Health Professional Councils Authority

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27 September 2024

[redacted]

The Hon Dr Joe McGirr MP
Chair
Committee on the Health Care Complaints Commission
Parliament of New South Wales

BY EMAIL to: hccc@parliament.nsw.gov.au

The 15 Health Professional Councils (the Councils) thank you for the opportunity to contribute to your Committee's annual review of the Health Care Complaints Commission (the HCCC). We also appreciate the extended period allowed for responses to the stakeholder questions to be sought and consolidated.

The following responses from the Councils have been facilitated by the Health Professional Councils Authority (the HPCA). The HPCA is an executive unit of the NSW Ministry of Health, and it provides administrative and business services to the Councils to enable them to perform their statutory functions as a professional regulator in conjunction with the HCCC. This because the Councils cannot employ staff.

Statutory context and jurisdiction
The consolidated responses to the stakeholder questions below have been endorsed by the 15 Council Presidents on behalf of their respective Councils, (save for additional comments from 1 Council as indicated in the answers to Q6 and Q7). The Councils work closely with the HCCC to manage complaints and notifications concerning registered health practitioners and students. This relationship is essential to the successful operation of the co-regulatory framework for health professionals in NSW.

The answers Q1 to Q4 inclusive concern the management of complaints about registered health practitioners and students under our respective governing legislation, the *Health Practitioner Regulation National Law (NSW)* (the National Law) and the *Health Care Complaints Act* 1993 (the HCCC Act). The Councils acknowledge that the HCCC's jurisdiction also extends to unregistered health workers and health facilities and organisations delivering health services to patients. These are areas over which the Councils have no regulatory power. Questions and answers to Q5 and Q7 appear sequentially because of their shared subject matter.

Release of responses
This letter and the responses to stakeholder questions below can be made public. This stance is in keeping with the Councils' overarching protective role regarding public health and safety and the guiding principles of transparency and effectiveness enshrined in the national registration and accreditation scheme.

Responses to stakeholder questions
Benchmarks and performance measures

Q1. 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?
- In your experience, has the HCCC consistently assessed complaints within its 60-day time frame?

A1. The HCCC and the Councils receive complaints and notifications regarding health practitioners from diverse sources, with often complex clinical issues. The Councils' experience concerning the HCCC assessment process is based on the mandated consultation processes with the HCCC under our respective governing legislation, the National Law and the HCCC Act. Straightforward matters are routinely assessed by the HCCC within the 60 days of receipt of the complaint. The 60-day obligatory period for assessment of complaints is appropriate because it assures the public that the HCCC's resources will be enlivened within a specified period to determine how the complaint is to be managed.

For complex or incomplete complaints, further information is needed before any meaningful assessment of the complaint by the HCCC is made. The Councils' note the statutory powers of the HCCC to obtain further information during the preliminary assessment process, thereby making this assessment process robust. Section 21 of the HCCC Act allows the 60-day period for assessment of a complaint to be extended, where additional information, records or other evidence are needed before an assessment can be finalised. It is important that the HCCC has sufficient, reliable, factual material to ground a robust assessment of the complaint and make the best use of limited resources. This additional information can often include a clinical opinion about the issues or concerns identified in the complaint. There is a breadth of clinical practice that is regulated by the HCCC and Councils, and within professions, like medicine for example, there is the additional range of specialties. In the context of a clinical complaint adequate time therefore is needed to source this clinical opinion as part of determining whether further action is needed.

The assessment period, including any extension, does not place the public at serious risk.. During the complaint assessment by the HCCC, the relevant Council can take immediate action, at any time, where appropriate to protect the health and safety of the public. This is acknowledged in section 14(2) of the HCCC Act. Additionally, the taking of immediate action is not dependent on an assessed complaint. If the health practitioner or student's conduct poses an unacceptable risk, a Council can suspend or impose conditions on the registered health practitioner's or student's registration.

Q2. The HCCC aims to complete reviews of assessment decisions **within 60 days.**

- Is 60 days an appropriate timeframe for completing reviews of assessment decisions?
- In your experience, has the HCCC consistently completed reviews of assessment decisions within its 60-day timeframe?

A2. The Councils are not in position to comment on HCCC internal processes and targets because the review of an assessment decision may not involve engagement with the Councils. However, there may be some occasions when a complaint is assessed and referred by the HCCC to a Council to manage under a Council's performance, health or lower-level conduct pathway. A complainant may be dissatisfied with the outcome following referral of a complaint to the Council and then ask that the HCCC review the referral of the complaint to the Council. In these cases, the HCCC may need to get more information from the Council as part of this

review to better understand the outcome and reasons for the Council's decision. This may result in the review taking the full 60 days to complete.

Q3. 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?
- In your experience, has the HCCC consistently completed investigations within its 12-month timeframe?

A3. At the end of the investigation, the HCCC is required to consult with the Councils about what action is to be taken concerning the complaint. The Councils acknowledge that the HCCC's investigatory processes are necessarily thorough and comprehensive given their extensive powers to obtain relevant information, records and evidence, compared with the Councils' limited information gathering powers. The Councils rely on the investigative processes undertaken by the HCCC concerning serious complaints regarding registered health practitioners and students.

The HCCC's aim to complete investigations within 12 months is reasonable given the volume of complaints the agency receives and their level of complexity. However, the Councils are also aware that complaints can involve multiple registered health practitioners and multiple Councils (for practitioners registered in multiple health professions), complex clinical subject matter and settings, challenging subject matter, distressed complainants and health practitioners and voluminous health records. These factors can extend the duration of an investigation. Additionally, the HCCC often needs to obtain the opinion of a suitably qualified peer / expert practitioner and on some occasions in highly complex specialist cases, more than one opinion. There can be challenges in finding an expert / peer who does not have a conflict of interest and who feels able to provide such an opinion about the respondent practitioner. This is discussed further below when identifying the complexities in carrying out a factual investigation.

Having 12 months as an aspirational marker for a completed investigation is an appropriate starting point for more straight forward complaints. However as seen below the course of investigation can be prolonged by a range of factors presented by the complaints and the course of the investigation.

In assembling the relevant information, witnesses can be contacted by the HCCC, and statements taken to verify factual circumstances or provide background concerning relevant practice modalities. There may be difficulties in locating and contacting witnesses as part of an investigation. Additionally, expert witnesses may be consulted and engaged to provide a written opinion on relevant standards of practice and the degree to which the health practitioners' conduct has departed from the recognised standards. If the relevant body of professionals in NSW is small, expertise may be obtained from interstate or overseas so that practitioners avoid a potential conflict of interest or apprehension of bias claim, which could render the expert report unreliable in a prosecution before a Tribunal or Professional Standards Committee. There are other complexities such as when a practitioner is charged and awaiting a criminal trial. The criminal proceedings will often delay the completion of an investigation.

Also, procedural fairness requires that the practitioner the subject of the investigation and allegations be given the opportunity to make submissions under section 40 of the HCCC Act, regarding the investigation report and the HCCC's proposed course of action. Adequate time

needs to be given to the practitioner to access appropriate information and records to make appropriate and fulsome submissions given the allegations raised by the HCCC.

Resources and increasing volume of complaints received

Q4. 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?

A4. It is understandable that the use of key performance indicators was halted by the HCCC in subsequent HCCC Annual Reports. The non-statutory indicators reflect internal performance measures, which may not inform, and in fact may confuse the public unless the underpinning methodology for such key performance indicators is disclosed.

Statutory indicators are of more relevance to the Councils' business and arguably the public interest in the role of the HCCC. If inclusion of key performance indicators is required, then it is suggested that they should be restricted to statutory indicators.

An additional performance indicator with statutory linkage and relevance to the Councils' complaint management concerns serious complaints. Serious complaints regarding health professionals are referred to the Director of Proceedings (DoP) following a completed investigation.

The HCCC Act (section 90B(3)) requires the DoP to consult with the relevant Council before deciding whether or not to prosecute a complaint before a disciplinary body. If statutory indicators were to be used, it would be desirable to have an indicator of 3 months for such consultation to occur once the complaint and evidence brief is referred from investigations to the DoP. Reporting on this indicator could provide more visibility to the public and the Councils about the workload of the independent DoP.

Stakeholder engagement

Q5. Is the HCCC and the services it provides accessible to the community, including First Nations and CALD communities?

A5. The HCCC has endorsed the cultural safety strategies published by health professional regulators, including Ahpra and the HPCA and the Councils, which emphasise the importance of cultural safety for Aboriginal people engaging in the NSW health professional regulatory scheme. In line with these strategies, the HCCC is seeking to strengthen connections with frontline staff, including Aboriginal Liaison Officers and Aboriginal Community Controlled Health Organisations.

In the 2022 to 2023 Annual report, the HCCC has expressed its ongoing need to strengthen engagement with First Nations communities in a culturally safe manner as distilled in the First National Engagement and Connection Strategy. The strategy includes enhancing HCCC staff capacity through cultural safety training to manage complaints involving First Nations Peoples in a sensitive and appropriate manner. The HCCC has also ensured that its complaints brochure for First Nations Peoples is clearly and appropriately expressed.

The HCCC has continued to build on existing partnerships with NSW Ministry of Health's Centre for Aboriginal Health and the Aboriginal Women's Consultation Network.

The Councils also applaud the work done by the HCCC to make its extensive published Website information accessible to First Nations and CALD communities. A CALD community member can from the HCCC website home page click on their language and the information

contained in the HCCC website is translated into the language chosen. There are 20 languages catered for on the HCCC website ranging from Afrikaans to Zulu. Easy Read Fact Sheets regarding the complaint process, FAQs, extensive health consumer resources are available on the HCCC website as well as the ability to talk to staff with the assistance of interpreting services through the HCCC's enquiry service.

It is also apparent from the strategic direction of the HCCC's stakeholder engagement action plan that the HCCC is actively collaborating with CALD organisations, providing information about the HCCC's operation for publication in various organisations' newsletters and social media sites.

Q7. How can the HCCC improve engagement with, and provision of services to, First Nations and CALD communities?

A7. The HCCC has shown a remarkable commitment to making their services accessible to First Nations and CALD communities as indicated in their Annual Report. To do more would necessarily require greater resources given the already heavy complaint and investigation workload that they manage and the extent of their jurisdiction concerning health workers and health facilities and organisations.

- The President of the Aboriginal and Torres Strait Islander Health Practice Council of NSW has also suggested that engagement with First Nations communities can be made by:
  - leveraging existing Peak Aboriginal Organisations and partnerships such as the Coalition of Peaks and National Association Aboriginal Torres Strait Islander Health Workers and Practitioners (NAATSIHWP), Indigenous Allied Health Australia (IAHA), Australian Indigenous Doctors Association (AIDA) and The Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM). Partnering with these organisations and their existing links to communities enables trust within community and is an efficient use of limited resourcing, and
  - increasing the number of Aboriginal employees at the HCCC to build cultural safety and capability and developing an internal Aboriginal Workforce Strategy to support, develop and increase Aboriginal Workforce. This initiative will enable networking and engaging with Aboriginal communities and networks. Existing government initiatives such as the Elsa Dixon Funding is a cost-effective way to increase Aboriginal Workforce to support the HCCC's core business.

Q6. Do you believe there is wide and strong community awareness of the role and functions of the Commission?

A6. As mentioned in the previous answer, the HCCC has actively sought to build strong community awareness through its stakeholder engagement action plan which forges relationships with CALD organisations, presentations and workshops including working with existing networks to deliver outreach in rural, remote and regional areas and sector specific training sessions

The HCCC has also engaged with clinical staff in rural, remote and regional areas and Local Health District clinical governance teams with workshops and outreach presentations while effectively delivering on its core objectives of complaint receipt, assessment, investigation, prosecution and resolution for the protection of public health and safety. These initiatives have occurred against over a 100% increase in complaints received by the HCCC and the 10,403 enquiries received, as indicated in the 2022-23 Annual Report.

- The President of the Aboriginal and Torres Strait Islander Health Practice Council of NSW has commented as follows:
    - From a First Nations perspective and particularly within a rural and regional health context, there is minimal understanding of the role, functions of, and processes used by the HCCC within the wider Aboriginal community. If the HCCC can leverage the community partnerships and within LHDs, the existing Aboriginal Workforce, this will enable improvements to the promoting and delivering of a wider understanding of the HCCC role and functions, not only within the wider First Nations community, but also within the Aboriginal Torres Strait Islander health professionals' broader workforce.

Again, thank you for the opportunity to provide information in response to the Committee's questions and please let us know whether the Councils can be of any further assistance with your Committee's review.

Yours sincerely

Ameer Tadros
Director, Health Professional Councils Authority

Signed on behalf of the 15 Health Professional Councils

Greg Rickard OAM
President Nursing & Midwifery Council

Chair of HPCA Presidents Forum