

5 September 2024

Dr Joe McGirr MP
Chair, Committee on the Health Care Complaints Commission
Parliament House
Macquarie Street
Sydney NSW 2000

By email: hccc@parliament.nsw.gov.au

Dear Dr McGirr,

Re: Parliamentary Committee on the Health Care Complaints Committee

Thank you for the opportunity to comment on the performance of the Health Care Complaints Commission (HCCC). MIPS is a member-based medical defence organisation that provides professional indemnity insurance to approximately 10,000 registered health practitioners and students across New South Wales. MIPS has extensive experience over many years assisting its members respond to HCCC complaints, and is pleased to be able to share its feedback on the review.

Response to the questions raised

1. Under section 22 (a) of the *Health Care Complaints Act 1993*, the HCCC must carry out its assessment of complaints within 60 days after receiving the complaint.

- **Is 60 days an appropriate timeframe for assessing complaints?**

From the perspective of our members who are the subject of HCCC complaints, 60 days can feel like a long time, and it can be one of the most stressful periods in a practitioner's career. Therefore, wherever possible, we encourage the HCCC to complete assessments as expeditiously as possible. For example, in cases involving obviously unmeritorious or vexatious complaints, we would expect the HCCC to assess the complaint in a much shorter timeframe.

- **In your experience, has the HCCC consistently assessed complaints within its 60-day timeframe?**

In our experience, the HCCC's compliance with the 60-day timeframe is variable. While most complaints are assessed within this timeframe, it is important to communicate clearly and regularly with practitioners if the timeframe cannot be achieved. This would significantly reduce practitioner distress. In particular, it would be important to clearly state why the timeframe has not been met, what further steps or information is required to complete the assessment, an estimated timeframe for completion of the assessment and a commitment to communicate with the practitioner again with an update if the expected timeframe cannot be achieved. This does not always happen.

Another challenge that our members often face is that, in its efforts to comply with the 60-day timeframe, practitioners are often afforded little time in which to respond to a complaint. This can add to practitioners' initial distress when receiving a complaint that requires a response within a tight timeframe. That said, we have found the HCCC is generally agreeable to providing practitioners with extensions of time, which is appreciated.

2. The HCCC aims to complete reviews of assessment decisions within 60 days.

- **Is 60 days an appropriate timeframe for completing reviews of assessment decisions?**

We reiterate our previous response.

- **In your experience, has the HCCC consistently completed reviews of assessment decisions within its 60-day timeframe?**

No. In our experience, it often takes longer than 60 days to review assessment decisions.

3. Complaints are referred for investigation by the HCCC in situations where an initial assessment raises a potentially significant issue of public health or safety; significant departures from clinical treatment and professional conduct standards; and/or where there may be grounds for disciplinary action. The HCCC aims to complete all investigations within 12 months.

- **Is 12 months an appropriate timeframe for completing of investigations?**

MIPS recognises that some matters are complex and that it is important that they are thoroughly investigated. However, in many situations, this timeframe seems excessive, given that the Commission may have already had the matter for some time and is aware of the issues and has the statutory powers to obtain information. As described above, this can lead to significant practitioner distress.

We can point to numerous examples where practitioners have been suspended for years while awaiting the outcome of the HCCC investigation. While protection of the public is a paramount regulatory principle, this should be secured with as little damage or harm to the practitioner as is consistent with its maintenance. This is particularly troubling when practitioners may be suspended under Section 150 of the National Law based on allegations alone, rather than findings of fact.

- **In your experience, has the HCCC consistently completed investigations within its 12-month timeframe?**

No. In our experience, the HCCC almost always exceeds the timeframe.

4. In its 2020-21 annual report, the HCCC assessed its performance against a number of key indicators. Some examples of indicators and targets listed in the report are contained in the box below.

- Should the HCCC report on additional performance measures? If so, what additional performance indicators are important to capture?

Statutory indicators

- 100% of complaints assessed within 60 days (86.6% achieved)
- 100% of decision letters sent within 14 days (84.3% achieved)

Non-statutory indicators

- <10% of finalised assessments subject to review (6.5% achieved)
- 90% of reviews completed within 6 weeks (37.7% achieved)
- 70% of resolutions completed within four months (59.3% achieved)
- 90% of investigations finalised within 12 months (80.3% achieved)
- <5% of requests for review of investigation outcome (0% achieved)
- 80% compliance with deadlines - courts, NCAT and Professional Standards Committees (68.4% achieved)

Indicators without targets

- Complaints resolved during assessment of complaint
- Complaints acknowledged within 7 days of receipt
- Publishing of disciplinary decisions

MIPS notes that use of key indicators was discontinued in the annual reports of 2021-22 and 2022-23. MIPS believes that the continued publication of these indicators is critical to transparency and to both public and practitioner trust. Given the importance of clear and timely communication from the HCCC to practitioners who are the subject of investigation, we believe that an additional metric should be around regularity of communication. For example, we suggest that it would be appropriate for the HCCC to publicly commit to communicating with practitioners at least three-monthly so that practitioners can be assured that progress is being made on advancing the investigation.

Stakeholder engagement

The HCCC reports that it is developing resources and expanding outreach to improve accessibility and awareness of its functions, in particular among First Nations and culturally and linguistically diverse (CALD) communities.

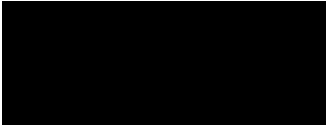
5. Is the HCCC and the services it provides accessible to the community, including First Nations and CALD communities?
6. Do you believe there is wide and strong community awareness of the role and functions of the Commission?

7. How can the HCCC improve engagement with, and provision of services to, First Nations and CALD communities?

MIPS does not have a view on questions 6, 7 and 8 and does not respond.

Please do not hesitate to contact me should you require any further information.

Yours sincerely



Dr Owen Bradfield
Chief Medical Officer, MIPS

cc. Ms Natasha Anning
Chief Executive Officer, MIPS