notification it receives which could also form the basis of a complaint to the Health Complaints Commissioner. Ahpra and the Health Complaints Commissioner are required to agree on which body will deal with a matter.

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(3) – one
- disclosure under section 151(2)(f) – seven
- disclosure under section 152(2)(d) – one

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