

Introduction

The Health Care Complaints Commission (the Commission) was established in 1993 as an independent organisation to deal with complaints about health care providers in NSW.

The functions of the Commission are set out in the *Health Care Complaints Act 1993* (HCC Act). In exercising its functions, the Commission's primary objective is the protection of the public health and safety.

The Commission impartially deals with complaints and manages them in the most appropriate way by assessing, resolving, investigating and prosecuting serious complaints.

The Commission is independent. However, it is required to consult with the relevant health registration boards in regard to complaints about registered health practitioners. The Commission also reports to the Minister for Health and the Joint Parliamentary Committee on the Health Care Complaints Commission in relation to its operations.

Purpose of the code

To properly and effectively carry out its functions, the Commission relies on every officer acting in accordance with their public duty, and the trust placed in them by the community.

This Code sets out the obligations of each staff member and outlines what behaviour is expected.

Breaches of the Code or any of the principles and guidelines that it describes may lead to the Commission taking appropriate management or disciplinary action. If in doubt, consult your line manager, a Director, or the Manager of Human Resources.

Principles applying to the Code

The Code has been prepared within the framework of the following principles:

Public confidence

The public has the right to expect that we demonstrate the highest level of integrity and competence, treating all persons fairly, reasonably and equitably.

Responsibility to the community of NSW and the government of the day

The community of NSW and the government of the day are entitled to expect us to undertake the tasks entrusted to us efficiently, in a timely manner and in the public interest.

To whom the code applies

This Code applies to all employees of the Commission and other persons engaged to do work for the Commission. This includes all staff working full time or part time, and whether they are public sector employees or not.

The Code extends to consultants engaged by the Commission.

Our employment

By accepting employment or engagement with the Health Care Complaints Commission, we are obliged to be aware of and comply with this Code of Conduct, and have undertaken to:

- ▶ engage in personal or professional conduct that will uphold the reputation of the Commission
- ▶ abide by the confidentiality provisions of the *HCC Act*.

We must continually be alert to our individual employment obligations to ensure we are acting ethically, responsibly and productively.

Objective

The Commission independently deals with complaints about health service providers in NSW by assessing and resolving complaints when possible. We also investigate and prosecute serious complaints.

We consult closely with the health registration boards when handling complaints to ensure the best possible protection of the public health and safety.

In exercising our functions as an independent body, our primary objective is the protection of the health and safety of the public.

The services of the Commission

Responding to inquiries

We respond to inquiries by people concerned about health service provision by an individual health practitioner or health service organisation.

Our Inquiry Service provides information to potential complainants and discusses strategies on how to resolve their concerns without the need to lodge a formal complaint.

The Inquiry Service may suggest more appropriate avenues to address concerns.

The Inquiry Service may assist a person to lodge a complaint with the Commission.

Assessing complaints

We assess complaints about health service provision in order to determine the most appropriate way to deal with the concerns.

During the assessment, we obtain all information needed to determine the most appropriate action, if any, to take in order to deal with the complaint.

Resolving complaints

We aim to resolve those complaints that do not raise significant issues of public health and safety that would warrant investigation.

We may be able to resolve complaints during the assessment phase by providing the response of the health service provider to the complainant and thus satisfy their need for clarification.

We may also refer complaints for conciliation by the Health Conciliation Registry, or for assisted resolution by Resolution Officers of the Commission.

Investigating complaints

The Commission must investigate complaints that raise significant issues of public health and safety or significant questions about the care provided.

In relation to individual practitioners, we must investigate complaints that, if substantiated, would provide grounds for disciplinary action or involve gross negligence.

When we investigate serious complaints against health organisations, we may finalise the investigation by making recommendations to the provider. Recommendations are aimed to instigate long-term improvements in health services. In such cases, the critical issue is of systemic nature and not the conduct of an individual practitioner.

Investigations are conducted in a timely, independent, impartial manner. We respect the rules of procedural fairness and provide a fair opportunity to respond to any proposed adverse outcomes.

Reviewing complaints

We respect the right of complainants to request a review of the decision regarding their complaint.

We review our assessment of a complaint while dealing with it.

We may also review and amend both the issues raised in a complaint and the persons involved in a complaint, whenever this is supported by new relevant facts.

Prosecuting serious complaints

The Commission prosecutes complaints against individual practitioners where the Director of Proceedings has made a determination in accordance with statutory criteria that a complaint should be prosecuted before a disciplinary body.

The Director of Proceedings determines the most appropriate forum for disciplinary proceedings taking into account

- ▶ the evidence gathered during the investigation
- ▶ the nature of the complaint
- ▶ the likely outcomes.

In conducting all prosecutions and other legal proceedings, the Commission acts with complete propriety, fairness and in accordance with the highest professional standards.

Our Values

We acknowledge that the trust and confidence of the public are essential to our role. We therefore set for ourselves a high standard of professionalism and place ethical conduct at the core of our operations.

Our work is based on the following core values adopting the principles set out in section 3A (5B) of the *Health Care Complaints Act*. The Commission strives to be:

Independent

The Commission acts independently by handling complaints without direction from any person or body.

Accountable

We are accountable for our work.

We report to the general public about our work and trends in complaints in our Annual Report.

We regularly report to the Minister for Health, the Joint Parliamentary Committee on the Health Care Complaints Commission, and professional and key consumer bodies.

The Joint Parliamentary Committee on the Health Care Complaints Commission oversees the management of our processes. The Commissioner is responsible to the Minister for Health for the management of the Commission.

Accessible, flexible and responsive

People from all parts of the community should feel confident that they have a complaints body that is accessible, impartial and available. We ensure the accessibility of our services to everyone, and will act with flexibility in order to accommodate special needs. This includes:

- ▶ Assisting people with disabilities (accessibility of the building, TTY access).
- ▶ Providing information about the Commission in 20 community languages for people from non-English speaking backgrounds, and arranging interpreting and translation services when required.
- ▶ Helping people to lodge a complaint, when required.

We aim to be responsive to changes in the health care system.

Open, clear and understandable

Our decision-making processes are open, clear and understandable for all parties to complaints.

We explain our processes and the reasons for our decisions. We also keep all persons who are involved in a current complaint updated about the progress of the complaint.

Impartial

We deal with everyone without bias and in a fair, co-operative and respectful manner.

We handle complaints impartially, considering the rights and interests of both clients and health service providers. In the process of determining the most appropriate action in dealing with a complaint, we act on all relevant evidence.

Timely and effective

We thoroughly assess complaints to be effective in protecting the public from harm.

We perform our work in a timely manner and adhere to the statutory timeframes set out in the Act.

Confidential

We observe and respect the privacy of parties to complaints and others and act strictly within the framework of relevant legislation.

Professional behaviour and decision making

We should perform our duties diligently, impartially, conscientiously and to the best of our ability. In our performance we must:

- ▶ Treat everyone, including members of the public and staff of the Commission, with respect, courtesy, honesty and fairness, and have proper regard for their interests, rights, safety, health and welfare.
- ▶ Provide all necessary and appropriate assistance to members of the public and parties to a complaint.
- ▶ Ensure that our work habits, behaviour and personal and professional relationships at the workplace contribute to a harmonious and productive work environment.
- ▶ Make decisions in a fair and timely manner, giving due attention to all relevant information, legislation and Commission policies and procedures, and not take irrelevant matters or circumstances into consideration.
- ▶ Maintain adequate documentation to support any decisions made.
- ▶ Respect diversity of thought, experience and skills.
- ▶ Observe common courtesies and etiquette in terms of day-to-day relationships.

- ▶ Comply with lawful or reasonable instructions given by an authorised colleague.
- ▶ Comply with any relevant legislative, industrial and administrative requirements.
- ▶ Keep up to date with changes in our area of expertise.
- ▶ Strive to obtain value for money spent and avoid waste and extravagance in the use of public resources.
- ▶ Not harass, bully or discriminate against any person on the ground of gender, marital status, pregnancy, age, race, ethnic or national origin, physical or intellectual impairment, sexual preference, transgender status, carers responsibilities, or religious or political conviction.
- ▶ Not take or seek improper advantage of any official information gained in the course of employment with the Commission.

Comply with the lobbyist code of conduct

The [Lobbyist Code of Conduct](#) provides that Government representatives, which includes all staff working in public sector agencies must only be lobbied by a professional lobbyist who is registered and has their lobbyist's details on the official Register.

"Lobbyist" means a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government Representative.

"Lobbyist" does not include:

- (a) an association or organisation

constituted to represent the interests of its members;

- (b) a religious or charitable organisation; or
- (c) an entity or person whose business is a recognised technical or professional occupation which, as part of the services provided to third parties in the course of that occupation, represents the views of the third party who has engaged it to provide their technical or professional services.

It is essential that as an employee of the Commission we comply with the NSW Government's Lobbyist Code of Conduct.

Conflicts of interest

We must avoid conflicts of interest between our official, public duty and our private, personal interests. The public interest must come first on all occasions. We should avoid any personal activity, association or financial dealing that could directly or indirectly compromise the performance of their duties.

Conflicts of interest, or the perception that they have arisen, can do great damage to the reputation of the Commission and its staff.

A conflict of interest arises when staff with a particular personal interest may appear to be influenced in the performance of their official duties.

Examples may be:

- ▶ Having a financial interest in a health organisation or in the provision of health services, or having friends or relatives with such an interest.
- ▶ Having or developing a personal

association with a complainant or a health practitioner involved in a complaint to the Commission that goes beyond the level of a professional work relationship. Any personal association with parties to a complaint (for example, the health practitioner in a complaint is your GP) must be disclosed to your line manager.

- ▶ Accepting outside employment that may, or may appear to, compromise the integrity of the officer or the Commission.
- ▶ Participating in political, community or personal matters that may relate to the affairs of the Commission.

In many cases only we will be aware of a potential conflict of interest. Therefore it is our obligation to consult with our line manager or a Director if a potential or actual conflict of interest arises.

Where we are unsure whether a conflict of interest exists, it is the general rule to disclose a potential conflict of interest to our line manager or a Director. Consultation about a possible conflict of interest can be confidential. Please remember, such consultation cannot harm, whereas not disclosing a conflict of interest can harm not only you, but also the whole Commission.

Possible outcomes of the consultations include:

- ▶ Recording the details of the disclosure.
- ▶ Requesting termination of the personal interest.
- ▶ Removal from duties in which the conflict of interest arises.

Conflict of interest of medical expert advisers

Under section 30(2) of the *HCC Act*, the Commission may not obtain an expert report from a person who has a financial connection with the health practitioner against whom the complaint is made.

Acceptance of Gifts, Benefits, Bribes or Favours

We should never create the impression that any person or organisation is inappropriately influencing the Commission or any of its staff.

The acceptance of gifts and other benefits has the potential to compromise our position by creating a sense of obligation in the receiver and so undermining our impartiality. It may also affect the public perception of the integrity and independence of the Commission and its staff.

Bribery

We should never solicit any money, gift or benefit and should never accept any offer of money. To do so may constitute bribery. Bribery is soliciting, receiving or offering any undue reward. A reward can encompass anything of value and is not limited to money or tangible goods. The provision of services may amount to a reward. We should report to our line manager immediately if we believe we have been offered a bribe, or if we have been offered or received a benefit. We may also choose to report the matter direct to the Independent Commission Against Corruption (ICAC).

There are some circumstances when to refuse a gift would be perceived as rude or offensive. Token gifts, such as flowers or chocolates, may be accepted

provided that there is no possibility that we might be, or appear to be, compromised in the process. However, even token gifts should not be accepted from any party to a complaint that is being dealt with by the Commission.

Gifts and Benefits

We must exercise sound judgement when deciding whether or not to accept a gift or other benefit. All gifts and benefits must be disclosed to your line manager using the *Gifts and Benefits Declaration*, which will be forwarded to the Commissioner.

Favours

Particular attention needs to be given to favours. A favour by a party to a complaint can compromise the officer and therefore needs to be managed in the same way as any other benefit that is offered to us. If unsure, seek advice from your line manager.

Use of public and Commission resources

The resources we use at work are publicly funded resources, including our time. These resources include — *but are not limited to* — facilities, computers, printers, motor vehicles, the internet, mobile phones, credit and fuel cards, and people. Because these resources are publicly funded, our use of them needs to be efficient and appropriate.

It is our obligation and responsibility to use publicly funded resources in accordance with government legislation and policy. Limited private use of the Commission's resources may be permitted in some cases. However, our private use of the Commission's resources, including our time, should be short, infrequent, and not interfere with Commission work.

We should not permit abuses by others.

Further guidance about these issues can be found in our

- ▶ [Email Policy](#)
- ▶ [ICT Policies](#)
- ▶ [Internet Usage Policy](#)
- ▶ [Mobile Computing Devices Policy](#)
- ▶ [Telephone Policy](#)
- ▶ [Voicemail Usage Policy](#)

Political, community, and personal activities

As individuals, we have the right to participate in political and community activities and to pursue personal interests, provided we do so in a private capacity and do not allow a conflict of interest to arise.

We must ensure that any participation in activities does not conflict with our primary duty to advance the public interest in a politically neutral manner.

In participating in any political, community and personal activity we must ensure that:

- ▶ Any comment we make or discussion we have does not cast doubt on our ability or willingness to implement Commission policies and guidelines objectively.
- ▶ We do not participate in private political activities in the work environment.
- ▶ We do not use Commission resources to assist us in our political, community or personal activities.
- ▶ We do not use information obtained through our work at the Commission to assist our political, community or personal activities, or make such information known to any other person.
- ▶ We do not misrepresent the position of the Commission on any issue.

It is our obligation to ensure that any involvement in political, community, or personal activities is understood to represent our personal views as a private citizen. It is also our responsibility to ensure that our manager is made aware of any

association that may affect, or be perceived to affect, our day to day work.

Our workplace

Free of discrimination, harassment, or bullying

We strive to act in a way that allows our workplace to be free of discrimination, harassment, or bullying.

Guidance can be found in our:

- ▶ [Bullying & Harassment Prevention Policy](#)
- ▶ [EEO & Discrimination Prevention Policy](#)
- ▶ [Employment of people with Disabilities](#)
- ▶ [Grievance & Dispute Resolution Policy](#)
- ▶ [Harassment free workplace guidelines](#)

Where we experience or witness discrimination, harassment, or bullying, we should notify our line manager or the Commissioner. Alternatively, we may notify the Anti-Discrimination Board.

Safe and secure

We also strive to act in a way that allows our workplace to be safe and secure.

We are expected to understand our responsibilities and obligations under Workplace Health and Safety (WHS) legislation. We should be proactive in ensuring that our workplace is safe and secure for everyone, including identifying, assessing and reporting safety risks and hazards.

We have an obligation to ensure that personal use of alcohol or other drugs does not affect our performance or

safety, or the performance or safety of others.

We have obligations to keep our workplace secure by being aware of and reporting suspicious visitors and/or unusual events. It is important that we are familiar with our security policies and procedures.

Guidance can be found in our

- ▶ [Security Access Policy](#)
- ▶ [Bomb/Threat Checklist](#)
- ▶ [In Case of Emergencies](#)
- ▶ [WHS Policy](#)
- ▶ [Risk Management Policy](#)
- ▶ [Visitor Procedures](#)

Our obligations regarding Commission information

Using and protecting confidential information

Commission work involves access to sensitive and personal information in the course of managing complaints. We must maintain the confidentiality of any information that we acquire during the course of our work. We must take precautions to ensure that no information is disclosed without clear authority. To do so may harm individuals, affect their information privacy, and breach duties of confidentiality owed to them. In addition, the credibility and integrity of the Commission may be damaged if it appears unable to keep its information secure.

Unauthorised disclosure of information is an offence. Section 99A of the *HCC Act* prohibits disclosure of information obtained during dealing with complaints

except:

- ▶ With the consent of the person to whom the complaint relates
- ▶ In connection with the execution and administration of the *HCC Act*
- ▶ For the purpose of legal proceedings arising out of the *HCC Act*
- ▶ With other lawful excuse.

Authorisation to disclose information

If you believe that disclosure of complaint-related information (other than as a part of the complaint-handling process) is justified or required, you should seek written approval from your line manager or the Commissioner.

We should also exercise caution and sound judgment in discussing such information with other Commission officers. Normally information should be limited to those who need it to conduct their duties, or who can assist us to carry out our work because of their expertise.

We should remember that former Commission employees will not be given favourable treatment or access to confidential information.

We must not use information to gain a personal or commercial advantage for ourselves or another person.

Commission files and other documents and information are not to be removed from the premises except in accordance with the Commission's security policies and procedures. If in doubt as to how to manage or secure sensitive material, consult your line manager.

Making public comment on the Commission's work

The Commission deals with very sensitive issues. We should observe the confidentiality provisions of legislation when making comments.

Public comments include speaking engagements, comments on radio, television, websites or other media and expressing views in letters, newspapers, books, journals, notices or where it might be expected that the publication or circulation of the comment will spread to the community at large.

Any media inquiries should be immediately referred to the Executive Officer. When we represent the Commission externally, prior notification must be given to the line manager, and be authorised by the Commissioner.

We are able to refer to the content of Commission work that is already in the public domain, such as published reports and discussion papers, annual reports, public relations material, transcripts of public hearings, media releases, and public addresses.

We should ensure that others are aware that we are only discussing material that is in the public domain, to avoid the perception that we may be telling people something that is confidential, for example, when talking to family, friends or acquaintances, when on public transport, in social settings, or at a café, party or pub. If uncertain as to whether information is in the public domain, consult your line manager or the Executive Officer.

While staff, as members of the community, have the right to make

public comments and to enter into public debate on political and social issues, there are some circumstances in which public comment is inappropriate. These include situations where the public comment, although made in a private capacity, may appear to be an official comment of the Commission. This type of comment should be strictly avoided. If in doubt, consult your line manager or the Commissioner.

Intellectual Property

Anything we develop, invent or create, either alone or in collaboration with others in the course of our employment or engagement with the Commission, remains the intellectual property of the Commission, even when we leave the Commission.

On occasion, it may be in the public interest for the Commission to share its intellectual property with other agencies, but this must be authorised by the Commissioner.

Outside employment and other activities

Prior to engaging in any secondary employment or other professional activity, we should seek advice from our line manager. We should only commence secondary employment once we have received formal authorisation from the Commissioner for that employment. Each case will be assessed on its merits in terms of the likely effect of the outside employment on our ability to perform our duties with the Commission.

This applies to all of us, independent of whether we work full or part time, or on a permanent or temporary or contractual basis for the Commission. Medical experts engaged by the Commission declare conflicts of interest in each case they are engaged and need not seek approval for other employment.

We must, before taking up employment with the Commission, declare any other employment we have or plan to undertake.

If we have any outside employment, a potential conflict of interest may also

arise. We therefore need to consider the part of this code of conduct about conflicts of interest in assessing the implications of outside employment.

For further details regarding secondary employment and how to apply for authorisation, consult your line manager or the Human Resources Advisor and Executive Support Officer.

If we leave the Commission

If we intend to accept a position with another organisation, we should advise our line manager or Director as soon as possible so that any conflict or potential conflict of interest can be managed.

When we leave the Commission, we should respect the confidentiality of information that we have come across in our work, and the Commission's intellectual property rights over material produced by the Commission, including material produced by us while at the Commission.

When we cease duty with the Commission, we cannot take any Commission resources such as manuals, documents, materials or other information or equipment, unless authorised. These items are the property of the Commission. This includes any work and documents we have produced during our engagement with the Commission.

Being a former employee of the Commission does not entitle a person to favourable treatment or access to confidential information.

Accountability and Reporting

If we suspect or become aware of conduct inside the Commission that is unethical, unfair, unlawful or corrupt, or which involves maladministration or serious and substantial waste, we should promptly report it to our line manager or the Commissioner.

We also can report corrupt conduct or suspected corrupt conduct directly to the ICAC. Under section 11 of the *Independent Commission Against Corruption Act 1988*, the Commissioner must report corrupt or suspected corrupt conduct to the ICAC.

We should report such conduct that we suspect or encounter in the course of our duties. We should also make a report if we suspect that another Commission officer is engaged in corrupt conduct, even if that corrupt conduct is unrelated to the officer's duties for the Commission.

We can also report maladministration to the Ombudsman and substantial waste to the Auditor-General.

Public Interest Disclosures

The *Public Interest Disclosures Act 1994* acknowledges the difficulty we may face when making a report about another public official.

The Act provides certain protections against reprisals for employees who report such matters and makes it an offence for detrimental action to be taken against a person for making a protected disclosure (but not for vexatious or malicious complaints). The Act applies to complaints made about

the actions of public officials from other agencies as well as those involving the agency by which the public official is employed.

Internal investigations of protected disclosures are ordinarily conducted by a member of the Executive and a report submitted to the Commissioner for consideration of appropriate action. In the case of more serious or difficult investigations, outside assistance may be engaged.

Complaints about corrupt conduct, maladministration or serious and substantial waste on the part of Commission officers may be made to the ICAC, the NSW Ombudsman or the Auditor-General of NSW.

Breaches of the Code of Conduct

By accepting a position or engagement with the Commission, we have agreed to abide by this Code of Conduct.

Breaches of the Code or any of the principles and guidelines that it describes may lead to the Commissioner taking appropriate management or disciplinary action. Disciplinary action may include counselling, official notification of unsatisfactory performance, dismissal, or prosecution in serious cases.

Unacceptable conduct

The integrity and public image of the Commission could be seriously compromised if any of us engage in conduct that is corrupt, unlawful, unethical or unfair.

Examples might be:

- ▶ deliberate actions or acts that contravene the *HCC Act*, the Code of Conduct, or other Commission policies
- ▶ actions that are unethical, unfair or unlawful, for example:
 - taking credit for someone else's work
 - making wrong or unsubstantiated statements
 - shifting blame
 - withholding relevant information
 - being biased.
- ▶ acts of carelessness, neglect, deceit, bullying, discrimination, harassment, or the misuse of position or information arising from a conflict of interest, as well as taking reprisal action against someone for making a protected disclosure
- ▶ corrupt conduct - for example, when a public official uses or attempts to use their position for personal advantage, or when a member of the public influences or attempts to influence a public official to use his or her position for a purpose other than the benefit of the public
- ▶ serious and substantial waste - which refers to the uneconomical, inefficient or ineffective use of resources that results in loss/wastage of public funds/resources

- ▶ maladministration - for example, action (or lack of action) of a serious nature by a public employee that is against the law, unreasonable, unjust, oppressive or discriminatory, or based wholly or partly on improper motives.

Applicable legislation and guidelines

The Code is not a comprehensive guide to all ethical and legal obligations that we have. We should also be familiar with legislation relating to the Commission including the *HCC Act*, the health registration acts and the legislation administered by the Department of Health.

Legal obligations are also imposed on staff of the Commission by the *Public Sector Employment and Management Act 1988* and *Management (General) Regulation 1996* and other relevant legislation, including:

- ▶ *Crimes Act 1900*
- ▶ *Anti-Discrimination Act 1977*
- ▶ *Freedom of Information Act 1989*
- ▶ *Industrial Relations Act 1996*
- ▶ *Occupational Health and Safety Act 2000* and *Regulation 2001*
- ▶ *Privacy and Personal Information Protection Act 1998*
- ▶ *Public Interest Disclosures Act 1994*
- ▶ *Public Finance and Audit Act 1983* and *Regulation 2005*

In addition, we have Commission specific obligations that are set out in Commission policies and guidelines, available on the Intranet.

Checklist

When faced with an ethical dilemma, ask whether your conduct:

- ▶ Is legal?
- ▶ Is consistent with Commission values, principles and policies?
- ▶ Is the right thing to do?
- ▶ Can be justified?
- ▶ Has it negative consequences for colleagues, the Commission, other parties or yourself?
- ▶ Would lead to negative reactions of family and friends, if they were to find out?

If you are unsure of the answer or what to do, speak to your Manager or a senior Commission Officer.