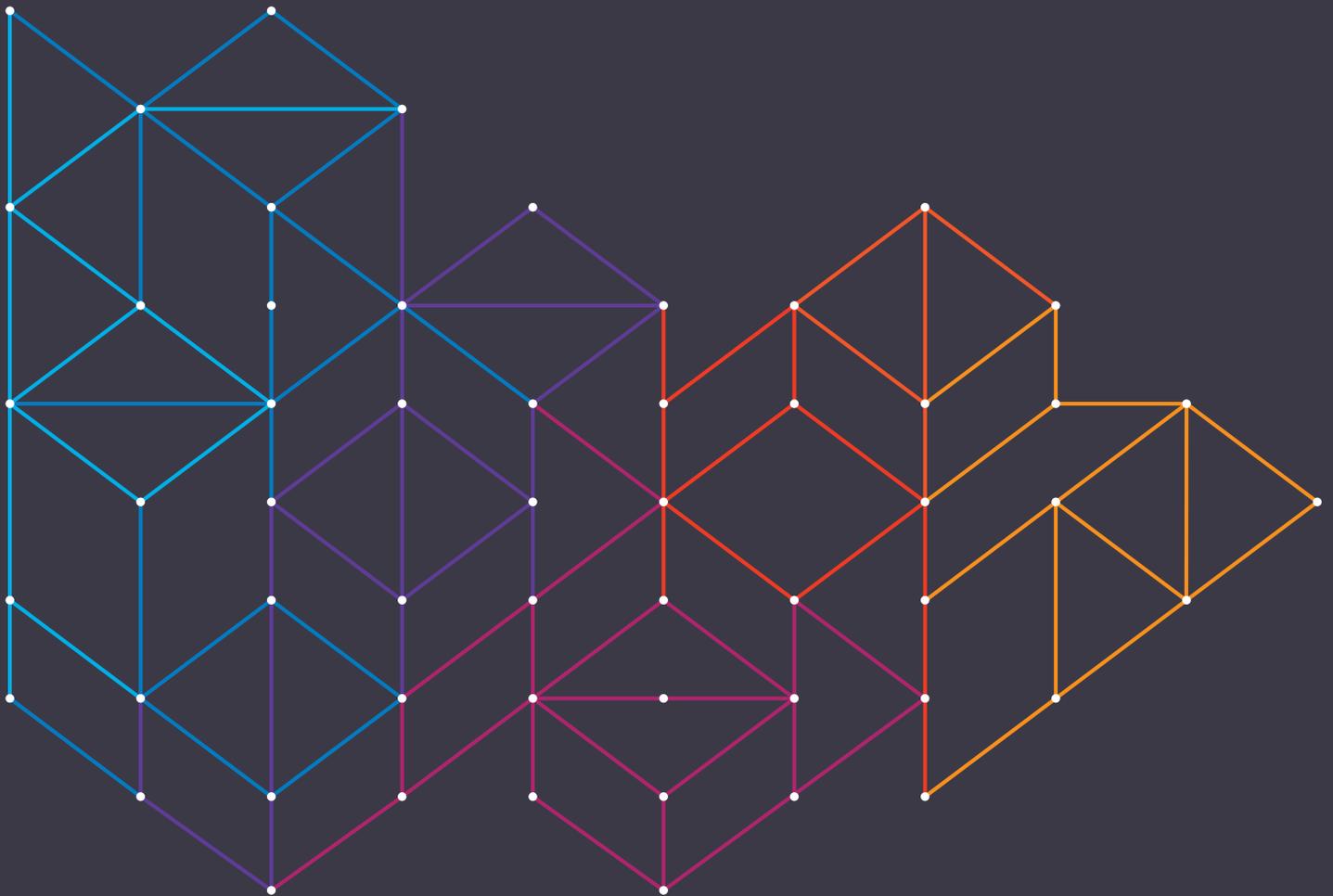




**HEALTH
COMPLAINTS
COMMISSIONER**

Supporting safe and
ethical healthcare



**ANNUAL REPORT
2019-20**



OUR VISION

WE WORK

WITH VICTORIANS
TOWARDS SAFE
AND ETHICAL CARE

OUR VALUES

IMPARTIALITY

WE ARE FAIR AND
TRANSPARENT
IN ALL THAT WE DO

COLLABORATION

WE ARE INCLUSIVE AND
ENGAGED IN OUR
APPROACH

INTEGRITY

WE PROVIDE SERVICES
IN A RESPECTFUL AND
ETHICAL MANNER

COURAGE

WE ACT WITH STRENGTH
AND WE ARE COMMITTED
TO OUR PURPOSE

ACKNOWLEDGMENT OF TRADITIONAL CUSTODIANS

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

MORE INFORMATION

This annual report details our performance over the 2019–20 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 would like more information about our role or if you wish 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 or about training, resources or your responsibilities under the Health Complaints and Health Records Acts, 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.

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A MESSAGE FROM THE COMMISSIONER



There is no doubt that the second part of the 2019–20 reporting year has been severely affected by health, social and economic consequences as a result of the coronavirus (COVID 19) pandemic. We are continuing to look at how we engage with our stakeholders and provide access to our services while also ensuring the health and welfare of our staff, and our stakeholders.

This year's annual report might appear to be a story in two parts – our work pre-COVID-19 and the work that has continued during the global pandemic. Coronavirus (COVID-19) has presented many challenges in Australia and around the world, and I want to acknowledge how proud I am of the way our staff have risen to the challenges we have faced here. Even though we have been working remotely since March 2020, our services have carried on unabated and we continue to support safe and ethical health care for all Victorians. While there have been distinct changes to the way we work, more than ever we need to be a trusted and impartial player within the health sector.

In working with the Victorian public to deal with complaints through our impartial complaint resolution process, we are well placed to identify where health services could do things better. Part of our role, beyond providing an alternative dispute resolution process in relation to health services, is to educate those services about their responsibilities and obligations. Despite the challenges of moving all our operations to remote working in the latter part of the reporting year, we continue to provide our full services and, as always, we deal with complaints sensitively and thoroughly. In a voluntary complaint resolution process, the outcomes may not always be what either party wants or expects. We must, however, remain impartial



"CORONAVIRUS (COVID-19) HAS PRESENTED MANY CHALLENGES IN AUSTRALIA AND AROUND THE WORLD, AND I WANT TO ACKNOWLEDGE HOW PROUD I AM OF THE WAY OUR STAFF HAVE RISEN TO THE CHALLENGES WE HAVE FACED HERE."

and independent, and it is important that the people and organisations we work with understand our role.

While the impact of coronavirus (COVID-19) has seen the number of complaints to our office reduce slightly, which is not surprising, we are continuing to see increasingly complex matters. This is not just in the nature of particular complaints but also in the nature of the services themselves. Our staff have adapted to the challenges of managing complaints in an everchanging environment with resilience and positivity, and that is to be commended.

We have also continued to conduct investigations into those more serious matters that are not suitable for complaint resolution or that I deem should be investigated. Conducting investigations is a key aspect of our protective function in that we are able to deal with those health service providers that may pose a serious risk to the public and, where necessary, issue prohibition orders and warning statements. Our small team of investigators has also had to adapt to the coronavirus (COVID-19) environment and carry out their functions in ways we could not have imagined at the start of this reporting year.

In 2019–20 we completed two major inquiries referred to us by the Victorian Government. I submitted our reports to the Minister for Health. The first inquiry related to assisted reproductive treatment services and the second, which we began in 2018, was a major review of privately funded alcohol and other drug treatment services across the state. Both reports were the culmination of considerable work by staff within my office and I want to acknowledge their role in these very important achievements. As a small office, the fact we are able to produce such significant and high-quality

work is a testament to the passion and dedication of all the staff but particularly those who worked on the inquiries. The government is currently considering both reports. In three years of operation, my office has completed major inquiries into conversion therapy, assisted reproductive treatment services and the privately funded alcohol and other drug sector. The breadth of these inquiries and the diversity of the services within each of these matters is something of which we are immensely proud. Most importantly, at the heart of each of these inquiries are people (in many cases, vulnerable people), and what makes the work we do so fulfilling is trying to make a difference for all Victorians.

Finally, in this reporting year the Complaint Handling Standards were gazetted, which was the culmination of extensive consultation and development, and I want to particularly thank the Health Complaints Commissioner Advisory Council for their assistance and support in developing these Standards. Now, in partnership with the Advisory Council members, we will begin to implement these important complaint-handling tools for all Victorian health services.

As I close off on what has been an extraordinary year, I want to again thank the entire team, for we are a team, for their commitment to the work we do. I want to show my gratitude for the way in which they have all worked through their own challenges in dealing with the coronavirus (COVID-19) pandemic to continue providing our services to the Victorian public.

Karen Cusack
Health Complaints Commissioner

OUR ADVISORY COUNCIL

The Health Complaints Commissioner Advisory Council is appointed by the Victorian Minister for Health.

Its functions are to:

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

MEMBERS OF THE ADVISORY COUNCIL



The *Health Complaints Act 2016* established Interim Complaint Handling Standards that applied when the Act first came into operation.

Following extensive consultation with health service providers, consumers and other key stakeholders, the Health Complaints Commissioner 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 2020–21 to help health service providers embed the new 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. More information about the Standards is on page 16 of this report.

OUR LEGISLATION

The Health Complaints Commissioner (**the Commissioner**) is an independent and impartial statutory officer appointed under the *Health Complaints Act 2016*.

The Commissioner is responsible for administering two pieces of legislation:

- the *Health Complaints Act 2016* (the HCA)
- the *Health Records Act 2001* (the HRA).

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

HEALTH COMPLAINTS ACT

Under the HCA, our powers and functions include:

- helping to 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
- educating consumers and providers about their rights and responsibilities

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

CODE OF CONDUCT FOR GENERAL HEALTH SERVICE PROVIDERS



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

The HCA includes a code of conduct for general health services. The *General code of conduct in respect of general health services* (Schedule 2) supports safe and ethical health care by prescribing minimum legal standards that apply to all general health service providers in Victoria.

MUST

- provide safe and ethical health care
- 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.

General health service providers are those health services that are not required to be registered with the Australian Health Practitioner Regulation Agency (Ahpra).

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

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.

HEALTH RECORDS ACT

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 its patient records and how patients can assess their health records.

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



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

THE YEAR IN REVIEW: 2019-20 HIGHLIGHTS

IN 2019-20 WE RECEIVED:

 **5,895** COMPLAINTS

 **3,580** ENQUIRIES

OF THE 5,895 COMPLAINTS, WE RECEIVED



5,677
complaints
under the HCA

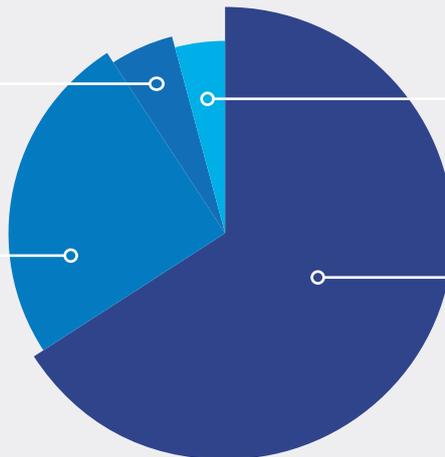
213
complaints
under the HRA

5 complaints under the *Health Services (Conciliation and Review) Act 1987* (this was the legislation that preceded the HCA)

HOW COMPLAINTS WERE MADE

5%
were made over email

25%
were made via our online
'Make a complaint' form



4%
were made in
writing or in person

66%
were made
by phone

FINALISED COMPLAINTS IN 2019-20

WE FINALISED
6,107
COMPLAINTS



3,939
COMPLAINTS WERE
FINALISED WITHIN
30 DAYS



5,246
COMPLAINTS WERE
FINALISED WITHIN
90 DAYS



"2019-20 HAS PRESENTED UNIQUE CHALLENGES FOR DELIVERING ON OUR ONGOING COMMITMENT TO SUPPORTING SAFE AND ETHICAL HEALTHCARE."

INVESTIGATIONS

In 2019–20 we commenced **56 investigations** under the HCA.

This comprised:

2

MINISTER-REFERRED INVESTIGATIONS

In 2019–20 the Commissioner

ISSUED 78 ORDERS

ISSUED 3 GENERAL HEALTH WARNING STATEMENTS

FINALISED 29 INVESTIGATIONS

Across these finalised investigations, we identified:

107

code breaches, and

21

breaches of the Interim Complaint Handling Standards



OTHER

WE FINALISED MAJOR INQUIRIES INTO PRIVATELY FUNDED ALCOHOL AND OTHER DRUG SERVICES AND ASSISTED REPRODUCTIVE TREATMENT SERVICES.

ENGAGING WITH THE COMMUNITY

This year:

- Our online content was accessed more than **279,000 times**
- We provided training through 16 presentations by the Commissioner and 11 sessions by staff to raise awareness of our role, and to educate health services and the public about the rights of consumers and the responsibilities of health service providers
- We completed an audit to ensure our website complies with web accessibility guidelines
- We expanded our online learning management system to increase our capacity for online training and education delivery

HANDLING COMPLAINTS

Anyone who has concerns 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. Health service staff and volunteers, concerned members of the public and professional organisations can also contact us if they have concerns.

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 when that step has already been unsuccessful, we may then be able to assist. In some cases we may accept a complaint without requiring the complainant 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 code.

We can only assist with complaints about health service provision, 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 timing of the complaint or if another forum, such as a court, is a more suitable place 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 help health service providers with information about their legal obligations, our processes and what to do, if they receive a complaint against them.

Importantly, taking part 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.

When we first receive an online complaint our Customer Service Team usually contacts the complainant to confirm the details. They will often offer advice to complainants about options for resolving their concerns as quickly and directly as possible.



“EVERYONE IN VICTORIA DESERVES SAFE AND ETHICAL HEALTHCARE, NO MATTER WHAT THE HEALTHCARE SETTING. WHEN COMPLAINTS ARISE, WE WORK WITH CONSUMERS AND HEALTH SERVICE PROVIDERS TO HELP RESOLVE THE DISPUTE.”

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 organisation to deal with the complaint.

In some cases, we may refer your complaint to another organisation.

If your complaint is about a registered practitioner, we must notify Ahpra of your complaint and agree on which body should handle it.

2. WE CONSIDER THE BEST PATHWAY FOR THE COMPLAINT

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



EARLY RESOLUTION

This is the quickest and least formal way that we can help resolve a complaint. It suits 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 HCA that may involve a discussion or negotiation of the complaint between the parties or conciliation where we propose options for resolution and terms for agreement. The process may include more formal correspondence, meetings, access to medical records and obtaining independent expert opinion.

3. WE RECORD THE OUTCOMES ACHIEVED



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.

CASE STUDY

CONTINUITY OF CARE

COMPLAINT

Marta complained that her GP clinic was unwilling to give her a prescription for pain relief medication while her regular GP was away. The clinic told her to make an appointment with a different clinic because they were fully booked for the next fortnight. Marta's attempts to resolve her complaint directly with the clinic were unsuccessful.

WHAT WE DID

We worked with Marta to pinpoint the main issues in her complaint and the outcomes she was after, and worked with to compile the formal complaint. We then contacted the clinic and asked them to respond to Marta's complaint.

In response, the clinic's practice manager apologised to Marta and acknowledged that the clinic had not followed its policies to ensure continuity of care to patients with chronic conditions. The practice manager explained that several doctors had recently left the practice, which had an impact on the availability of appointments. The practice manager advised that the clinic would review all chronically ill patients and invite them to an appointment to develop an ongoing treatment plan, including a pain management plan. This would ensure that when their regular GP is absent, the agreed treatment and medication plan would continue without causing distress or inconvenience to the patient. The clinic also provided refresher training on its policies to all staff.

THE OUTCOME

Marta was pleased with the way her complaint was resolved and the action the clinic took to improve the way it manages patients with chronic conditions.

CASE STUDY

HIGH COST OF ACCESS TO HEALTH RECORDS

COMPLAINT

Aminah complained about a \$220 charge imposed by a medical practitioner for providing her with access to her health records. Aminah did not know why the fee was imposed and was concerned that even if she paid the fee, she might not be provided with her records.

WHAT WE DID

We contacted the practitioner to ask about the \$220 charge. The practitioner said that he was charging \$220 for medicolegal documents because the request had come from Aminah's solicitor rather than from the patient herself.

We reminded the practitioner of his obligations under the HRA about what he could charge a patient to access their own health information. We explained that whether the request came from the patient or from a solicitor acting on the patient's behalf, the practitioner must charge in accordance with the HRA. Under the HRA, he may charge a maximum of \$37 to access and collate a copy of Aminah's health information. To provide a copy of Aminah's records to her solicitor, the practitioner can charge an additional 20 cents per page, as well as GST and postage.

Following our advice, the practitioner agreed to recalculate the charges in line with the HRA and to send a new invoice to Aminah's solicitor. The invoice listed a breakdown of the fees charged and totalled \$106.70.

THE OUTCOME

Aminah was satisfied that she was now charged the correct amount for accessing her health information.

MENTAL HEALTH COMPLAINTS

In Victoria, the Mental Health Complaints Commissioner handles complaints about 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 to identify which of us should deal with specific complaints about mental health treatment. The following case study highlights the role we play in dealing with private mental health services.

CASE STUDY

INVOLUNTARY MENTAL HEALTH ASSESSMENT

COMPLAINT

After a voluntary admission to a private mental health service for treatment, Vlad was told he would be discharged home. As he was preparing to leave, nursing staff became concerned about his behaviour. Without warning, a nurse told him that he would be placed on an assessment order (under the *Mental Health Act 2014*) and would be taken by ambulance to a public mental health service for further assessment. Vlad disputed the need for the assessment order and ambulance. His requests to speak with his psychiatrist were denied and private hospital staff escorted him to the public mental health service.

The public mental health service assessed Vlad and found that he did not need any more treatment. He was discharged home.

Vlad was upset that the actions of the nurse made the situation worse. He believed the assessment order was unnecessary and that the nurse should not have placed him on an assessment order. He wanted the private mental health hospital to apologise, to explain what happened and to compensate him for his distress.

WHAT WE DID

We worked with Vlad to prepare a formal description of his complaint, covering the key issues and outcomes that he hoped to achieve. We then contacted the nurse to provide her with an opportunity to respond to Vlad's complaint.

The nurse agreed to take part in the complaint resolution process and gave detailed reasons behind the assessment order, made in consultation with Vlad's treating psychiatrist. She acknowledged that Vlad felt hurt by the incident and that the process could have been handled better.

Vlad did not accept the nurse's response and asked for a meeting with her. We worked with Vlad and the nurse to facilitate a meeting at our office. Both Vlad and the nurse were invited to bring support people along.

During the meeting, the nurse could not confirm that Vlad was given a statement of rights at the time he was placed on the assessment order. She agreed to work with the private hospital to ensure a statement of rights is given to future patients in similar situations, and to document that this had been done.

THE OUTCOME

Vlad was satisfied with how his complaint was resolved and the process improvements undertaken by the health service provider.

**CASE STUDY****POOR DENTAL TREATMENT****COMPLAINT**

Amanda lodged an online complaint about treatment she received from a dentist. When the dentist took an impression of Amanda's teeth, she felt he had used excessive force to remove the impression. At the next appointment, Amanda had two new crowns implanted. However, a few days later she noticed that another crown, not treated by the dentist, had come loose. The dentist said the crown may have been loosened when he removed the impression. The dentist agreed to fix the loose crown, but Amanda said he again used too much force and also loosened the implant underneath it. The dentist was unable to fix the problem and told Amanda that the whole implant would come out in the next few months. The dentist charged Amanda for the work on the loose crown even though he did not fix it.

Amanda booked in with a prosthodontist, who easily fixed the loose crown. The prosthodontist said there was no issue with the implant, which the dentist said needed to come out. Amanda called and emailed the dentist but received no response. She felt the dentist's skills in fixing crowns and implants were inadequate.

WHAT WE DID

One of our customer service officers (CSO) called Amanda to explain that we could facilitate communication between Amanda and the dentist to reach a resolution, if Amanda could not resolve her concerns directly with him. The CSO asked Amanda whether she had already requested a refund. Amanda clarified that she had not mentioned this in her emails. The CSO explained that the dentist needed to be made aware of the outcome she was after. The CSO also explained our obligation to notify Ahpra of any complaints about registered health practitioners and, if Ahpra chooses to take action, we must refer the complaint on.

THE OUTCOME

Amanda was grateful for our guidance and subsequently emailed the dentist to ask for a refund of the cost of her last visit. She later contacted us to say that the dentist agreed to give her a full refund.

As required, we notified Ahpra of the complaint. Ahpra requested that we refer the complaint about the dentist's professional performance for further assessment.

COMPLAINT HANDLING STANDARDS



“HANDLING COMPLAINTS WELL MEANS GIVING PEOPLE A VOICE AND LISTENING TO WHAT THEY SAY.”

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 to identify where they need to improve.

New Complaint Handling Standards came into effect on 4 June 2020, replacing the Interim Standards in Schedule 1 of the HCA. Comprising 11 separate

obligations, the new 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 STANDARDS

<p>STANDARD 1</p> <p>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.</p>	<p>STANDARD 2</p> <p>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.</p>	<p>STANDARD 3</p> <p>No person shall experience reprisals because of providing feedback or making a complaint to a health service provider.</p>	<p>STANDARD 4</p> <p>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.</p>
<p>STANDARD 5</p> <p>The complainant and the health service provider must mutually agree on a method and frequency of communication throughout the complaint handling process.</p>	<p>STANDARD 6</p> <p>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.</p>	<p>STANDARD 7</p> <p>A response to the complainant includes information about how to make a complaint to the Health Complaints Commissioner.</p>	<p>STANDARD 8</p> <p>The personal information, collected from a complaint, must be kept confidential in accordance with the <i>Health Records Act 2001</i>, the <i>Privacy and Data Protection Act 2014</i>, the <i>Privacy Act 1988</i> (Cth), the <i>My Health Records Act 2012</i> (Cth) and, where applicable, the <i>Health Services Act 1988</i>.</p>
<p>STANDARD 9</p> <p>Records of complaint handling must be kept separate from a person’s health information.</p>	<p>STANDARD 10</p> <p>Where possible, the staff dealing with a complaint must identify, declare and manage any conflicts of interest when handling the complaint.</p>	<p>STANDARD 11</p> <p>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.</p>	<p></p> <p>READ MORE ABOUT THE COMPLAINT HANDLING STANDARDS AND GUIDING PRINCIPLES FOR IMPLEMENTATION ON OUR WEBSITE HCC.VIC.GOV.AU/PROVIDERS/COMPLAINT-HANDLING-STANDARDS.</p>

CASE STUDY

CONSENT TO TREATMENT

COMPLAINT

Ming, who suffered from a compressed nerve in her cervical spine as well as arthritic pain, visited a physiotherapist for treatment. Ming asked that he not treat her neck at the first appointment. The physiotherapist confirmed that he would only be treating her knee, which Ming said had been making a clicking sound.

Ming said that during the treatment the physiotherapist asked her to stand and unexpectedly placed undue pressure on top of her head, which caused her neck discomfort and worsened her pain. Ming said this was done without a warning and despite her request to not apply pressure to her neck.

Ming asked the physiotherapist about the treatment but was not happy with his response. He acknowledged that he should not have applied the pressure but said he 'did not know his own strength'.

Unhappy with the physiotherapist's explanation, Ming contacted us to help resolve the issue.

WHAT WE DID

We worked with Ming to put together a formal description of her complaint. We then asked the physiotherapist to respond.

In contrast to this previous explanation, the physiotherapist gave us a considerably more thorough explanation. His response included a reply to each key concern with reference to Ming's clinical notes.

THE OUTCOME

Ming did not agree with the physiotherapist's version of events. The complaint resolution process promotes discussion between parties but does not make findings or decisions. For that reason, we were not able to achieve a more definitive outcome for Ming through our process.

However, before closing the complaint, we helped Ming craft a response to the physiotherapist that made it clear that she did not agree with his explanation. Ming was grateful that, with our help, she was able to obtain a fuller explanation from her physiotherapist.

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

HOSPITALS
1,657

→	Public hospitals	1,444
	Private hospitals	213

REGISTERED PRACTITIONERS
1,510

This category includes all practitioner types registered with Ahpra.

→	Medical practitioners	1,090	Occupational & environmental medicine	1
	General practice	624	Palliative medicine	1
	Surgery	173	Rehabilitation medicine	1
	Psychiatry	88	Dentists	248
	Physician	78	Psychologists	72
	Obstetrics & gynaecology	37	Nurses and midwives	27
	Dermatology	19	Pharmacists	16
	Paediatrics	14	Optometrists	13
	Anaesthesia	13	Podiatrists	10
	Pain medicine	13	Chiropractors	9
	Ophthalmology	12	Physiotherapists	8
	Pathology	5	Occupational therapists	5
	Radiology	5	Chinese medicine practitioners	4
	Radiation oncology	3	Osteopaths	4
	Sport & exercise medicine	2	Medical radiation practitioners	3
	Emergency medicine	1	Paramedics	1

GENERAL HEALTH SERVICE PROVIDERS

368

General health service providers are those that do not need to be registered with Ahpra.

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



Laboratory services	87
Mental health services	79
Cosmetic services	67
Massage therapy services	29
Aged care services	26
Complementary and alternative health services	25
Allied health services	16
Community and social services*	12
Optical services	10

Dental/oral health support services	3
Operational support services	3
Birth-related services	2
Diet and nutrition services	2
Health promotion services	2
Nursing support services	2
Disability services	1
Physical therapy services	1
Reproductive/sexual health services	1

PRISON HEALTH SERVICES

1,265

OTHER

1,307

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

* Community health services are services that provide state-funded primary health care including allied health services, dental health services, disability services and medical services.



Clinics	915
Community health services*	120
Pharmacies	78
Ambulance and patient transport services	58
Day procedure centres	53

Medical imaging services	51
Non-health service providers	20
Home doctor services	6
Local councils	5
Schools	1



THE HEALTH COMPLAINTS COMMISSIONER AND AHPRA – WHAT'S THE DIFFERENCE?

The Health Complaints Commissioner can accept complaints about 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 without a licence.

The Health Complaints Commissioner 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 more suited to respond to the complaint.

CASE STUDY

ALLERGY TO MEDICATION

COMPLAINT

Dennis, a prisoner, contacted us because he was worried about not being provided with his buprenorphine medication, which is used to treat opiate addiction. The health service provider had given him methadone as an alternative to buprenorphine.

Dennis said he was allergic to methadone and developed a rash after taking it. Although the health service provider knew about the rash, they did not acknowledge that he had suffered an allergic reaction to the medication. Instead, the provider said Dennis had experienced 'a side effect' to methadone and continued to prescribe it.

To confirm his rash was an allergy, Dennis took another dose of methadone and his rashes returned. The health service provider accepted that Dennis has an allergy to methadone and agreed to switch him back to buprenorphine. However, the provider said there would be a waiting period before he could access buprenorphine.

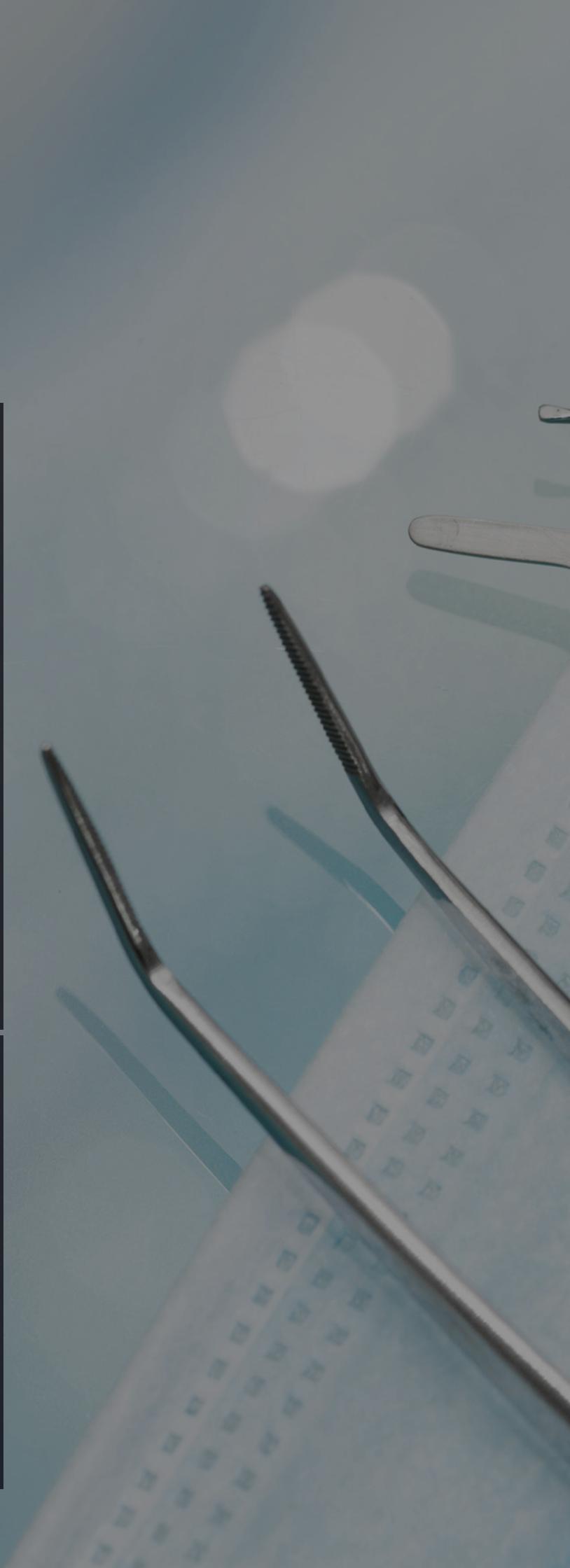
WHAT WE DID

We contacted the health service provider and outlined Dennis's concerns. We asked whether the provider was aware of his methadone allergy and, if so, why it was necessary for him to take methadone again in order to confirm it. We also asked why the provider did not prescribe buprenorphine for Dennis.

In its written response, the provider said that, following another appointment with a medical practitioner, Dennis had since been prescribed buprenorphine.

THE OUTCOME

Dennis was happy with being prescribed his preferred medication.



CASE STUDY

CLOSURE OF DENTAL CLINIC

COMPLAINT

In August 2019, a dental clinic in Melbourne closed without notice. Some patients received text messages the day before the closure, while others turned up for their appointment to find the clinic closed.

Distressed patients who were undergoing dental or orthodontic treatment contacted us, concerned that they had received no information about what would happen with their treatment. Some patients had also prepaid for their treatments. Crucially, the patients were unable to access their health records, nor were they able to resolve enquiries or complaints about outstanding treatment. In September 2019, a court-appointed liquidator took over the clinic's business and finances.

WHAT WE DID

Under the HRA, the Commissioner is empowered to handle complaints about how health information is managed in Victoria, so we began negotiations with the liquidator to see if we could access the clinic's records. For affected patients who needed to continue their treatment with other clinics, we discussed with the liquidator how the patients' dental records could be transferred to new practitioners. We informed affected patients of the action we took and advised them to find a new dentist as soon as possible to ensure continuity of care. To alert the public about the new arrangements, we also published information on our website.

THE OUTCOME

A new dental clinic took over from the closed clinic and, as part of the sale, took ownership of the health records. We posted information on our website so patients knew where to obtain their records. We also let former patients know that they could ask the new dental clinic to provide them with a copy of their records, or their current dentist could request the records for a fee. The new clinic worked with affected patients to manage the records transfer process.

When a health service provider closes, patients need to be able to access their health records to ensure continuity of care. Patients' health care could be put at risk if their new providers can not access treatment histories. In this case, the risk of the dental records being permanently lost when the clinic closed, prompted the Commissioner to act quickly to secure the records.

WHAT COMPLAINTS WERE ABOUT



ACROSS THE

6,107

COMPLAINTS WE FINALISED IN 2019–20



WE RECORDED

6,832

ISSUES

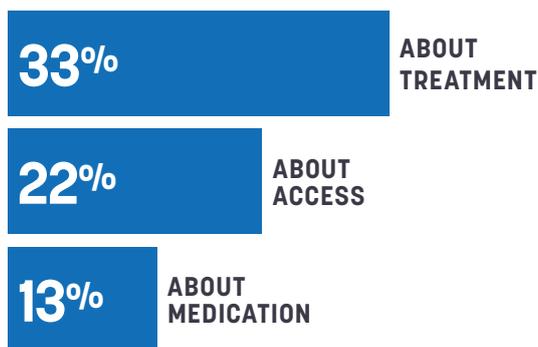
Complaints can include more than one issue. As such, the number of issues in finalised complaints will be higher than the number of complaints finalised.

COMMON ISSUES RECORDED

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



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



The most common issues in finalised HRA complaints were:



ISSUES IN FINALISED HCA COMPLAINTS



GENERAL HEALTH SERVICE PROVIDERS

405 FINALISED COMPLAINTS

Safe and ethical manner	168
Financial exploitation	69
Complaint management	27
Conduct in relation to treatment advice	24
Misinformation	22
Sexual misconduct	20
Responding to adverse events	17
Consent	15
Record keeping	8
Infection control	6
Claim to cure illnesses	5
Privacy	5
Breach of prohibition order	4
Physical or mental impairment	4
Report provider conduct	4
Access and display code of conduct	3
Criminal offence	3
Human rights	1



NON-GENERAL HEALTH SERVICE PROVIDERS

6,133 FINALISED COMPLAINTS

This category includes all health service providers, but excludes general health service providers.

Treatment	2,052
Access	1,365
Medication	788
Fees, costs and billing	490
Conduct and behaviour	476
Communication	416
Diagnosis	341
Complaint management	91
Facilities	90
Human rights	24

ISSUES IN FINALISED HRA COMPLAINTS



ALL PROVIDERS

284 FINALISED COMPLAINTS

Access	120
Use and disclosure	57
Data security and retention	29
Making information available to another health service provider	26
Collection	15
Data quality	15
Correction	11
Openness	6
Transfer or closure of the practice	5

Complaints under the *Health Services (Conciliation and Review) Act 1987*

We recorded 10 issues across complaints finalised under the *Health Services (Conciliation and Review) Act 1987* (the legislation under which the Health Complaints Commissioner operated before 1 February 2017).

6

TREATMENT

2

DIAGNOSIS

1

CONDUCT AND BEHAVIOUR

1

MEDICATION

CASE STUDY

WITHDRAWN CONSENT TO MEDICAL PROCEDURE

COMPLAINT

Barry visited the emergency department of a public hospital where he had several tests for a serious condition. Barry complained that, although the hospital was aware that he was hearing and sight-impaired, a qualified interpreter was not made available for all clinical conversations.

Barry had to undergo several attempts at a lumbar puncture, which he found distressing and painful. Through an interpreter, he asked to stop the procedure, but the hospital staff continued. The procedure was ultimately unsuccessful, and a less invasive CT scan was then performed.

Barry was distressed by the multiple failed lumbar puncture attempts and felt that despite saying he wanted it stopped, he was not listened to. He felt that the less invasive CT scan should have been done in the first place to avoid causing him unnecessary pain. Barry also complained that the hospital used nursing staff with limited interpreting skills to communicate with him and expected Barry to lip-read.

Barry complained to the hospital but was unhappy with the response. He approached us to resolve the matter and wanted the hospital to change its protocols when dealing with vulnerable patients.

WHAT WE DID

We worked with Barry to prepare a formal description of his complaint, capturing his key issues and desired outcomes. We then invited the hospital to respond.

The hospital accepted it should have stopped the lumbar puncture procedure at Barry's request. The hospital apologised and provided an explanation about why the lumbar puncture was considered clinically indicated in his specific circumstances.

Barry did not accept the hospital's response and we continued to work with him and the hospital to resolve the complaint.

In a second response, the hospital undertook to better educate staff about its vulnerable patient and language services guidelines. The hospital also agreed to revise existing guidelines so that an accredited interpreter is used in all cases of patients with disabilities. Staff offered to meet with Barry in person to discuss the changes it implemented.

THE OUTCOME

Barry accepted the hospital's response. We will work with Barry and the hospital to set up a face-to-face meeting to resolve the complaint, once permitted under coronavirus (COVID-19) restrictions.

CASE STUDY

REFUND FOR
INADEQUATE
TREATMENT**COMPLAINT**

Rosie complained that a drug and alcohol treatment and rehabilitation centre had failed to treat her husband's drug addiction. She had paid the treatment centre more than \$20,000, but when she tried to get a refund, it was refused.

Rosie told us that her husband was under court orders to serve his bail at this treatment centre. She claimed that the conditions at the centre were unhygienic, that her husband did not receive any counselling or rehabilitation, and when the centre took him to a doctor, he was prescribed a treatment that did not suit his addiction. Her husband subsequently relapsed following his release.

WHAT WE DID

We told Rosie that it was unlikely she would get a refund, given the circumstances. However, because of the nature of Rosie's complaint, we wrote to the provider for a response.

The provider responded in writing to Rosie's complaint, providing a detailed overview of the treatment given to her husband. The provider also supplied documentation to support the claim that Rosie's husband did receive treatment.

THE OUTCOME

The provider declined to offer Rosie a refund, maintaining that treatment had been provided.

Although Rosie was unhappy with the provider's response, we concluded that there was no reasonable prospect of resolving the complaint through our voluntary complaint resolution process.

While the process did not achieve the outcome Rosie was after, the Commissioner examined this provider's conduct as part of a wider investigation into the private alcohol and other drug rehabilitation and counselling sector in Victoria. Subsequently, the Commissioner issued two interim prohibition orders temporarily banning the provider from advertising, offering or providing alcohol and drug addiction treatment services.

We let Rosie know about these temporary bans and about other options that were available to her, including pursuing a claim through the Victorian Civil and Administrative Tribunal (VCAT).

OUTCOMES IN FINALISED COMPLAINTS

Under the law, we require complainants to raise their complaint directly with a health service provider before approaching us, unless it is unreasonable or inappropriate for them to do so.

Our customer service team can offer advice and assistance about how to do this. If a person is still 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:



OTHER TYPES OF AGREED OUTCOMES IN HCA MATTERS INCLUDED:



FOR HRA COMPLAINTS THE MOST COMMON AGREED OUTCOMES WERE:



OUR OPERATIONS DURING THE CORONAVIRUS (COVID-19) PANDEMIC

The health, safety and welfare of our staff and members of the public who use our services remains a high priority while we continue to deliver our services.

Like many organisations responding to the coronavirus (COVID-19) pandemic, we transitioned to remote working in March 2020.

These changes to our operational environment have been significant and are likely to continue for the foreseeable future.

To ensure we remain accessible to all our service users, we have adjusted how we provide our services. This includes:



FAST-TRACKING THE ROLLOUT OF A NEW, ONLINE FORM FOR LODGING COMPLAINTS



STREAMLINING HOW WE MANAGE PHONE CALLS AND MESSAGES TO ENSURE WE CAN FOLLOW UP AS QUICKLY AS POSSIBLE



IMPLEMENTING A CENTRALISED MAIL PROCESS FOR HARD-COPY LETTERS



USING TELECONFERENCING WHERE POSSIBLE

As the coronavirus (COVID-19) pandemic continues to shape the world around us, we will adapt and adjust the way we operate to ensure our services remain as accessible and safe as possible. We will publish updates on those changes on our website and social media platforms.

COMPLAINTS AND ENQUIRIES RELATING TO CORONAVIRUS (COVID-19)

Since January 2020 we have received 195 complaints and 115 enquiries relating to coronavirus (COVID-19). The most common concerns raised across these matters related to:

- access to health services (24%)
- potential exposure to coronavirus (COVID-19) infection (20%)
- delays in receiving coronavirus (COVID-19) test results (14%)

PROTECTING VICTORIANS – OUR INVESTIGATIONS

As well as offering a complaint resolution process to do with health services, the Commissioner has the power under the HCA to investigate complaints and matters referred to her by the Minister for Health and to initiate 'own motion' investigations.

In reaching a decision about whether to commence an investigation, the Commissioner must consider whether the conduct being investigated may pose a risk to the public and, with respect to investigations into general health service providers, whether the Commissioner has reasonable grounds to believe a general health service provider may have breached the code.

The aim of our investigations is to establish the facts and, once we have done so, to identify what measures, if any, need to be taken to protect the public from serious risks to their health, safety or welfare.

When conducting an investigation, we may carry out whatever enquiries into the subject matter of the investigation that the Commissioner believes are necessary. This may include requesting clinical notes, treatment plans, policies and procedures, and conducting interviews with staff and patients. As part of our investigations, we can also seek independent expert advice or apply for search warrants.

KEEPING THE COMMUNITY SAFE DURING AN INVESTIGATION

If, during an investigation, the Commissioner believes a general health service provider has breached the code and poses an unacceptable risk to the public, she can make an interim prohibition order against that provider. Such an order can be in place for up to 12 weeks while the investigation is ongoing and can prohibit the provider from offering all or part of the general health service that is being investigated, or place conditions on the way the provider delivers that general health service.



WHEN AN INVESTIGATION IS COMPLETED

On completing an investigation, the Commissioner issues a report that sets out her findings and any recommendations to address those findings.

A copy of the report is given to the health service provider. Subject to the HCA, other parties may also be provided with a copy of the report – for example, the complainant, Ahpra, the Minister for Health or the Secretary of the Department of Health and Human Services.

Where the Commissioner makes recommendations, these will often require a provider to undertake quality improvements. Under the HCA, the provider must respond to the Commissioner and explain how they will implement the Commissioner's recommendations. Subject to the provider's response, the Commissioner may consider taking further action, which may include a fine or a follow-up investigation.

Where the outcome of an investigation into a general health service provider shows the provider has breached the code and poses a serious risk to the health, safety or welfare of the public, the HCA empowers the Commissioner to make a permanent prohibition order. Such an order may permanently ban a provider from providing all or part of a service or place conditions on the provider. All interim and permanent prohibition orders are published in the *Victorian Government Gazette* and on our website.

In addition to the powers described above, the Commissioner can also issue public warning statements in the media and on our website to warn the public about unsafe or unethical providers.



WHEN AN INVESTIGATION IS COMPLETED

In an investigation under the HCA, we may find that a general health service provider was responsible for multiple breaches of the code. An investigation can also identify if a provider failed to comply with the Complaint Handling Standards.

Most code breaches identified in the investigations we finalised in 2019–20 related to clause 1 of the code, namely the obligation that general health service providers must provide services in a safe and ethical manner.

Breaches of clause 9 (general health service providers must not engage in misinformation or misrepresentation about their products, services or qualifications), clause 15 (providers must keep appropriate records) and clause 16 (providers are required to have appropriate insurance) were the next most commonly found code breaches across completed investigations.

Investigations were also initiated and completed under the HCA, where a health service provider failed to have a reasonable excuse for not participating in a complaint resolution process.



INQUIRIES

Under Part 9 of the HCA, the Commissioner has the power to conduct an inquiry into any health service matter referred to her by the Minister for Health, a House of Parliament or a Parliamentary Committee.

In 2019-20 the Commissioner concluded two inquiries into assisted reproductive treatment (ART) practices and privately funded alcohol and other drug treatment services. More information on page 34.

KEEPING THE COMMUNITY SAFE

When we investigate a health service provider, we may call on experts to provide advice to help us determine if a treatment offered by a provider is inherently unsafe and could cause serious harm to the public.



GENERAL HEALTH SERVICE PROVIDERS OPERATING DURING CORONAVIRUS (COVID-19)

During the coronavirus (COVID-19) pandemic, many businesses have been affected by the Victorian Government's measures to safeguard the health and wellbeing of the community. Some health service providers were subject to those restrictions. Where we can, we have worked with those general health service providers to help them understand their obligations. It is pleasing to note that a great majority of general health service providers subject to the government's restrictions have done the right thing in following the directions. However, there have also been those that have not followed coronavirus (COVID-19) restrictions and, by doing so, may have also breached the code. This may have put the public at risk. Where we have become aware of breaches, we have taken action and will continue to do so.

We continue to raise awareness with updates on our website as different stages of restriction result in changing obligations.



COSMETIC SERVICES

Cosmetic treatment services continue to be an area of concern in our investigation work. Areas of investigation include unsafe treatment practices (such as unsafe use of dermal fillers/ Botox injections), poor infection control and inappropriate qualifications in providing cosmetic treatment services.

As general health service providers, cosmetic treatment providers must comply with the code. Any breach of the code is cause for an Health Complaints Commissioner investigation. While many cosmetic treatment providers adhere to the code, there are some that do not. We urge the public and fellow providers to contact us if they become aware of a cosmetic treatment provider who is delivering their services in an unsafe or unethical manner. Where appropriate, we leverage mainstream media to warn the public about treatment providers who have been issued interim prohibition orders and prohibition orders to help ensure Victorians are not put at risk.

Any person who is considering undertaking a cosmetic treatment should make an informed decision and ask the provider about:

- their qualifications and experience
- the products they use
- the risks involved
- if they have adequate insurance if things go wrong
- where the procedure will be carried out.

CASE STUDY

ALTERNATIVE THERAPIES – KAMBÔ

COMPLAINT

Our office received information about two interstate-based general health service providers who were jointly providing Kambô treatments in Victoria.

Kambô is an alternative treatment that uses Amazonian frog secretions, which is often applied to open wounds created specifically for that purpose. It has not been registered for therapeutic use in Australia and can cause immediate side effects in some people, including severe vomiting, fainting and, in some cases, seizures and death, especially if Kambô enters the bloodstream.

WHAT WE DID

The Commissioner initiated an investigation under the HCA. We engaged an independent biochemistry and pharmaceutical science expert to provide his opinion on Kambô.

The expert's findings identified how using Kambô could be life-threatening and could present a clear risk to the public. Based on the investigation, the Commissioner formed a view that Kambô was inherently unsafe. As such, the providers had breached the code of providing their services in a safe and ethical manner. They had also offered a product that did not meet the needs of their clients and misinformed the public about the products they provided.

THE OUTCOME

Given her findings, the Commissioner made permanent prohibition orders against both providers, banning each of them from advertising, offering or providing any general health service in Victoria, paid or otherwise, that involved, or were in any way related to, Kambô.

We recommend that the public first consult a registered healthcare professional before considering any alternative therapies. The public can also contact us if they have a complaint or a concern about a Kambô provider or any health service provider.

CASE STUDY

UNSATISFACTORY COSMETIC TREATMENT

COMPLAINT

We received a complaint from Helen about laser hair removal services. Helen had visited the service provider on several occasions previously but reported that she had an adverse experience on her final visit that resulted in burns to her neck. Helen also said that when she brought her concerns directly to the provider, the provider was dismissive and did not adequately address her concerns.

WHAT WE DID

We initiated an inquiry under the HCA and obtained, from Helen and her partner, statements and photographs that showed the alleged injuries. We also obtained information from the provider including Helen's client records and internal procedures for staff training, obtaining consent and handling adverse outcomes.

The evidence showed that when Helen attended the appointment in question, the laser was used at the same settings as the previous treatment she had received. When she returned to the provider shortly after this appointment, reporting redness and soreness on her neck, staff reviewed her and discussed appropriate aftercare. The provider and Helen both agreed that Helen refused to follow the provider's aftercare advice. Helen also agreed that she refused free remedial treatment and the provider's offer of a refund.

THE OUTCOME

Our inquiry found that the treatment provided did not breach the code, and that Helen opted not to follow the advice of the provider or to accept the provider's offers to remedy her complaint. This was not within the provider's control. The provider also met its obligations under the Interim Standards for Complaint Handling.

Based on our inquiry, the Commissioner made no recommendations under the HCA to prohibit or warn the provider for a breach of the code. We explained to Helen that although no findings were made, this was a valuable opportunity to remind the provider of its obligations under the code and the HCA.

CASE STUDY**FALSE CLAIMS
AND FINANCIAL
EXPLOITATION
OF CLIENTS****COMPLAINT**

We received a complaint that raised serious concerns about two general health service providers who had exploited a client with complex and serious medical conditions.

The information alleged that the providers had made claims of being able to cure serious illnesses. There were also concerns that they were not adequately trained or qualified to deliver health services to a client with complex physical and psychological needs. It was also alleged that the providers set out to financially exploit the complainant and the client.

WHAT WE DID

Under the code, all general health service providers must provide their services in a safe and ethical manner. They must not make claims to cure serious illnesses and must not financially exploit their clients. Based on the information received, the Commissioner decided to investigate the complaint.

We obtained an independent expert opinion from a consultant neurologist specialising in the serious illness in question. The expert's report focused on the appropriateness of treatment delivered to the client, the qualifications that a health service provider treating a client with the specific illness should hold, the therapeutic value of the treatment delivered to the client, and any risks that the client may experience after treatment.

The expert concluded that there was no evidence that the treatments had been beneficial to the client and that some treatments, such as the administration of herbal preparations without appropriate qualifications, may, in fact, be harmful to the client.

We also interviewed the providers and offered them the opportunity to provide any information relevant to the inquiry.

THE OUTCOME

Having considered the information provided by all parties and the expert opinion report, the Commissioner found that the providers had breached 12 clauses of the code. The breaches included failure to obtain informed consent from the client and to take appropriate action in response to adverse events. The providers were also found to have made unsubstantiated claims to cure certain serious illnesses and had financially exploited the complainant and client.

Following our inquiry, the Commissioner made permanent prohibition orders against both providers that prohibited them from advertising, offering or providing any general health services in Victoria.

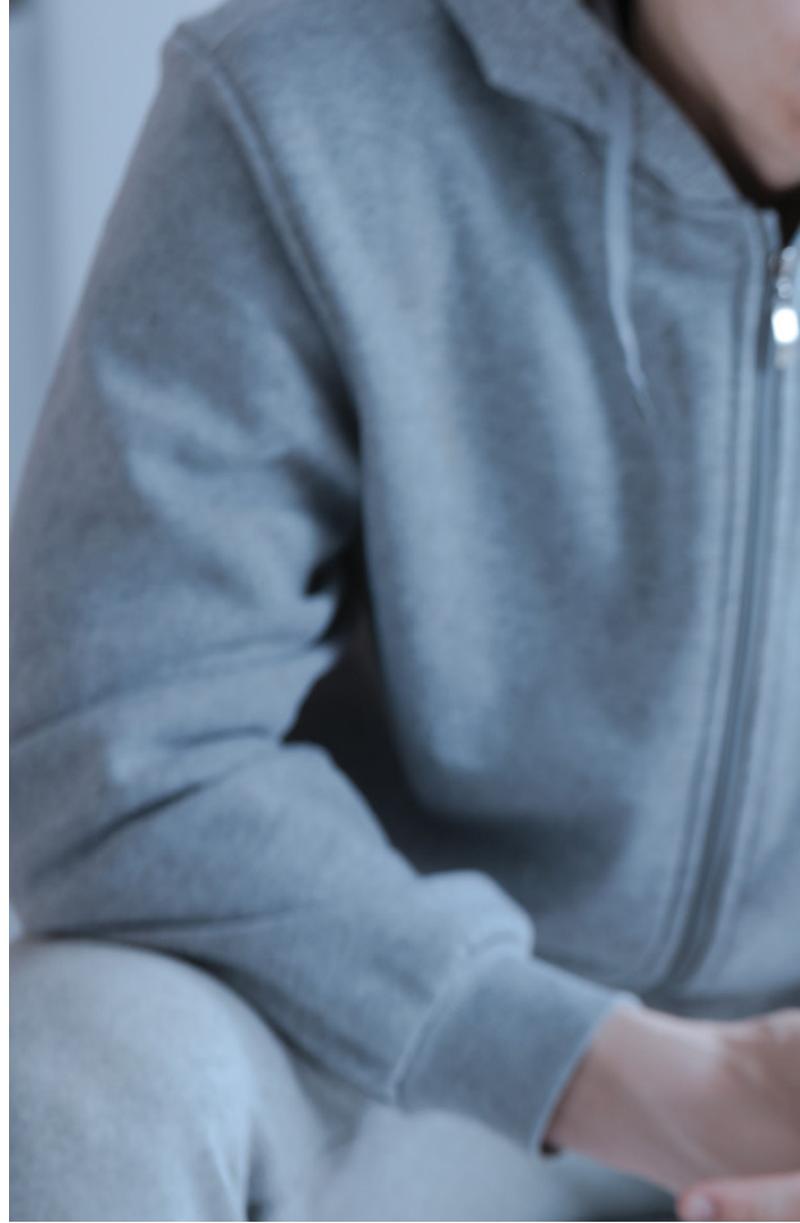
MAJOR SECTOR-WIDE INQUIRIES

VICTORIAN PRIVATE ALCOHOL AND OTHER DRUG REHABILITATION AND COUNSELLING SERVICES

With extra funding from the Victorian Government in 2018, we carried out a major sector-wide inquiry into privately funded alcohol and other drug (AOD) services.

In our first year of operation we received more than 30 complaints about privately funded AOD services. As part of the Victorian Government's Drug rehabilitation plan, we used the extra funding to inquire into the sector-wide issues around unsafe and substandard services that were evident through our complaints, and which has also resulted in a number of separate investigations into specific privately funded alcohol and other drug treatment services.

Common issues we saw in these complaints, included concerns about the safety and effectiveness of treatments, the cleanliness of facilities and inappropriate discharge of patients, as well as exploitative billing



practices – sometimes involving treatments costing up to \$30,000 – and a lack of informed consent for financial and treatment decisions.

AOD clients and their families are often in a vulnerable position, either dealing with AOD addiction themselves or the addiction of a family member. Long wait times to access services in the public system have led to the growth of the private sector.

Our review identified some disturbing patterns within the privately funded AOD treatment sector. Based on the review, the Commissioner has made a number of key recommendations to help establish a stronger regulatory framework for privately funded AOD providers. The Commissioner's report is currently with the Victorian Government for consideration, following which it will be published on our website.



INQUIRY INTO ASSISTED REPRODUCTIVE TREATMENT PRACTICES

In March 2019, the Minister for Health referred the matter of Assisted Reproductive Treatment (ART) services to the Commissioner for an inquiry under the HCA.

The purpose of the inquiry was broad and sought submissions from ART and other fertility treatment service clients (including from family members and friends), from providers of ART and other fertility treatment services, and from other interested stakeholders.

The focus was on health service provision and ART providers, and not the legislation under which ART services are provided or the regulation of ART generally.

We received more than 120 submissions and held public consultation sessions with ART providers and members of the public in metropolitan Melbourne and regional Victoria. We also considered the complaints we had received before, and during, the inquiry.

What our inquiry found was that most consumers who made submissions described their ART journey as a negative experience, due to a range of factors and that the toll on patients going through ART was both physical and psychological. We concluded that there is significant room for improvement and consumers want a more patient-centred approach to the treatment provided by ART clinics and specialists.

We also found through our contact with those ART clinics and providers who made submissions and attended the consultation forum, that there is considerable intent among providers to continuously improve the way in which they provide ART services to Victorians.

The final report on our inquiry, setting out a number of recommendations, has been submitted to the Minister for Health for consideration.

CASE STUDY

COMPLIANCE NOTICE AND THE HRA

COMPLAINT

Claire's lawyers made a written request to her medical practitioner for a copy of her health records. The lawyers explained that they were prepared to pay the relevant fees. Despite the lawyers making a number of written requests, the practitioner refused to provide Claire's records. The practitioner gave various unsatisfactory explanations for his refusals, saying that he did not want to become involved in Claire's legal matter and later justifying his refusal by saying he was responsible for safeguarding the medical records.

The lawyers lodged a complaint with us under the HRA. Under the Act, a person had a right of access to their health information held by any organisation in Victoria, subject to certain exceptions set out in the Act and to paying a fee. Claire instructed her lawyers to make an access request on her behalf. The Act also requires an organisation to respond to a request for access within 45 days from the date it received the request. In Claire's case, the practitioner responded by refusing the request without sufficient grounds.

WHAT WE DID

We contacted the medical practitioner and advised him of his obligations under the HRA. In his response, the practitioner indicated that he was unwilling to provide the records and was unhappy that the maximum fees that could be charged were too low. The practitioner indicated that Claire's lawyers could visit the clinic in person to view and copy the records, and we informed him that it was not necessary for Claire's lawyers to do so. Health information had to be provided in the form requested by the patient. The practitioner again refused the request.

The practitioner's repeated refusals were a serious contravention of the HRA. The practitioner's failure to provide Claire's lawyers with her health information after repeated requests for access demonstrated a flagrant and persistent failure to comply with the Act. In such cases, the Commissioner can issue a compliance notice requiring the practitioner to comply.

THE OUTCOME

We told the practitioner about our intention to issue a compliance notice and offered him the opportunity to explain why he should not be issued the notice. Shortly afterwards, we received Claire's complete health records from the practitioner, which we then provided to her lawyers. The lawyers were pleased with the outcome because it meant they were able to proceed with reviewing Claire's legal matter, using her records as evidence for her case.

Health records are important for ensuring good health care is provided to patients. In situations where a person has a legal action relating to an injury, health records provide crucial evidence.

The HRA has been in operation for 18 years. It is not common for us to deal with complaints here an organisation or a health provider persistently refuses to comply with an access request without sufficient grounds. On occasions such as these, the Commissioner is prepared to exercise her powers to ensure that obligations are complied with. The delays caused to progressing Claire's legal matter could have been avoided had the practitioner responded promptly and provided access to her health records within the permitted time frame.


CASE STUDY

UNSATISFACTORY COMPLAINT HANDLING

COMPLAINT

We received separate complaints from three consumers about the billing practices and the complaint handling procedures of a health service providing psychological services.

Through our complaint resolution process, we tried to resolve all three complaints but the provider ultimately failed to engage in the process without a reasonable excuse.

WHAT WE DID

Like all other health service providers in Victoria, those offering psychological services must meet the Complaint Handling Standards. Under the HCA, the Commissioner can start an investigation if the provider fails to engage in a complaint resolution process without a reasonable excuse. The Commissioner can also investigate a provider for possible breaches of the Standards.

In this case, because the provider did not respond to our written requests with a reasonable excuse, the Commissioner decided to initiate three investigations in relation to all three complaints.

We considered information provided by all three complainants. We wrote to the provider and requested information from them about their handling of all three complaints, information about their current complaint handling process and information about why they failed to engage in the complaint resolution process. Once the investigation began, the provider responded, providing evidence of the steps they took to resolve each of the complaints.

THE OUTCOME

The Commissioner found that, in relation to all three complaints, the health service provider had breached the Standards. The provider also took steps to resolve each of the complaints alongside our investigations.

The Commissioner made findings and implemented recommendations requiring the provider to implement, and provide evidence of, satisfactory complaint handling policies and procedures. It also had to provide training to staff to ensure complaints are managed appropriately in the future. The provider complied with the Commissioner's recommendations and now has adequate complaint handling policies and procedures in place to ensure that all complaints are managed in line with the Standards.

ENGAGING VICTORIANS

Our education and training programs offer 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.

During 2019-2020, our staff applied their extensive experience in complaints resolution, investigations and health records law, to engage with health service providers, consumers, government stakeholders and industry professionals and deliver training and support through presentations, forums, meetings, roundtables and conferences.

During 2019-2020, the Commissioner delivered 16 presentations on complaints resolution and health regulation to Victorian health services and consumers in a range of forums, including at grand rounds and in presentations to university students from health and health/law disciplines. The Commissioner had also received invitations to speak at conferences nationally and internationally.

With the spread of coronavirus (COVID-19), we have had to deliver our training sessions in new ways. We have moved from delivering training in an in-person environment to exploring online platforms to continue to meet the needs of health service providers, consumers and other key stakeholders. We are finalising development of our online learning management system, which will enable us to offer a variety of different learning modules and provide participants with contemporary ways to stay engaged with our education and training options.

With the implementation of the new Complaint Handling Standards, we will start running training sessions in September 2020. These sessions will be designed to help health service providers understand their obligations with respect to complaint handling. We see the Complaint Handling Standards as important tools for health service providers as part of an open and receptive culture of feedback in managing complaints.

COMMUNICATIONS

Our communication strategy supports our objectives in increasing the Victorian community's awareness of our role in supporting safe and ethical health care. Our website is often the first information touchpoint for the public and for health service providers, providing information about our functions and services and how to access them. We try to ensure our website is accessible, intuitive and provides clear, concise and up-to-date information. In 2019-20, we arranged for an accessibility audit of our website. As a result of the audit, we have made a number of improvements to provide greater accessibility for website users who have different needs. For example, we have included

more accessible headings and changed colour contrasting, which aids anyone with vision impairment when accessing our website.

To further improve the online experience, we will be implementing a major website upgrade in 2021. This upgrade will add a user focused and mobile-first delivery for our online visitors.

To broaden our reach and engagement with the community, we also use social media, together with radio and print media to communicate our role, services and resources.

PRESENTATIONS/TRAINING: 2019-20

THE COMMISSIONER:

 **16**

**PRESENTATIONS,
INCLUDING AT CONFERENCES**

HCC STAFF:

 **11**

**TRAINING/EDUCATION
SESSIONS**

*Presentations/training impacted by coronavirus (COVID-19) and delivery moved to online.

OUR WEBSITE: 2019-20 FACTS AND FIGURES

MORE THAN

 **179,000**

UNIQUE OVERALL VIEWS



OUR MOST POPULAR
WEBPAGE IS THE ONLINE
COMPLAINT FORM

WITH MORE THAN

 **16,300**

UNIQUE PAGE VIEWS

25%

OF ALL OUR COMPLAINTS
WERE RECEIVED VIA THE
ONLINE COMPLAINT FORM

84%

OF TOTAL TRAFFIC
TO OUR WEBSITE
ARE NEW USERS

58%

OF USERS ACCESS
OUR WEBSITE VIA
DESKTOP COMPUTERS

36%

OF USERS ACCESS
OUR WEBSITE VIA
MOBILE DEVICES



DID YOU KNOW?

MULTILINGUAL RESOURCES

Our website has free multilingual information on lodging a complaint with us and about consumers' rights when it comes to how health records are managed and stored.

These online resources are available in 26 community languages including

Arabic, Farsi and Vietnamese. Of these 26 community languages, eight have also been translated into audio resources. You can download these and other resources, or view or listen, at hcc.vic.gov.au/translations.

PROTECTED DISCLOSURES AND DISCLOSURES UNDER THE HCA

PROTECTED DISCLOSURES

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

Under the Protected Disclosure 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 Protected Disclosure Act also broadens the operation of the previous whistleblower 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 Protected Disclosure Act requires that any disclosures relating to the Health Complaints Commissioner must be made to either the Victorian Ombudsman or IBAC.

For the current reporting period, the Health Complaints Commissioner reports nil results for:

- disclosures
- public interest disclosures referred to the Ombudsman
- disclosures referred to IBAC
- disclosures referred to the Health Complaints Commissioner
- disclosures of any nature referred to the Ombudsman,
- investigations taken over by the Ombudsman.

DISCLOSURES UNDER THE HCA

Section 138 of HCA requires us to report on specific information about 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:

- disclosures under s.150(3), two
- disclosures under s.151(2)(f), seven.





Supporting safe and ethical healthcare



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