HEALTH COMPLAINTS COMMISSIONER

Supporting safe and ethical healthcare

ANNUAL REPORT 2021–22

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 paysrespect 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, 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.

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FOR MORE INFORMATION

This Annual Report details our performance over the 2021 – 2022 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 ACTING COMMISSIONER

DOROTA SIARKIEWICZ

ACTING HEALTH COMPLAINTS COMMISSIONER FROM APRIL UNTIL JULY 2022

The past year was characterised by significant changes and challenges for the HCC.

Last November saw the departure of HCC's inaugural Commissioner, Karen Cusack. Commissioner Cusack established the functions and processes needed under the legislative framework of the Health Complaints Act 2016, particularly in relation to the HCC's new investigative and regulatory powers. Her passion and drive in the role demonstrated a deep commitment to quality and safety in healthcare for all Victorians.

While a recruitment process to appoint a new permanent Commissioner was in train, two consecutive interim Commissioners were appointed. Elizabeth Langdon, a highly experienced senior public servant, previously CEO of the Royal Commission into the Casino Operator, took the helm from November to April. From April to July 2022 I had the privilege of leading the HCC as Acting Commissioner following my temporary appointment to the role.

Like many other organisations, the HCC continued to operate largely remotely for the better part of the year. While remote work has many benefits for staff and employers, it is not without some drawbacks. We worked hard to ensure that, despite the challenges, we provided the best possible complaints resolution service to health consumers and health service providers and protected the public from serious risks we identified during the year.

In contrast to the contraction observed in the previous reporting period, in 2021-22 the volume of complaints and enquiries received by the HCC grew and returned to pre-pandemic level. While our throughput also increased, the surge in complaints received has led to a high workload across the organisation and resulted in longer processing times.

To improve our performance, in May 2022 we restructured our intake and early resolution functions to streamline workflows and improve efficiency by putting more emphasis on early resolution of complaints. Following changes to our telephony systems, we were also able to return to live call taking, improving our service to the Victorian public.

In the second year of the pandemic Covid-19 related concerns continued to be a common cause of complaints and enquiries received. However, while exposure to Covid-19 was a key issue recorded in the previous year, in 2021-22 the most common Covid-19 concerns related to vaccines and access to health services.

During the reporting period we noted a concerning increase in the number of complaints relating to boundary violations by general health service providers. Our investigations into these matters have resulted in orders being issued to protect the public. We have also set up a dedicated Compliance team to proactively assess compliance by providers with orders and recommendations made by the Commissioner and to act where non-compliance is identified.

On 1 July 2022 we welcomed the new Commissioner, Adjunct Professor Bernice Redley, who brings with her extensive leadership experience across multiple sectors and expertise in patient welfare, collaborative health and education. We look forward to the next chapter in the HCC's growth under Professor Redley's leadership.

Dorota Siarkiewicz
Assistant Commissioner

A MESSAGE FROM THE COMMISSIONER

ADJUNCT PROFESSOR BERNICE REDLEY

HEALTH COMPLAINTS COMMISSIONER

As I take on this important role as Health Complaints Commissioner, I look forward to building on the accomplishments of the previous Commissioners as I lead us into 2023. Our plans for the year ahead include a refresh of our strategic plan, to guide how we can ensure consumers are always the focus of our service and improve the quality and efficiency of our response to and resolution of complaints. In addition, our plan will consider how together, with our partners and general health care providers, we can continue to support safe and ethical healthcare for all Victorians.

Adjunct Professor Bernice Redle
Health Complaints Commissioner

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.

THE HCC ADVISORY COUNCIL

PRESIDENT
MS CATHERINE DUNLOP

PROFESSOR
ANDREA DRISCOLL

MR
ANTHONY MCBRIDE

MS
JENNIFER MORRIS

DR
SUSAN SDRINIS

ASSOCIATE PROFESSOR
ROSEMARY MCKENZIE

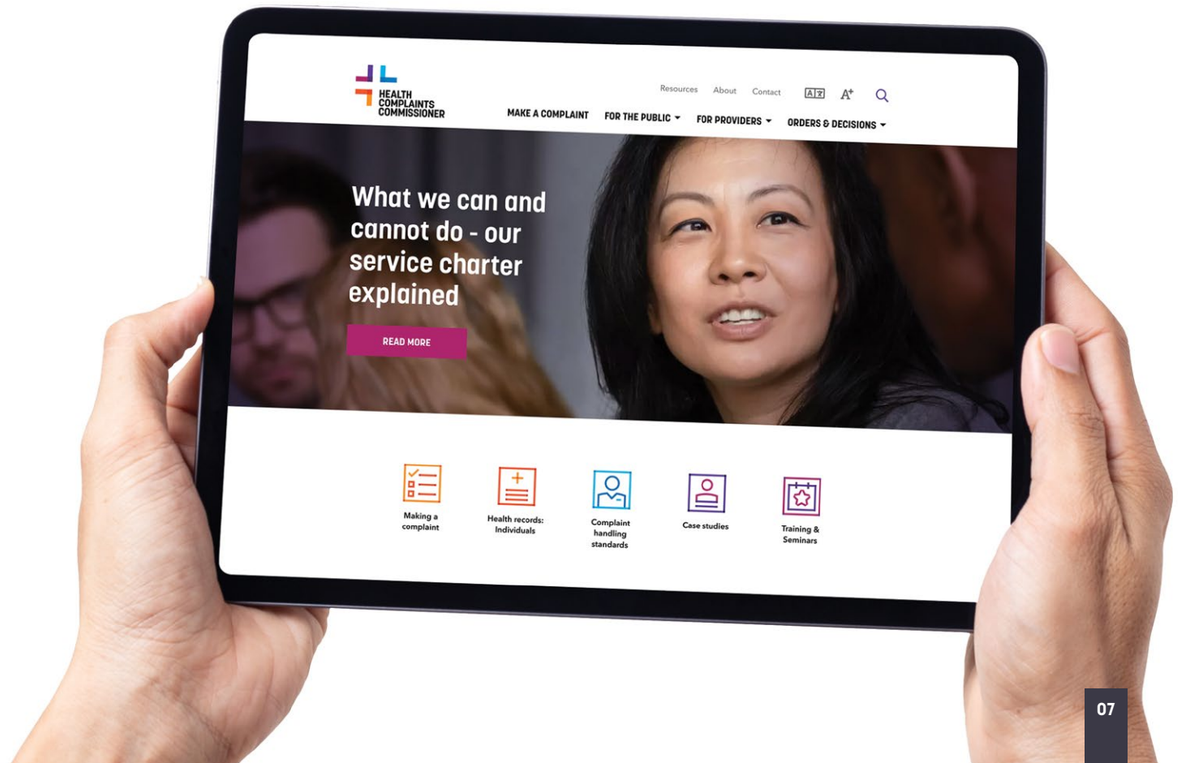
OUR SERVICE CHARTER

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 our service.

COMPLAINTS ABOUT US

During the year we received 72 complaints about our service delivery. Of those, 43 were made directly by complainants, and 29 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 20% 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**



HIGHLIGHTS

THE YEAR IN REVIEW 2021–2022

THE PAST YEAR WAS A TIME OF CHANGE AND CHALLENGES ACROSS OUR ORGANISATION, BUT OUR COMMITMENT TO SUPPORTING SAFE AND ETHICAL HEALTHCARE CONTINUED TO BE OUR HIGHEST PRIORITY.

IN 2021-22 WE RECEIVED

6,191
COMPLAINTS

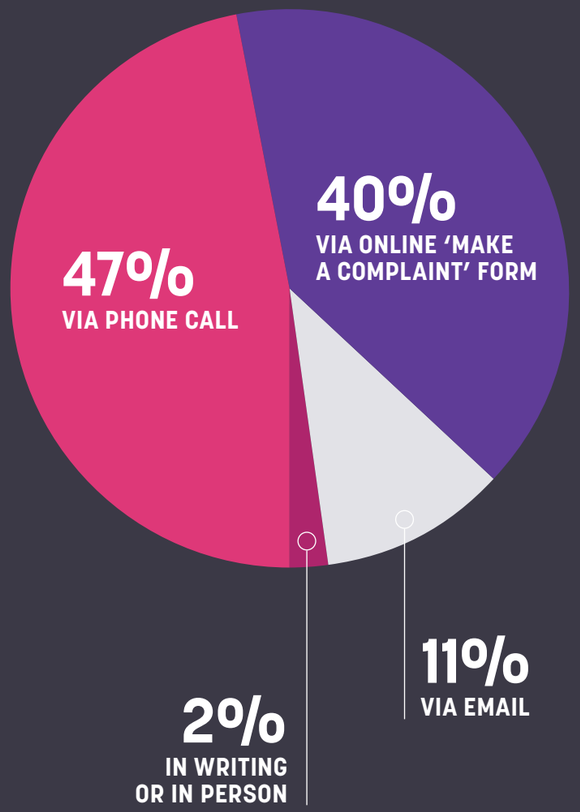
2,711
ENQUIRIES

OF THE 6,191 COMPLAINTS RECEIVED

5,969
COMPLAINTS UNDER THE HCA

222
COMPLAINTS UNDER THE HRA

HOW COMPLAINTS WERE MADE



WE FINALISED

5,582
COMPLAINTS

2,805
WITHIN 30 DAYS

4,425
WITHIN 90 DAYS

INVESTIGATIONS

We commenced
33
INVESTIGATIONS UNDER THE HCA

This comprised of
20
COMPLAINT INVESTIGATIONS

13
OWN-MOTION INVESTIGATIONS

The Commissioner issued
82
ORDERS

and published
2
GENERAL HEALTH WARNING STATEMENTS

We finalised
40
INVESTIGATIONS

Across these finalised investigations we identified
108
CODE BREACHES

and
5
BREACHES of the Complaint Handling Standards

There were
2
REVOCATION OF ORDERS

HANDLING COMPLAINTS

We can assist anyone with a concern about a health service provider in Victoria, with complaints related to the provision of a health service, as defined in the HCA. 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 do or achieve if the complaint is made without the knowledge of the health consumer.

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. This means that sometimes there will be matters where we are unable to 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.

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 has been unsuccessful and remains unresolved, 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.

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. This year we received 2,936 complaints via telephone, 2,470 via our web form, 678 via email and 107 by other means (in writing and/or in person).

HOW WE HANDLE COMPLAINTS — OUR COMPLAINT RESOLUTION PROCESS

1

AFTER A COMPLAINT IS MADE, WE WILL

ASSESS THE 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 agreement from both parties 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 case by case, but common agreed 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 which we can then monitor.

In many cases, the Health Complaints Commissioner's office assists consumers by providing

THE HCC'S COLLABORATION 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.

We work closely with the Australian Health Practitioner Regulation Agency (Ahpra) as well as the Victorian Mental Health Complaints Commissioner (MHCC) to identify the best place to deal with specific complaints. We also meet obligations to exchange information about those complaints and notifications received by each body if they could also be the subject of a complaint or notification to the other body.

During the reporting period we received in excess of	Shared information on approximately	Following consultation, Ahpra referred approximately	We referred approximately	And we referred
1,900 NOTIFICATIONS	1,300 COMPLAINTS	450 NOTIFICATIONS	300 COMPLAINTS	22 MATTERS
from Ahpra	with Ahpra	to us	to Ahpra	to the MHCC

*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.

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.

→ HCC.VIC.GOV.AU/PROVIDERS/COMPLAINT-HANDLING-STANDARDS

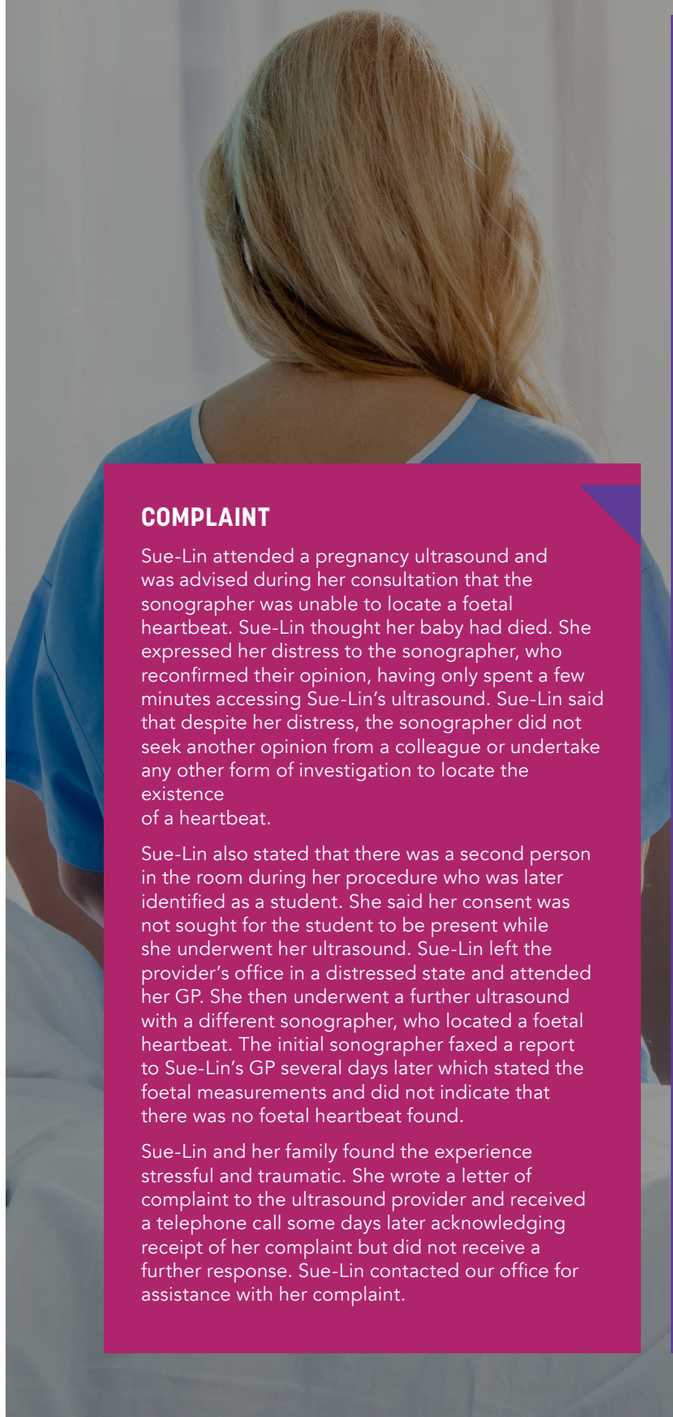
COMPLAINT RESOLUTION

We deal with most complaints as promptly and informally as is appropriate in the circumstances. 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 2021/22 year, we finalised 2,044 HCA complaints or 38% of all HCA cases through early, informal resolution process.

CASE STUDY

THE IMPACT OF POOR COMMUNICATION



COMPLAINT

Sue-Lin attended a pregnancy ultrasound and was advised during her consultation that the sonographer was unable to locate a foetal heartbeat. Sue-Lin thought her baby had died. She expressed her distress to the sonographer, who reconfirmed their opinion, having only spent a few minutes accessing Sue-Lin's ultrasound. Sue-Lin said that despite her distress, the sonographer did not seek another opinion from a colleague or undertake any other form of investigation to locate the existence
of a heartbeat.

Sue-Lin also stated that there was a second person in the room during her procedure who was later identified as a student. She said her consent was not sought for the student to be present while she underwent her ultrasound. Sue-Lin left the provider's office in a distressed state and attended her GP. She then underwent a further ultrasound with a different sonographer, who located a foetal heartbeat. The initial sonographer faxed a report to Sue-Lin's GP several days later which stated the foetal measurements and did not indicate that there was no foetal heartbeat found.

Sue-Lin and her family found the experience stressful and traumatic. She wrote a letter of complaint to the ultrasound provider and received a telephone call some days later acknowledging receipt of her complaint but did not receive a further response. Sue-Lin contacted our office for assistance with her complaint.

HOW WE HELPED

As Sue-Lin had not received an adequate response to her complaint, we assisted her to put together a formal complaint for the provider, to outline her concerns and the outcomes she sought.

Sue-Lin wanted the provider to explain the procedure that should occur when a foetal heartbeat is not located. She also wanted a detailed explanation as to why she had been advised that there was no heartbeat, when this was later shown to be incorrect. Sue-Lin also wanted an explanation as to why the conversation regarding the lack of foetal heartbeat had not been documented in the report provided to her doctor.

Regarding the student being present, Sue-Lin sought advice about why she was not asked for her consent to have another person in the room and also wanted advice on what training had been provided to staff following her experience.

OUTCOME

The provider acknowledged that the sonographer should have taken other measures to locate a heartbeat prior to informing Sue-Lin that there was no heartbeat. This could have been to ask Sue-Lin to take a break and perhaps move around a little or take a walk, for example, prior to conducting a second ultrasound. They also acknowledged that the sonographer could have asked for a second opinion of a colleague.

Following Sue-Lin's complaint, the manager of the clinic met with staff and discussed Sue-Lin's experience and the care that should be taken in handling such sensitive situations. The manager indicated that an internal scan should be performed prior to any final decision that no foetal heartbeat was present. They also agreed that the sonographer should discuss their findings with the manager prior to informing the patient.

The provider agreed that the sonographer should have obtained Sue-Lin's signed consent prior to the student being present for her scan.

Sue-Lin accepted the information provided to her but did not believe the matter was resolved, as she had not received a formal apology from the provider. However, as her baby was due to be born, Sue-Lin did not want to take further action and agreed that the complaint could be closed.

WHO COMPLAINTS WERE ABOUT

FINALISED COMPLAINTS BY PROVIDER TYPE

The following figures show the complaints we finalised in 2021–2022 using these five categories, with additional details based on provider speciality.

GENERAL HEALTH SERVICE PROVIDER

292

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

Laboratory services	72
Mental health services	55
Cosmetic services	42
Allied health services	38
Complementary and alternative health services	21
Massage therapy	18
Aged care services	12
Optical services	5
Birth related services	4
Dental/oral health support services	4
Health promotion	4
Physical therapy services	4
Community and social services*	3
Diet and nutrition services	3
Nursing support services	3
Disability services	2
Operational support services	1
Reproductive/sexual health services	1

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

HOSPITALS

1,434

Public Hospital	1,269
Private Hospital	165

PRISON HEALTH SERVICES

922

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

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

REGISTERED PRACTITIONERS

1,442

This category includes all practitioner types registered with Ahpra

Medical Practitioner	1,063
General practice	670
Surgery	153
Physician	79
Psychiatry	62
Obstetrics & Gynaecology	25
Paediatrics	18
Dermatology	17
Anaesthesia	11
Ophthalmology	9
Radiology	8
Pain medicine	4
Emergency medicine	2
Intensive care medicine	2
Occupational & environmental medicine	1
Public health medicine	1
Rehabilitation medicine	1
Dental	169
Psychology	75
Pharmacist	39
Nursing and Midwifery	23
Physiotherapy	15
Chiropractic	13
Occupational Therapy	13
Podiatry	11
Optometry	9
Chinese Medicine	5
Osteopathy	4
Medical Radiation Practice	3

OTHER

1,492

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

Clinic	1,073
Community Health Services**	107
Ambulance and patient transport	96
Pharmacy	93
Medical Imaging	48
Day Procedure Centre	38
Non Health Service Provider	24
Home Doctor	8
Nurse-on-Call	3
Council	1
School	1

** 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 will be higher than the number of complaints finalised.

ACROSS THE

5,582 **COMPLAINTS WE FINALISED IN 2021–22**

WE RECORDED

6,933 **ISSUES**

COMMON ISSUES RECORDED

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

40% **SERVICES NOT BEING PROVIDED IN A SAFE AND ETHICAL MANNER**

11% **COMPLAINT MANAGEMENT**

8% **FINANCIAL EXPLOITATION**

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

29% **TREATMENT**

24% **ACCESS**

11% **MEDICATION**

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

42% **ACCESS**

19% **USE AND DISCLOSURE**

9% **DATA QUALITY**

ISSUES IN FINALISED COMPLAINTS

GENERAL HEALTH SERVICE PROVIDER

518

ISSUES FOR FINALISED COMPLAINTS

Safe and ethical manner	205
Complaint management	56
Financial exploitation	44
Misinformation	41
Conduct in relation to treatment advice	37
Consent	24
Sexual misconduct	23
Record keeping	16
Infection control	16
Insurance	12
Responding to adverse events	12
Privacy	8
Claim to cure illnesses	7
Access and display Code of Conduct	6
Breach of Prohibition order	4
Human rights	3
Physical or mental impairment	2
Practising under the influence of alcohol or unlawful substances	1
Report provider conduct	1

NON-GENERAL HEALTH SERVICE PROVIDERS

6,156

ISSUES FOR FINALISED COMPLAINTS

Treatment	1,768
Access	1,487
Medication	680
Conduct and behaviour	664
Communication	457
Fees, costs and billing	383
Diagnosis	375
Complaint management	183
Facilities	128
Human rights	31

ALL HRA PROVIDERS

259

ISSUES FOR FINALISED COMPLAINTS

Access	109
Use and Disclosure	48
Data Quality	24
Data Security & Retention	20
Making Information available to another Health Service Provider	18
Correction	15
Collection	13
Transfer or Closure of the Practice	7
Openness	5

CASE STUDY

IMPAIRMENT AFTER SURGERY

IMPAIRMENT FOLLOWING SURGICAL TREATMENT

Martin came to us after several years of treatment following hip replacement surgery. Despite the procedure, Martin continued to experience severe pain and was referred to an orthopaedic surgeon for assessment. After the assessment, Martin was admitted to hospital for further surgery.

Two weeks after the surgery, Martin saw the surgeon again and told him his hip was painful and red. The surgeon ordered tests and prescribed antibiotics. Martin said his pain kept getting worse and, at the next consultation, he asked the surgeon to check his wound. Martin said the surgeon did not review the wound properly and attributed the redness to the dressing tape. Martin was later found to have an infection which required a surgical wash out of his hip wound and new antibiotics. Unfortunately, further investigations found the infection had attached to the prosthesis.

As a consequence of this infection Martin underwent multiple surgeries to remove the prosthesis and to wash out his hip. He was wheelchair bound or lying flat in bed for some five months at a rehabilitation facility until the infection had cleared and he was able to undergo a full hip replacement. In total, Martin underwent nine surgeries before he was discharged home.

The experience left Martin with reduced muscle bulk and tone, increased fatigue and limited mobility. He now requires assistance with personal care and housework.

Martin believed the care he received from the orthopaedic surgeon led or contributed to the necessity of further surgeries and prolonged hospitalisation.

Martin contacted us for assistance after unsuccessfully trying to resolve his complaint directly with the surgeon.

WHAT WE DID/HOW WE HELPED

Because of the complex issues raised we decided to deal with Martin's complaint in conciliation. We worked with Martin and his lawyer, as well as with the surgeon's legal representatives to confirm the key concerns that needed to be addressed to resolve the dispute. With the agreement of both parties, we obtained an independent opinion regarding the care provided to Martin by the surgeon as well as an impairment assessment. The independent opinion and impairment assessment outcome were accepted by both parties. We also facilitated communication between Martin and the surgeon in relation to the outcomes sought by Martin through an online conciliation meeting. The conciliation, attended by Martin, his lawyer and the surgeon's legal representatives was successful with parties agreeing to an offer of compensation.

WHAT WAS THE OUTCOME?

Martin accepted an offer of compensation which resolved his complaint.

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 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 they believe 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.

CASE STUDY

FINANCIAL CONSENT

COMPLAINT

John attended the emergency department of a private hospital for treatment on the advice of his doctor and was subsequently admitted to a ward. John complained that he was not provided with adequate information on the associated costs prior to receiving treatment. He stated that he was not informed in plain language that he was not covered by his private health insurance for the investigation of his high blood pressure. Instead, he states he was told he was not covered for vascular problems, which he did not understand included high blood pressure.

John stayed for several days of tests, despite wanting to discharge himself. John complained that if he had been correctly informed that his costs were not covered, and of the likely extent of his costs, he would have sought care elsewhere. John sought our assistance to have the fee from the hospital reduced or waived.

HOW WE HELPED

We contacted the hospital who in turn advised that John had been informed of his policy restrictions upon admission to the hospital, and that John had signed an informed financial consent form. They also advised that John had also agreed to a co-payment with his fund to cover the cost of his hospital admission. The hospital offered to reduce their bill by $200, as a gesture of goodwill, and also offered to organise a payment plan for John. John was not satisfied with this offer.

OUTCOME

The hospital provided an explanation to us of how it obtained John's financial consent and made a goodwill financial offer, however, John rejected the offer.

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 requests for specific medication or dosage, concerns about inadequate treatment, seeking doctor appointments or concerns about delay in receiving treatment.

In 2021-2022 our team handled 1034 of these issues and finalised 922 complaints.

Issue Taxonomy	No of Issues
Medication	424
Access	378
Treatment	115
Diagnosis	42
Facilities	26
Communication	17
Conduct and behaviour	13
Complaint management	12
Human rights	7
Grand total	1,034

CASE STUDY

PRISONER COMPLAINT

COMPLAINT

We received a complaint from a prisoner who lives with a chronic medical condition. He takes care of this condition himself but requires certain medical supplies to do so effectively and to avoid infection. The prisoner told us that for the previous two years, while he had been in prison, he had been receiving monthly supplies to manage his condition himself, including disposable components, sterile wipes, etc.

The prisoner contacted us however when this supply had been compromised. He advised that the system had recently been changed to a weekly supply and this had become problematic for him. When he received his first pack of medical supplies, there had been a number of vital components missing, which meant he was unable to treat himself properly. The situation had become critical after an incident where the prisoner needed new supplies overnight and was unable to gain the assistance he needed. The prisoner had asked the duty officer to call the medical centre for the supplies but was advised that it could not be provided until the morning. The prisoner was subsequently provided with incomplete and incorrect supplies.

When he followed up with staff, he was told that the service did not have all the items he required at one time. He was also told that he was now not to be provided with gloves. Instead, he would need to request these from custodial staff. As the prisoner's condition was susceptible to infection and required daily treatment, the prisoner wanted an explanation as to why his supply had been changed to weekly. He also wanted assurances that he would receive all the required supplies to manage his condition. He explained that the previous method had worked effectively for the previous years and he had rarely had infection. The prisoner also wanted to keep reserve supplies in his cell to prevent further emergency situations from occurring.

HOW WE HELPED

We contacted the appropriate Manager at the prison regarding the prisoner's concerns and to gain an explanation as to why the supply system had been altered. We also explained how the prisoner had not received a complete order of his required supplies and how this had been affecting his self-care and creating incidents.

The prison advised our office that they had changed the medical supplies provision to weekly as prison management had decided the supplies were cluttering the prisoner's cell and could pose a fire risk. We relayed this information to the prisoner, who in turn disputed that any of the supplies could pose a fire risk as they were in sterile packaging, wrapped in plastic or moist and as such he did not understand this rationale. He also advised that he had already been supplied with extra linen to cope with overnight situations when they occurred and there had never been a discussion about 'cluttering' previously.

He further explained that despite promising that the equipment would be available to him on a weekly basis, he was still unable to obtain all that he needed in a timely fashion and had had to make several requests before it was supplied.

OUTCOME

We received confirmation from the health service that they had met with the prisoner and that he had been provided with the appropriate items he needed. They also advised that they had put a mechanism in place so that this equipment was supplied each week on the same day.

We did not hear back from the prisoner again. In dealing with complaints about health service providers, the Health Complaints Commissioner is bound by the provisions of the Health Complaints Act 2016. Section 14(h) of that Act states:

'The Commissioner may refuse to deal, or cease to deal, with a complaint made to the Commissioner if the health service provider has taken action that the Commissioner is satisfied has resolved the complaint.'

With these circumstances, and without any further information from the prisoner to the contrary, we were satisfied that the prison had taken action that had resolved the complaint.

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 Intake and Enquiries team offers 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:

37%	EXPLANATION GIVEN
27%	ACCESS TO SERVICE PROVIDED
15%	APOLOGY OFFERED
12%	REFUND RECEIVED
4%	REFER TO PROVIDER
3%	FEE WAIVED
2%	COMPENSATION

FOR HRA COMPLAINTS THE MOST COMMON AGREED OUTCOMES WERE:

38%	ACCESS PROVIDED TO RECORDS
28%	EXPLANATION GIVEN
12%	APOLOGY OFFERED
10%	HEALTH INFORMATION TRANSFERRED
6%	HEALTH INFORMATION CORRECTED
2%	APPROPRIATE FEES CHARGED
2%	COMPENSATION OFFERED
1%	PROVISION OF PRIVACY POLICY

CASE STUDY

A RARE COMPLICATION DURING A PROCEDURE

COMPLAINT

Haruka was attending a service provider for IVF treatment. During a procedure to retrieve her eggs, Haruka's bowel was accidentally perforated. Haruka required emergency surgery and was unable to work or receive IVF treatment while she recovered.

Haruka came to us when her complaint with the provider was not handled to her satisfaction. She wanted the provider to reimburse her for her out of pocket expenses associated with her lengthy recovery from surgery and was confused by the provider's unspecific offer of assistance with the costs of future treatment.

We decided to deal with Haruka's complaint in our early resolution process.

HOW WE HELPED

We discussed the issues raised with Haruka and the service provider. Haruka also provided receipts and other documentation as evidence of the expenses she incurred while she was recovering from her perforated bowel. She explained that while she had been warned of and accepted the possible complications of egg collection, the injury she had sustained had a very significant impact on her life.

The service provider accepted that the bowel perforation was likely caused during the egg collection procedure. They highlighted that an injury such as that experienced by Haruka was a rare but possible complication of the procedure. The medical practitioner involved in Haruka's procedure suggested that although they were unaware of the damage caused to Haruka's bowel at the time of her procedure, it was a possibility that the accident had occurred. A complication may arise even when the procedure is undertaken with all the required skill and care.

OUTCOME

The service provider apologised to Haruka for the distress and financial hardship she had experienced and encouraged her to continue seeking support from the provider's counselling staff. They also agreed to cover the costs of specific further IVF treatment and medications.

Haruka was satisfied with this outcome and accepted the offer as resolution of her complaint.

OUR OPERATIONS DURING THE CORONAVIRUS (COVID-19) PANDEMIC

Covid-19 and the pandemic continued to affect our work through the 2021-2022 reporting year. The office of the Health Complaints Commissioner continued to function remotely for the early part of the financial year, with a gradual return to office-based work from February 2022. We also continued to receive Covid-19 related complaints and enquiries.

Of the 609 complaints we received, we saw a change in the nature of the complaint, with vaccines being the most common concern at 38% and 30% of complaints about access to health services. We also received a total of 163 Covid-19 related enquiries.

THE MOST COMMON CONCERNS RAISED ACROSS THESE MATTERS RELATED TO:

38%	**COVID-19 VACCINE**
30%	**ACCESS TO HEALTH SERVICE**
6%	**ACCESS TO COVID-19 TESTING**
5%	**EXPOSURE CONCERN**
2%	**DELAY IN COVID-19 TEST RESULTS**

CASE STUDY

HOSPITAL TREATMENT AND COVID-19 EXPOSURE

COMPLAINT

Raj was taken to hospital with a broken arm at the elbow. An X-ray showed a severe break requiring emergency surgery and Raj underwent surgery late into the evening. While Raj was in recovery, his parents noted that Raj was bleeding through his cast, bandages and onto the sheets. They alerted the nurses, who contacted the night doctor. The night doctor said he would speak to the specialist.

Despite calling the staff, Raj's bleeding was not attended to by the specialist, and his mother was told that bleeding was to be expected and nothing out of the ordinary.

Raj's mother was concerned however that the bleeding was not normal and that her concerns were not being noted by the medical staff.

Raj's condition deteriorated through the night as he continued to bleed. His mother was advised that Raj would be discharged the following morning because his vital signs were good. In the morning Raj was not discharged. The bleeding continued, despite a new cast being applied. Raj's heart rate increased and became erratic.

COMPLAINT (CONT.)

A Medical Emergency Team (MET) call was made. The doctors decided that Raj had lost a concerning amount of blood and ordered a transfusion and blood tests. The doctors then found the source of the bleeding and stopped it.

The following day, Raj's parents were advised that Raj's ward had been identified as a tier 1 COVID-19 site. The family were compelled to have COVID-19 tests at the hospital and told they would need to be isolated at home for 14 days. They were not however provided with any evidence for their employers that showed they had been at the site and exposed. The hospital site was not listed on the Department of Health's COVID-19 website.

Raj's mother made a complaint to the hospital. She wanted a written explanation as to why Raj's bleeding had been ignored and an explanation for the cause of his continued bleeding. She also sought a letter from the hospital stating that the ward where their son had stayed had been deemed as a COVID-19 tier-1 exposure site while they had been at the hospital. She and her husband needed this letter so that they could justify their isolation period to their employers, as the site had not been listed on the Department of Health's website as an exposure site at that time. When the family did not get a response from the hospital, they contacted the HCC.

HOW WE HELPED

We worked with Raj's family to write a formal complaint to the hospital. We explained to the hospital that Raj's family were seeking information and an explanation of Raj's treatment while in their care. We also explained the need for a separate formal letter from the hospital acknowledging the exposure to COVID-19 and their request for the family to isolate for 14 days. We then liaised with the hospital for some months, while it considered each element of the complaint.

OUTCOME

The hospital responded to Raj's family and acknowledged the severity of Raj's bleeding had been underappreciated by the staff at the time and that if it had been recognised earlier, it may have prevented the emergency calls and blood transfusion that Raj required.

The hospital also recognised that the level of communication and response to the family when they expressed their concerns, was not at the required standard. They further acknowledged that the team involved in Raj's care had met to discuss these management issues and identify if there were opportunities to improve patient care following this experience. The hospital apologised to the family for the frustration, inconvenience and distress caused by their experience.

The hospital also confirmed that the ward where Raj had stayed was deemed a COVID-19 positive site when Raj's family attended and that they had instructed all patients and visitors at the time to isolate for a 14 day period. The hospital further confirmed that they had notified the Department of Health and provided details of all patients who were admitted at the time of the exposure and as such it was not considered a public exposure site and not listed on the Department website. They also provided Raj's parents with the letter they required for their employers.

Following receipt of both letters, Raj' mother advised us that she had received the reassurance and closure that the family required and the letters had resolved their concerns. The complaint was then resolved.

HEALTH RECORDS ACT 2001

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.

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 222 complaints about the handling of health information and finalised 194 complaints. In addition, we dealt with 445 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.

CASE STUDY

ACCESS TO MEDICAL RECORDS

COMPLAINT

Ali wrote to Dr Green's clinic requesting a copy of his deceased wife's health records. Ali stated that the health service provider had treated his wife for a six month period prior to her death. Ali came to us and complained as he had requested his wife's health records directly from the provider but had been told that the provider was unable to locate the records and that they may have been destroyed after his wife's death.

The Health Privacy Principles (HPP) and Health Records Act state that an organisation must take reasonable steps to protect the health information it holds from misuse and loss and from unauthorised access, modification or disclosure.
It also states that an organisation must not delete health information relating to an individual, even if it is later found or claimed to be inaccurate. Finally, it states that those who hold health information about a person to give them access to their health information on request, subject to certain exceptions and the payment of charges.

Ali contacted us to complain about the provider and to seek assistance to obtain the records.

HOW WE HELPED

When contacted by our office, Dr Green responded that the deceased health records had in fact been destroyed by severe water damage they had incurred at their clinic. Dr Green further advised that his clinic did not keep digital, but rather handwritten files and these were what had been destroyed. We noted that this was a different response to the request than that Ali had received from the provider to his original request.

On further prompting, Dr Green then sought to provide evidence from an insurance claim that the water damage had occurred – and engaged the services of a legal firm. The practitioner subsequently located part of the hard copy records after performing a further search, which were given to Ali, - Dr Green could not, however, recover the partial records when it would be expected that the records for each patient would be stored together.

Having regard to concerns about Dr Green's previous record keeping practices and his inability to outline why he was unable to find some of the records, our office believed it was important to bring this to Ahpra's attention for consideration. Ahpra agreed that the absence of records raised a performance concern and requested referral of the matter for the relevant board to review.

OUTCOME

In consideration of the damage suffered from the loss of the health records, Ali sought financial compensation to resolve the complaint. Following a period of negotiation, the parties agreed to settle the matter after Dr Green paid Ali compensation.

CASE STUDY

DISCLOSURE OF HEALTH INFORMATION (HRA)

COMPLAINT

Jacob attended his doctor as he had been notified that he had elevated blood pressure. His doctor advised him to undertake some blood tests and wrote out a pathology referral form. On the referral, Jacob noted that the doctor had written his HIV status in large handwriting. Jacob did not believe that this information was relevant to the referral and did not want this health information to be disclosed on the form unnecessarily.

Jacob approached his doctor to complain. The doctor dismissed his complaint and stated that he needed to put it on the form to safeguard those taking blood from Jacob. He further advised that his understanding was that the phlebotomist also needed to take extra precautions and wear triple the usual amount of protective equipment when handling Jacob's blood sample.

Jacob knew that this information was incorrect and lodged a complaint with the Health Complaints Commissioner (HCC). He wanted an acknowledgment from the doctor that disclosure of his HIV status was not necessary in the circumstances. He also wanted the doctor to make adjustments to his practice and to undergo HIV protocol training to ensure others did not have to suffer the same embarrassment as Jacob.

HOW WE HELPED

Universal precautions for infection control make it unnecessary for the blood of a person with HIV to be treated differently from others. As this complaint related to a registered practitioner, the HCC was obliged to notify the Australian Health Practitioner Regulation Agency (AHPRA) who agreed the complaint should be handled by the HCC.

We contacted Jacob's doctor and advised that we had received a formal complaint from Jacob regarding the information that he had disclosed on the pathology referral form. We advised that this did not appear to be in accordance with the privacy principles. We explained the relevant privacy principle to the doctor and asked him to provide a response.

OUTCOME

The doctor responded with an apology for the distress he had caused to Jacob. He advised he had sought guidance and information about when it was appropriate to include information of HIV status on a pathology form. He also stated he had been wrong in assuming he needed to disclose patient HIV status when making a referral and that he was now aware that this was not required as he had undergone training regarding universal precautions for infection control.

Jacob was satisfied that his doctor had made changes to his practices because of his experience with him and that he had changed his way of thinking regarding disclosure of HIV status. Jacob advised he was satisfied his complaint was resolved and could be closed.

PROTECTING VICTORIANS — OUR INVESTIGATIONS

Protecting Victorians from unsafe and unethical healthcare is a core purpose of the Health Complaints Commissioner. Part of this function is the power to conduct investigations into health service providers who may have breached of the Code of Conduct for General Health Service Providers. At any time during an investigation the Commissioner, if satisfied that the provider is a serious risk to the life, health, safety or welfare of an individual or the public, can prevent the provider from providing all, or part of, their health service and or impose conditions on them.

Under the Health Complaints Act 2016 the Commissioner can initiate own-motion investigations in certain circumstances. The Minister for Health may also refer a matter for investigation.

CONDUCTING INVESTIGATIONS, TO KEEP THE PUBLIC SAFE

The Commissioner may carry out as many enquiries into a matter under investigation as 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, take the least intrusive measures that are appropriate in the circumstances.

Once the relevant facts are established, the Commissioner then identifies what measures, if any, must be taken to remedy any Code breaches by the provider and if any action is required to protect the public from serious risk to their health, safety, and welfare.

→ YOU CAN ACCESS A FULL DESCRIPTION OF OUR REGULATORY PRACTICE PRINCIPLES AT REGULATORY PRACTICE PRINCIPLES | HEALTH COMPLAINTS COMMISSIONER (HCC.VIC.GOV.AU)

KEEPING THE PUBLIC SAFE DURING AN INVESTIGATION

When an investigation is ongoing, the Commissioner may sometimes 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. A 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 who contravene an order 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 be required to provide the investigation report to other parties such as Ahpra, the Minister for Health or the Secretary of the Department of Health.

The investigation report outlines the Commissioner's findings and recommendations. These 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 then 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 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.

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.

→ YOU CAN FIND FURTHER DETAILS ABOUT OUR INVESTIGATIONS AT INVESTIGATIONS | HEALTH COMPLAINTS COMMISSIONER (HCC.VIC.GOV.AU)

CASE STUDY

PROVISION OF HAIR TRANSPLANT SERVICES

COMPLAINT

Luke contacted our office about a hair transplant procedure he received from a general health service provider who claimed to be an expert in follicular unit extraction. Hair transplant services are a health service under the Health Complaints Act 2016 (the Act). The provider claimed that he had been a hair surgeon for five years and had been employed as a consultant to cancer patients requiring hair transplants. Luke had agreed to pay the provider for 3000 grafts of hair at a significant cost.

When Luke attended his first appointment, he noted that the clinic appeared to be in a dental practice. Luke was told by the provider that he could expect good results and that all the transplants would be completed in one sitting. He also reassured Luke that he would continue the treatment until he had achieved a full head of hair. The provider confirmed that 3000 grafts would be required, and that Luke's donor hair was good. They agreed on the price.

On the day of the procedure, Luke was shown to an upstairs room at a dental clinic, where he was placed face down on a massage table. Luke noted that there was no nurse present to assist the provider during the procedure.

The provider shaved Luke's head but did not clean the area afterwards. The provider then proceeded to administer anaesthetic injections to Luke's scalp. As Luke remained face down on the table, the anaesthetic ran down the back of Luke's head, into his mouth and eyes. Luke advised the provider that he felt pain during the procedure, as some areas of his head had not been sufficiently anaesthetised. The provider then proceeded to move to another part of Luke's head to continue the surgery. Luke also experienced blurred vision during the procedure.

When Luke advised the provider of his discomfort, the provider told Luke that his discomfort had nothing to do with the surgery and continued with the hair transplant procedure. Luke stated that when the hair follicle was removed from the back of his head the provider would then place the hair follicle into a nearby dish. Luke was unable to see how the hair follicle was prepared prior to being transplanted into the top of his head.

At the conclusion of the procedure the provider wrapped Luke's head in a bandage. Luke was not provided with any advice on aftercare or pain relief when discharged, instead he received instructions for aftercare via a text message later that evening.

COMPLAINT (CONT.)

The day after the procedure Luke was concerned as his scalp did not appear as he had expected. Luke contacted his provider the following day to discuss his disappointment and was advised that it would require many more grafts before Luke would gain a full head of hair. This was contrary to the advice that Luke received at his initial consultation with the provider. The provider informed Luke that 7000 grafts would be required as his hair was thin, and the treatment was progressive and could take multiple transplants. Luke understood from his initial consultation that the procedure would be completed in only one session.

The provider also stated that Luke would not be required to pay for any more grafts until he could give him a complete head of hair. This was contrary to the initial information provided. Luke would not have commenced the procedure if this had been clear in the beginning.

Luke subsequently attended another similar provider for a second opinion on the procedure he received. The second provider confirmed his concerns and noted that Luke had only received approximately 300 hair follicles on that first visit, not the 3000 he had been informed had been inserted. Luke then contacted his initial provider and requested a refund of $7000, which was not forthcoming.

HOW WE HELPED

We contacted the provider and advised them that based on the information available to us, the Commissioner had decided to investigate his services under s.45 of the Health Complaints Act (2016). All general health service providers in Victoria are subject to the minimum legal standards set out in Schedule 2 of the Act, namely the 'General code of conduct in respect of general health services' (the Code).

Amongst other things, the Code requires general health service providers to provide their services in a safe and ethical manner. Luke's complaint raised concerns about whether the general health services provided to him complied with the Code and the potential risks that other clients may have been exposed to if the providers services and processes were not Code compliant. Given the advice of the complainant, we were concerned that the provider was not appropriately trained or qualified to conduct hair transplants. We were also concerned that there was little evidence of infection control and that Luke had been misinformed as to the outcome of his procedure as well as the cost involved to obtain the result he sought.

We also sought expert advice from an alternative hair transplant provider who confirmed Luke's procedure had not been sufficient to give him a full head of hair as he had understood.

We subsequently issued an interim prohibition order on the provider, prohibiting them from providing all, or part of, the general health service being investigated for up to 12 weeks. This allowed our team to conduct a thorough investigation into the provider.

OUTCOME

The provider was served with a prohibition order, preventing them from offering any general health services in Victoria.

KEEPING THE COMMUNITY SAFE

In recent years we have noticed with growing concern a rise in the complaints we have received in several general health service areas. This trend has continued in the 2021-2022 reporting year, with complaints continuing to be received across the provision of cosmetic treatments, increased concerns with counselling/psychotherapy services and massage providers frequently coming to our attention.

These are areas where we continue to exercise functions to avoid serious risk to the health, safety and welfare of the public, including carrying out investigations, issuing prohibition orders and warning statements.

An increased new area of concern however, that we have noted this year, is that of general health service providers who are offering Sonography services. Our office has received several complaints regarding such providers where incidence of 'boundary violation' complaints and allegations of impropriety or sexual misconduct have come to our attention.

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.

MASSAGE SERVICES

As general health 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.

We are aware of an inherent power imbalance that 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.

Recognising the seriousness of the complaints, the HCC commenced numerous investigations into massage therapy in the current year and since February 2017 have received in excess of 100 complaints about services provided by massage therapists and massage treatment providers.

CASE STUDY

MYOTHERAPY SERVICES

COMPLAINT

We received a complaint regarding a general health service provider who provided myotherapy services. Myotherapy is a form of physical therapy used to treat or prevent soft tissue pain and restricted joint movement. The complainant alleged that the provider she had seen had crossed sexual boundaries during an appointment, by partially removing her under garments and brushing a hand against her genital area during a treatment.

Upon receipt of this complaint, the Health Complaints Commissioner decided to investigate the provider under s.45 of the Act. We worked with the complainant to formulate a detailed account of her complaint.

As part of procedural fairness, the provider was also given an opportunity to respond to the complainants allegations. The provider submitted their summary of the consultation, as well as their clinical notes and supporting documentation.

WHAT WE DID

Once we had obtained both their descriptions of the consultation, we noted that there were several significant aspects of the accounts that differed. In assessing this, industry guidelines relating to record keeping and professional boundaries between Myotherapists and clients were also reviewed.

The Commissioner was required to apply the civil standard of proof to the decision and make a determination regarding the complaint on the balance of probabilities. As there were no other parties present during the consultation, the available evidence consisted of two largely contradictory accounts.

The Commissioner determined that the provider's conduct, on the available evidence, was more likely to reflect that they may not have obtained the complainants fully informed consent in the course of a legitimate and clinically justified treatment on their part, rather than a behaviour that fell within the scope of sexual misconduct.

It was further determined that the provider had breached the general Code of Conduct as their records did not include documented consent relevant to the treatments administered to the complainant. The General Code of Conduct sets standards for general health service providers, meaning those not regulated by AHPRA. It also applies to registered providers operating outside their area of registration.

To address these findings, the provider was requested to provide a reflective practice report with specific reference to the obligations outlined by Code clause 15. The HCC asked that this report should detail what steps the provider had taken to ensure compliance with the Code in the future.

FACTS AND FIGURES

ENGAGEMENT 2021–2022

OUR MOST POPULAR WEBPAGE IS OUR COMPLAINT FORM

We saw a 1.5% increase in website traffic and page views with 49.83% increase in unique page views for our "Make a Complaint" page and a 5.4% increase in new users to our site.

These figures are consistent with the growth of our online communication tools.

MORE THAN
263,417
PAGE VIEWS

WITH MORE THAN
34,036
UNIQUE PAGE VIEWS

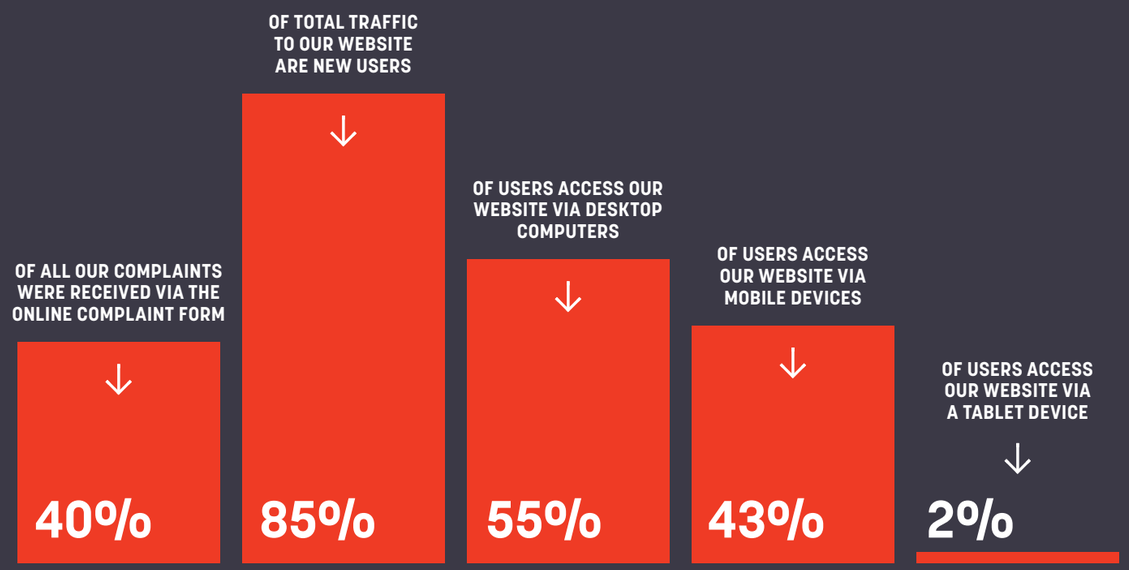
WE WELCOMED
79,225
NEW USERS TO OUR WEBSITE

EDUCATION

We continue to engage with our key stakeholders through our online education and training mechanisms.

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. During 2021/2022 our education and training seminars were undertaken by in excess of 54,000 health service providers.

8022	GENERAL CODE OF CONDUCT
128	THE HEALTH RECORDS SEMINAR
45,784	THE HEALTH RECORDS ACT
106	SUCCESSFUL COMPLAINT HANDLING



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) – 2
- disclosure under section 150(2)(b)(i) — 1
- disclosure under section 150(3) — 3
- disclosure under section 151(2)(f) — 2

HEALTH COMPLAINTS COMMISSIONER

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